

1956

## H. William Nalder et al v. Kellogg Sales Co. : Appendix to Brief of Respondents

Utah Supreme Court

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Dan S. Bushnell; Attorney for Plaintiffs and Respondents;

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# In the Supreme Court of the State of Utah

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H. WILLIAM NALDER, CATHERINE  
NALDER, H. WILLIAM NALDER, JR.

*Plaintiffs and  
Respondents,*

vs.

KELLOGG SALES COMPANY,  
a corporation,

*Defendant and  
Appellant*

UNIVERSITY UTAH

JAN 28 1957

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Case No. 8529

**FILED**  
NOV 30 1956

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Appendix to Respondents' Brief

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DAN S. BUSHNELL

*Attorney for Plaintiffs and Respondents*

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# Appendix to Respondents' Brief

## 1950 TURKEY CONTRACTS

Name — H. W. Nalder

Address — Layton

Location from nearest large city *Layton*

What is your opinion of this individual as a turkey grower?

Excellent....., Good *Good*, Fair....., Poor. Explain:

He has fine equipment. In spite of some brooder loss, caused by factors not his responsibility — for which a complete poult adjustment is being made — *Nalder came out with the best flock in the area in every respect.*

Mr. Scoville is familiar with this operation and results. *Mr. Scoville has suggested two flocks this year of 6000 each. Mr. Nalder wants to follow this program.*

Was he well satisfied with his results last year? Yes, Mr. Nalder is very happy over the prospects for 1950. He feels that with a reasonable market and results similar to what he finished with last year, he will have a very profitable season. He is very enthusiastic over the Kellogg program and the advice and help given to him by Mr. Scoville.

How is he regarded in his community? Very good. *He has the newest and most modern equipment in the area.* He has sufficient land and water to carry on his project. He has plenty of grain and enough help.

Will grower give these turkeys his personal attention or will someone be hired to raise them? Yes. Mr. Nalder will be with both herds all the way through. He will have helping him some members of his immediate family who are inter-

ested in his project. Their final pay will be determined by the final outcome of the project. Therefore interest from all parties will be extended to this project all the way through.

Remarks:

We believe that this man will successfully carry out his project.

/s/ W. H. Smith  
H. J. Bonie Poultry Co.  
Ogden, Utah

150-4  
Ex. C-1

## Appendix 1

Dictated by T. J. Lyon-ed  
Mr. George Vogel  
OMAHA PLANT

DATE: March 22, 1950

Dear George:

I am returning to you herewith the 1949 and 1950 Turkey files with H. William Nalder of Layton, Utah which you sent me at Salt Lake City.

Nalder has his 6,000 turkeys in the brooder house, and we have asked Mrs. Schinker to find out from Nalder if he is satisfied to have us pay Bonie's for those turkeys. He indicated at the time of our call there on March 14 that he was not satisfied at that time.

*We probably should have a real estate mortgage search made on this man to know who is holding the mortgage against his land, because there is going to be a deficit on the 1949 contract and we may want to have some security later on.*

Credit Department  
/s/ TJL

encl.

Ex. C-3

## Appendix 2

M. Schincker:mc  
Mr. E. C. Ogden  
Battle Creek Plant

July 27, 1950, Omaha

Dear Mr. Ogden:

We have received H. J. Bonie's check on 1949 turkeys of Mr. H. W. Nalder, Layton, Utah for \$17,891.24. This is final payment on his 1949 birds which leaves a balance of \$5627.39 plus interest charges. *We will prepare notes and have Mr. Scoville obtain signatures on the principal and interest as he has a 1950 turkey account.*

Yours very truly,

Ex. C-4

### Appendix 3

M. Schinker:mc  
Mr. R. M. Scoville  
Belvedere Apt. Hotel  
Salt Lake City, Utah

July 28, 1950, Omaha

Dear Ray:

We have received a check on H. W. Nalder & Sons account in the amount of \$17,891.24 to apply against their 1949 turkey account. This leaves a balance of \$5627.39 principal and interest of \$927.73 to-date. We are attaching notes on these two amounts and will appreciate it if you will obtain the signatures as we have a 1950 contract with these people and will hope to obtain this money at the time they sell their 1950 birds.

Yours very truly,

Plaintiff's Ex. C 5

### Appendix 4

August 2, 1950

Mr. S. J. Quinney  
c/o Ray, Quinney & Nebeker  
921 Kearns Building  
Salt Lake City, Utah

Dear Mr. Quinney:

It now appears to be necessary for us to furnish additional finance to Mr. H. W. Nalder under our turkey production program.

It has been our custom where additional finance was required to require *security at the rate of two for one*. In other words, \$2.00 worth of security for each \$1.00 furnished on additional finance.

We have now received returns on Mr. H. W. Nalder's 1949 turkey production and it leaves a balance of \$5627.39 *in principal and interest to July 28, 1950 in the amount of \$927.73*.

*We are securing notes to cover these two items, but of course are depending on the second mortgage which we hold on Mr. Nalder's home place as security to cover this indebtedness.*

The additional grain finance required will amount to approximately \$3600.00 and we feel that we should have double security on the combined amount of his 1949 balance and the grain finance for this year, which amounts in round dollars to \$10,154.00.

*If you will prepare a mortgage in the amount of \$10,000.00 on the property which we are now holding a mortgage in the amount of \$6721.80 showing various notes to be executed from time to time and deliver this to our representative, Mr. R. M. Scoville at the Belvedere Apt. Hotel, your city, he will secure the signatures of Mr. and Mrs. Nalder and deliver same back to you for recording.*

So you will have the complete description of the property we are sending you the Subordination Agreement dated May

26, 1950 and the note amounting to \$6721.80. When you have prepared the new mortgage and it is properly recorded, you may return these papers along with a copy of the new mortgage. This should give us a total of \$16,721.80 against this property and will give us a recorded mortgage value of 1.6 to 1 of indebtedness.

*We may be entirely off the beam in working on the basis of drawing a mortgage for an amount larger than we expect the account to be, but we feel that it is some protection to have a recorded amount in that figure and if by some extreme it was necessary to advance more than was originally requested there would not have been an opportunity for the grower to have placed another mortgage which would come in between the mortgage we might file now and another one some 60 or 90 days later. You might advise us as to this procedure. We understand that in most states the law is that the mortgage has to be backed up by notes and of course we would never attempt to collect any more than our account actually amounted to regardless of the size of the mortgage.*

Mr. Scoville can be reached by phoning him c/o the address listed above and will be glad to come over to your office and pick up the documents for signature.

Yours truly,

Kellogg Sales Company  
W. H. Williams, Jr.  
General Sales Manager  
Omaha Plant

WWH:mc  
Mr. R. M. Scoville  
Mr. T. J. Lyon  
Mr. L. C. Borsum

Ex. C 7.5

## Appendix 5

August 30, 1950

M. Schinker: mc  
Mr. R. M. Scoville  
Belvedere Apt. Hotel  
Salt Lake City, Utah

Dear Ray:

We are returning voided notes on Mr. H. William Nalder, Sr. and Jr. on the principal for their 1949 turkey account and the interest, as the notes are signed in error.

We are sending along new notes and will appreciate it if you at your first opportunity will obtain the signature of Mr. H. William Nalder, Sr. and Jr. and they may be signed by H. William Nalder Sr. and Jr. by H. William Nalder, Sr. or Jr. Thank you.

Yours very truly,

Ex. C 8

## Appendix 6

Dec. 8, 1950, Omaha Plant  
Dictated Dec. 7

M. Schinker:mc  
Mr. H. W. Williams, Jr.  
Utah Hotel  
Salt Lake City, Utah

Dear Bill:

The attached copy of letter to Mr. William Nalder will be self-explanatory. *His 1950 account is all clear and he has paid the interest charges up to December 15 on his 1949 account.*

The principal on the 1949 account amounts to \$5627.39. He was wondering what the interest rate would be and since I *was not sure whether it would be 4, 5 or 8, I did not commit myself.*



We will not have any of the mortgages released, either the Chattels or Real Estate until we have advice from you.

Yours very truly,

Ex. C-9

## Appendix 7

December 8, 1950  
Dictated December 7

Mr. H. W. Nalder, Jr.  
1221 Fourth Avenue  
Salt Lake City 3, Utah

Dear Mr. Nalder:

It was certainly a pleasure to make your acquaintance when you stopped in the office this morning to settle your turkey account. As you will note from the copy of statement we gave you while you were in the office we were pleased to give you our check for \$362.35 and only sorry that it wasn't more.

We have contacted Mr. Williams and he undoubtedly will see you or your father while he is out West.

We gave you the paid interest note on the 1949 account while you were in the office and the payment included charges to December 15 at 4%. *We are now returning the paid notes on your 1950 contract. Undoubtedly some satisfactory arrangements can be made for settling the balance due on your 1949 account, but we will withhold releasing mortgages until we hear further from Mr. Williams.*

It was a pleasure to serve you and we would like to take this opportunity to thank you for your fine cooperation.

We are returning the manifest sheets and thank you for their use.

Yours very truly,

KELLOGG SALES COMPANY

/s/ M. Schinker

Credit Dept.

Omaha Plant

MS:mc

cc

Mr. W. H. Williams, Jr.

Utah Hotel

Salt Lake City, Utah

Mr. Scoville

Ex. C-10

Appendix 8

LEE BROWN

TURKEYS

247 24th Street, Ogden, Utah

Kellogg Sales Company

26th and Center Street

Omaha 5, Nebraska

Attention Mr. W. H. Williams Jr.

General Sales Manager,

Omaha Plant.

March 19, 1951

Dear Mr. Williams:

This letter is confirmation that we will under-write the loss on H. W. Nalder and H. Wm. Nalder Jr. Turkey Finance Accounts, up to the amount of the purchase price of the Poult, which will be a maximum of \$2,400.00 on each of the two accounts, namely: H. W. Nalder and H. Wm. Nalder Jr. This refers to the 1951 projects only, and it is understood that any past indebtedness owing, by Nalders, to the Kellogg Sales Company from other years operations, will not enter into this agreement.

Very truly yours,

LEE BROWN COMPANY

signed E. L. Brown

E. L. Brown

ELB:fwc

Ex. D-2

Appendix 9

November 21, 1951  
Layton, Utah

Mr. Williams of the Kellogg Company

Dear Mr. Williams:

Find enclosed check and manifest for the turkeys this year. It surely looks bad again for us. Mr. Williams you will see by the manifest those in red we brought home and sold. We know that we should not have done this without your consent, but last Monday they were starting suit against us to get Judgement for \$2000.00 which was due two years ago. You know, Mr. Williams it just does not matter who you are or what you are if you cannot pay you are out. You also know without me telling you that we have made nothing since we went into the turkeys. The first year we were so green. We knew nothing about the business end of it I guess we had to learn the hard way. But it is a lesson we will never forget.

We let Mr. Bonie ship our turkeys East in his name when the understanding was that they were to stay in our name till sold. If we had sold them here when processed we would have been able to pay Kellogg all we owed and had \$800.00 over, but as it was we went \$6000.00 in the hole. We were unable to do much about it as they were shipped in his name.

The next year (last year) we were able to pay Kellogg Company all of last year's bill and \$1000.00 on interest.

Mr. Williams, this year the way we had to feed was also a very costly lesson to us. Our feed bill this year I believe will be more than \$6000.00 above what it was last year. We would sure like to talk this feed situation over with you if possible.

You can see by the other letter I have also sent that we lost turkeys apparently was no fault of ours but it looks now that the Insurance Company will pay for this loss which would pay up the Kellogg Company for this year.

Mr. Williams, two weeks after this loss Mr. Barnard insisted that we give the herd blue vitriol, which he said would do no harm if it did no good. This was against our desire because those turkeys did not need any medicine as the birds that did not die two weeks before were good birds as they had

never gone off feed. As for myself and Mrs. Nalder we do not believe in dopping up turkeys with medicine when there is no need of it. At the time Mr. Barnard gave us the understanding that Mr. Ereksen also advised it. We found out after he was also against having it.

When we took some of these birds up to the A. C. College at Logan they had a fever which they said was caused by the blue vitriol, this (the blue vitriol) had poisoned them. Dr. Benno told us never to put that in Mash as a few might get most of it which apparently had happened in this case. He said if it was necessary always put it in the drinking water. We lost 105 at this time.

Mr. Williams, by using the money when we did it has saved us from that Judgment. *Now if you are very disappointed and angry with us for doing this we will see if they will increase our first mortgage about the \$1200.00 we got from these birds. We did not want to do this but it seemed there was no other way in such short notice. We do hope that you have not lost faith in us. Now we realize when it is too late that we should have called you on the phone, but you know a person who is desperate the way we were, does little reasoning. Please do not judge us as dishonest for we have placed the cards upon the table and there is nothing underhanded.*

Mr. Williams, please do not blame Mr. Lee Brown in any way as we were unable to get hold of him that day and he did not know at the time that we had taken them, we just told the foreman there that we would like to take that many turkeys. He said O.K. Now we don't know whether Mr. Brown had orders from you not to remove any birds. We really did not think of that part until now. It is the last desire of our heart to cause him any trouble as he is a very fine man and we are going over to see him and find out if we have caused him any trouble as you know he has the processing plant. I assure you this will not happen again.

Respectfully,

Mr. and Mrs. H. W. Nalder  
Layton, Utah

P.S. Please let us hear from you by return mail.

Mrs. H. W. Nalder

You will see by the count that we came out of the brooder with better than 3000. In fact it was 3129. Mr. Brown had put in some extra birds.

Ex. D-5

## Appendix 10

Layton, Utah  
January 16

Dear Mr. Aust

Just a line to inform you that I am sending you some money. I thought I would be able to send it off today but connections have been so bad to make contact. But I will send it to you by the 20th and will send it air mail so you will get it without unnecessary delay. The amount will be \$1250.00 and by that time I hope the check from the insurance will be in your hands. \$1267.40 is that amount, so I hope all will work out for me. I am trying and doing my best so please be as patient and forbearing with me as you can. I have a lot at stake and want to work out as soon as possible. I hope to be able to see you or Mr. Williams when you come to Utah. Be sure and contact me.

Thanking you,

I am respectfully,

H. W. Nalder

Ex. D-10-5

## Appendix 11

*Air Mail*

January 17, 1952  
Dictated January 16

Messrs. H. W. Nalder Sr. & H. William Nalder, Jr.  
Layton, Utah

Gentlemen:

On January 8 the writer wrote you confirming the telephone conversation of January 5 in regard to your outstanding 1951 turkey balance.

It is our understanding when I talked to you on January 5 that you would arrange to have the funds forwarded to this office by January 11 to take care of the number of turkeys which you sold locally.

We note that we have not received these funds from you and this is now January 16. It is imperative that you immediately arrange to forward these funds to this office by return mail. We have not yet received the insurance adjustment check, as soon as it arrives we will forward it to you for endorsement. Please give this matter your immediate attention and we will look forward to receiving your check in accordance with our letter of January 8.

Yours very truly,

KELLOGG SALES COMPANY  
V. L. Aust  
Credit Manager  
Omaha Plant

VLA:mc

cc

Mr. Barnard

Ex. D-11

## Appendix 12

January 30, 1952

Messrs. H. W. Nalder Sr. & H. William Nalder, Jr.  
Layton, Utah

Gentlemen:

We wish to acknowledge receipt of the insurance adjustment check in the amount of \$1267.44 which we have credited to your 1951 turkey account, the 1951 interest, and have credited the balance of \$493.31 to your old account. The outstanding principal on the 1951 account was \$326.44 and the interest amounted to \$447.69.

We are awaiting the remaining balance for the 1951 turkeys which were sold locally. We understand that Bill traded \$352.00 worth of turkeys to take care of a gasoline bill and of course *inasmuch as we had a mortgage on these turkeys that amount must be remitted to us together with the remaining balance as discussed with Mr. Williams recently. We would appreciate having these funds forwarded to us so that we would be able to release the mortgage and return the notes to you.* Your cooperation will be greatly appreciated.

Yours very truly,

KELLOGG SALES COMPANY  
V. L. Aust  
Credit Manager  
Omaha Plant

VLA:mc

cc

Mr. Barnard

(Notation attached as follows:)

H. W. Nalder Sr. & Jr.

Ins. Ck for 1267.44

Applied

1951 TC 326.44

Int. 447.69

N. Rec. 493.31

1267.44

Ex. D-13

## Appendix 13

Mr. W. H. Williams, Jr.  
Kellogg Sales Company  
Omaha, Nebraska

Bountiful, Utah  
February 2, 1952

Dear Mr. Williams:

I understand from Dad that you will not be feeding us this year but that you would be willing to let another feed company do so, letting them have first lien to the extent of their services.

I have arranged for some poultts and a company to feed them providing they get confirmation from that they will be assured of their money first. I would like to remain in turkeys if possible and try to clear off our outstanding obligations.

If such a satisfactory arrangement can be worked with you people I wish you would send me confirmation so I can turn it over to the feed company as that is the only thing holding it up and my turkeys are scheduled to arrive the first week in March.

Sincerely yours,

H. William Nalder Jr.  
P. O. Box 552  
Bountiful, Utah

Ex. D-14

Appendix 14

2-5-52  
February 26, 1952

ATTENTION Mr. Williams

Attached is copy of letter received from Bill Nalder Jr.

I'd like to tell him that we will have to have the \$352.00 for 1951 turkeys which he traded for the gas bill before we could agree to write such a letter. What do you think? *I doubt if he can pay this but it might work.*

V. L. Aust

Ex. D-15

Appendix 15



February 18, 1952

Mr. H. William Nalder, Jr.  
P. O. Box 552  
Bountiful, Utah

Dear Mr. Nalder:

We wish to acknowledge receipt of your letter of February 2 in which you desired *a confirmation from us that we would permit another feed company to finance your 1952 turkeys.* The delay in reply to this letter was caused due to the fact that Mr. Williams was in Salt Lake City at the time and we forwarded the letter out to him and he attempted to get in touch with you but inasmuch as you do not have a telephone he was unable to see you.

Before we can give a confirmation to you, it will be necessary that we receive the funds for the turkeys which you did not sell, but received credit on the outstanding gas bill and this will have to be paid in full to us. *After receipt of a remittance of \$352.00 we would be pleased to furnish a Subordination Agreement to any feed company that you would suggest, but we would appreciate having you give us the name of the feed company so that we can write the letter direct to them and a copy of such Subordination Agreement sent to you, but as mentioned before, we would not be able to grant this until your share of the 1951 turkey contract is paid in full.*

I believe that Mr. Williams explained this to your Father when he was out there recently, so we trust you have been able to make arrangements for this money by this time. We do want to apologize for the delay in getting a letter to you, but sincerely trust this has not inconvenienced you too greatly.

Yours very truly,

KELLOGG SALES COMPANY  
V. L. Aust  
Credit Manager, Omaha Plant

VLA:mc

cc

Mr. Lyman

Ex D-16

Appendix 16

KELLOGG SALES COMPANY  
FEED DEPARTMENT  
26th and Center Streets  
OMAHA, NEBRASKA

Farmers Grain Company  
Ogden  
Utah

Gentlemen: Mr. H. William Nalder, Jr. — Bountiful, Utah

We recently had a request from Mr. H. William Nalder, Jr. to subordinate a lien which we have on his 1951 flock of turkeys. We have written to Mr. Nalder and notified him that upon receipt of his remittance for \$352.00 we would agree to furnish a subordination agreement to cover the remaining balance for prior years, *but we must have the 1951 account cleaned up first. We also asked Mr. Nalder the name of the feed company that intended to finance him for the season but as yet we have not received a reply to our letter.*

*We understand that you folks are contemplating financing his 1952 turkey program and we wish to notify you at this time that we still have a lien on his turkeys. If there should be any further question on this we would appreciate having you contact us.*

Yours very truly,

KELLOGG SALES COMPANY  
/s/ V. L. Aust  
V. L. Aust  
Credit Manager  
Omaha Plant

VLA:mc

Stamped Received Feb. 28, 1952, 8:15

Ex. F-10

Appendix 17

TELEGRAM

10:45

March 2, 1952

Kellogg Sales Co.  
Church and Center Sts.  
c/o Mr. Aust or Mr. Williams  
Omaha, Nebr.

Talked Lee Brown taking processing agreement sending you \$352. Said would but now says can't do for 60 days. *My turkeys arrived 26th March. Get one ton feed can't get more until General Mills Ogden Utah Mr. Henry Stephens receives subordination can you send subordination to General Mills?* Wire if possible and receive submittance Brown 60 days? *My only possible way of raising it.*

H. William Nalder, Jr.

Box 552 Bountiful, Utah

Ex. D-17

Appendix 18

TELEGRAM

Paid        X  
Collect

9:15 A.

March 3, 1952

H. Wm. Nalder Jr.  
Bountiful, Utah

Necessary you secure a letter from Lee Brown agreeing to pay balance of 352 dollars to us by April 15 this year.

V. L. Aust

Kellogg Co.

322. So. 19th St.

(Contains pencil notation of)

Fell thru, I guess

Ex. D-18

Appendix 19

April 5, 1952  
Layton, Utah

Mr. Williams of Kellogg Sales Co.

Dear Mr. Williams:

I have been unable to send the \$350 we owe you. Bill has a job now and he is getting in better condition. He will be able to send it before long. I hope you will bear with me and consider my case again in order that I may work out of my predicament, you know the three years I have fed Kelloggs feed. You may say rightly that they have not been good years. I have been able to pay up my current bills, however myself, Mr. Scovill and Mr. Bonie in storing those first turkeys sure made a bonner, and I am the looser of close to 7,000 \$ seven thousand dollars, this placed me in my present condition.

*I have been fair and honest with your Co. and in all fairness I feel you should go along with me and help me to recover my self. I would like to put this proposition for your consideration. I would like to have 2000 turkeys to care for right around here I can get the turkeys. I have about 50 acres of grain. This is the best condition I have been in. I have a lot of equipment I want to stay in the business and not fail I want to succeed and pay up without having to sell my home. I have never dealt with anyone that I could not go back and do business with them, again. Please reconsider my case let me work out and regain my losses give me a chance and I will not let you down.*

Please ans. me back as soon as possible  
let it be favorable

respectfully

H. W. Nalder R.F.D. No. 2  
Layton, Ut.

Stamped: Received April 8, 1952 Kellogg Co. Omaha at 9.  
Ex. D-19

Appendix 20

Mr. H. W. Nalder  
R No. 2  
Layton, Utah

April 9, 1952

Dear Mr. Nalder:

We have received your April 5 letter addressed to Mr. Williams regarding the outstanding balance of \$352.00 in connection with your 1951 turkey project. We note that apparently Bill has gotten a job and is now working out and as you mentioned is getting in better condition so that he will be able to send us in the \$352.00 before too long.

We are indeed sorry and realize that you have had two or three bad years in the turkey business which has caused you to go in the hole considerably.

In regard to a finance arrangement for 1952 we are indeed sorry but there is no way that we can approve a contract for you for 1952, at least until your entire outstanding account is paid in full. There is nothing in our 1952 finance program that would permit us to approve a contract until your obligations are taken care of. We did agree to prepare a subordination agreement for Bill providing we received payment of \$352.00 but inasmuch as this was never received we could not cooperate with him and furnish the subordination agreement and we might say at this time that we would be agreeable to furnish a subordination agreement for you, but it would be necessary that we receive the \$352.00 before this could be taken care of, the same agreement that we did give your son, Bill.

We sincerely trust that you will be able to secure financing so that you can continue in the turkey business. We also want you to arrange to take care of your outstanding account with us just as soon as possible and we would appreciate hearing from you as to just what your plans are in taking care of this.

Yours very truly,  
KELLOGG SALES COMPANY  
V. L. Aust  
Credit Manager  
Omaha Plant

VLA:mc  
cc - Mr. Lyman  
Mr. H. Wm. Nalder, Jr.  
Box 552 — Bountiful, Utah

Ex. D-20

## Appendix 21

KELLOGG SALES COMPANY  
FEED DEPARTMENT  
26th and Center Streets  
OMAHA, NEBRASKA

August 27, 1952

Mr. H. William Nalder, Jr.  
Box 552  
Bountiful, Utah

Dear Mr. Nalder:

We have been reviewing your account and find that we have not yet received a remittance of \$352.00 for turkeys which you disposed of and did not remit to us in accordance with the terms of your contract.

We are sending a copy of this letter to your Dad and note that in a recent letter of April 5 your Father wrote us advising that you now had a job and would be in a position to take care of this obligation in the very near future.

It is imperative that you make arrangements to take care of this part of your obligation without delay.

The outstanding balance on the 1949 account, the principal balance is \$5134.08. *This is secured by a second mortgage on your parents' home at Layton, Utah.*

In connection with this old account we had hoped that we would receive substantial payments during 1952 but as yet we have not received anything except some proceeds from the 1951 obligation and at this time our Home Office is requesting

that we proceed to effect this collecting. We feel we have been very lenient with you folks and that we should not be asked for an additional extension. We wish to advise you at this time that we are going to expect full payment of this obligation this fall and we trust you and your father will work towards this settlement.

Yours very truly,

KELLOGG SALES COMPANY  
signed  
V. L. Aust  
Credit Manager  
Omaha Plant

VLA:mc

Ex. D-21

## Appendix 22

December 22, 1952

Mr. H. W. Nalder  
R No. 2  
Layton, Utah

It was indeed a pleasure to meet with you and Mrs. Nelder when we were in Salt Lake City last week.

We want to confirm the arrangements made in our conference that you will turn over to the Kellogg Sales Company your proceeds from the trial about March 15, 1953 which you are suing the H. J. Bonie Poultry Company. It is also understood that you will arrange to pay the \$352.00 balance on the 1951 Turkey account which amount was for the turkeys which Mr. H. William Nalder, Jr. did not account to us for.

*As mentioned in our conference, upon receipt of these remittances we will be in a position to furnish you with a subordination agreement allowing you to secure turkey financing elsewhere inasmuch as our mortgage is still of record.*

We want to urge you to do everything possible to liquidate this account and will appreciate having you keep in touch



with us in regard to these payments which you have promised to send us. Your cooperation will be greatly appreciated and best wishes for a Happy Holiday Season.

Yours very truly,

KELLOGG SALES COMPANY  
V. L. Aust  
Credit Manager  
Omaha Plant

VLA:mc

cc

Mr. Lyman

Ex. D 21-5

Appendix 23

April 15, 1953

Mr. H. W. Nalder  
R No. 2  
Layton, Utah

I happened to be out in Salt Lake City last week on Friday and Saturday and I did attempt to contact you by telephone two different times but was unable to get an answer at your phone.

I recently wrote you on December 22, 1952 in regard to your old account confirming the arrangements made in the conference with you and Mrs. Nalder and Mr. Williams and myself last December.

We had expected to receive the remittance agreed upon and the proceeds from the trial long before this time and are indeed disappointed that we have not heard further from you. *We did agree to furnish a subordination agreement contract upon receipt of \$352.00, the balance on the 1951 turkey contract but we will be unable to do this until the payment is received. We are wondering whether you are intending to raise turkeys this year or not.*



We would like to ask at this time that you arrange to forward us a substantial remittance to apply on your account and also *advise us when you will be able to pay the \$352.00 to clean up the 1951 account. We must insist on your cooperation* in an effort to liquidate this account and unless a substantial remittance is received at this time we will have to proceed with other action.

Yours very truly,

KELLOGG SALES COMPANY  
V. L. Aust  
Credit Manager  
Omaha Plant

VLA:mc  
cc — Mr. Lyman  
Mr. H. W. Nalder

Ex. D-22

Appendix 24

KELLOGG SALES COMPANY  
FEED DEPARTMENT  
26th and Center Streets  
OMAHA, NEBRASKA

June 4, 1953

Mr. H. W. Nalder  
R No. 2  
Layton, Utah

Dear Mr. Nalder:

On April 15 I wrote you in regard to your outstanding balance *especially the \$352.00 which is the balance due on the 1951 turkey contract* from the sale of the balance of the turkeys which of course would be applied on your old account. We asked you at that time to arrange to forward us a substantial remittance by return mail and also advised that if we did not receive this we would proceed with legal action.

When Mr. Williams and myself saw you last December you agreed to pay this \$352.00 balance on the 1951 account and also remit to us the proceeds from your trial on approximately March 15.

We feel we have been very lenient with you and inasmuch as you have not cooperated with us we have no other alternative than to place your account with our attorney for collection. We will withhold action until June 15 and unless we receive a substantial reduction at that time we will proceed to enforce this collection.

Yours very truly,

KELLOGG SALES COMPANY

V. L. Aust

## Credit Manager

## Omaha Plant

VLA-mc

### Ex. D-23

## Appendix 25

KELLOGG COMPANY

## 26th & Center Streets

## Omaha 5, Nebraska

January 21, 1954

Ray, Quinney & Nebeker  
Suite 921 Kearns Building  
Salt Lake City, Utah  
Attention Mr. Albert R. Bowen

Gentlemen:

## Nalder vs Kellogg Sales Company

Your letter of December 21 addressed to Mr. Harding and copies to Messrs. Aust and the writer have been received. Mr. Harding has suggested that we answer your letter and keep him informed by sending a copy so his file will be complete.

*We are relying entirely on our Real Estate Mortgage and for that reason can at this point release all the Chattel Mortgages which are unreleased at this time. We are attaching*

*releases for 1949, 1950 and 1951 Chattel Mortgages together with fee for releasing.*

*The only Real Estate which is of record now we feel quite sure is the last one as you put it, which came about as a result of our having had a second mortgage on the Real Estate and they wanted to secure \$1,500.00 more than the current balance from Deseret Building and Loan, which we agreed to. We advised Mr. Quinney of what we were doing and asked him to handle the details, and Mr. and Mrs. Nalder both came into Mr. Quinney's office and signed the note and mortgage which is now of record. No doubt his file in this matter will disclose what was stated at the time as to whether or not it was a bona fide mortgage and will also disclose as to whether or not anyone had ever told the Nalder's that we would never foreclose on it.*

I do not recall ever having made a statement to Mrs. Nalder regarding the Real Estate Mortgage, but if I did make a statement to her it would have been along the line that Kelloggs were not interested in acquiring real estate and that we certainly would not foreclose on the mortgage unless it was necessary to clean up an account and this would only be done after all other courses of action had been pursued to the fullest extent. Naturally I would not say to her that we would not foreclose on the mortgage, otherwise why would we ever take it in the first place.

With regard to the statement that Bonie's acted as our agent in selling the turkeys, we would be forced to deny this inasmuch as we have never given any one this specific responsibility, having always taken the position that we acted both as feed supplier and financial supplier in line with our contract, *but that the grower had full authority to sell through whatever channels he deemed best. We of course relied on our Chattel Mortgage to be sure that the purchaser of the birds was aware that an obligation was due Kellogg's in connection with the turkey flock.* It could be possible that Mr. Bonie or some one in the Bonie Poultry Company organization implied to the Nalder's that they had been appointed as agents to

handle the Kellogg financed birds, but this was not the case and our written contract should show this quite clearly.

I would suggest that you contact Mr. Bushnell again and review the case in light of the above statements and offer to release all unreleased Chattel Mortgages and see what the reaction is at this time.

Yours very truly,

KELLOGG COMPANY

/s/ W. H. Williams, Jr.

W. H. Williams, Jr.

General Manager

Omaha Plant

WHW:mc

We are enclosing additional correspondence listed below which may be helpful to you:

Copy of Letter to Mr. S. J. Quinney written August 2, 1950 by Mr. W. H. Williams, Jr.

Copy of Letter to Mr. H. William Nalder, Jr. written September 21, 1949 by M. Schinker.

Letter dated September 16, 1949, written to M. Schinker by Mr. H. Wm. Nalder, Jr.

Copy of Letter of August 18, 1949, written by M. Schinker to Mr. H. W. Nalder and Mr. H. Wm. Nalder, Jr.

Undated Letter written by Mr. H. Wm. Nalder, Jr. to M. Schinker.

Ex. D-24

## Appendix 26

RALSTON PURINA COMPANY

Checkerboard Square  
St. Louis 2, Missouri  
January 28, 1954

Credit Department  
Kellogg Sales Company  
Battle Creek, Michigan

Gentlemen:

In re: Hacer W. & Catherine Nalder, 962 Church St.,  
Layton, Utah.

Our branch plant at Pocatello, Idaho has informed us that the above has applied for credit from our company for the feeding of turkeys this year.

In the course of our credit investigation, it was noticed that you folks are still holding a mortgage which the Nalders gave you on March 26, 1951. This mortgage was recorded on April 4, 1951 in file no. 11183 in the amount of \$42,825.

I believe your company is no longer engaged in the feed business in Utah, and therefore, we are wondering whether you are willing to release the mortgage at this time.

If so, it would certainly be appreciated by us if you would take whatever steps are necessary to have the mortgage released on the records.

In any event, would you please notify us by return mail what your position is so that we will be able to determine whether or not the Nalders are eligible for any credit with us.

This will be appreciated by us.

Sincerely

signed

R. J. Musec

R. J. Musec

General Consumer Credit Division

rjm/gr

(Pencil notations as follows:)

V. L. Aust, Omaha Plant

Phoned 2-1-54  
gave information to VLA  
Ex. G-6

Appendix 27

RALSTON PURINA COMPANY Box 230 Pocatello, Idaho  
February 5, 1954

Emily T. Eldridge, Recorder  
Davis County Courthouse  
Farmington, Utah

Dear Miss Eldridge:

A short while ago you sent us a list of chattels outstanding against Hacer W. and Catherine Nalder.

In your listing you showed that these folks still had on file a chattel mortgage given to Kellogg Sales Company dated March 26, 1951, recorded April 4, 1951, for \$42,825, file No. 11183. We contacted the Kellogg people on this mortgage and they said it has been released. Since sending us your list that may be the case, but we would appreciate it if you would check into this for us and let us know whether or not it is still a matter of record.

Thank you very much for your help and for your convenience in replying you will find attached a return envelope which requires no postage.

Sincerely,

signed  
R. A. Bliss  
Credit Manager

dlw  
Enclosure

Gentlemen:

The mortgage you speak of dated March 26, 1951, recorded April 4, 1951 for \$42,825, file No. 11183, has not been released on our records as of this day, Feb. 7, 1954.

Very truly yours,  
signed  
Emily T. Eldridge  
Davis Co. Recorder

Ex. G 7

Appendix 28

RALSTON PURINA COMPANY Box 230 Pocatello, Idaho  
March 4, 1954

Mr. V. L. Aust, Credit Manager  
Kellogg Sales Company  
26th & Center Streets  
Omaha, Nebraska

Dear Mr. Aust:

On March 26, 1951, Hacer W. and Catherine Nalder of Layton, Utah, gave your company a chattel mortgage on their turkeys.

This mortgage on their turkeys for \$42,825.00 was recorded by your company on April 4, 1951 at the Davis County Courthouse, Farmington, Utah. The File Number on this instrument is 11183.

*You have told our people in St. Louis that this item has been released.* A recent check, however, shows that it is still a matter of public record.

If there is any reason to keep this mortgage in full force and effect please advise. Otherwise, kindly release this mortgage, sending a copy of your releases to:

Mr. R. A. Bliss, Credit Manager  
Ralston Purina Company  
Box 230  
Pocatello, Idaho

Thank you for your usual good help.

Sincerely,

signed  
R. A. Bliss  
Credit Manager

Ex. G-8

## Appendix 29



Kellogg Sales Company

Feed Department  
26th and Center Streets  
Omaha, Nebraska  
March 8, 1954

Ralston Purina Company  
Box 230  
Pocatello, Idaho  
Mr. R. A. Bliss  
Credit Manager

Gentlemen:

Your letter of March 4 is acknowledged and we notice you are inquiring about the Chattel Mortgage which we had on H. W. Nalder and Catherine Nalder of Layton, Utah.

When I talked to Mr. Musec of your St. Louis office on Feb. 1 I advised him that these Chattel Mortgages were being released of record. Our records show that on January 21 we issued a release of the Chattel Mortgage in the amount of \$42,825.00 file No. 11183.

Inasmuch as this account is involved in litigation we forwarded these releases to our attorney and asked that he release them if he felt it would not jeopardize our claim.

For your information we have an outstanding balance of the 1949 contract of \$5867.67 as of September 15, 1953. We have a note signed by the Nalder's dated July 28, 1950 which original amount was \$5627.39 with 5% interest. We trust this information will be of assistance to you.

Yours very truly,

KELLOGG SALES COMPANY  
signed  
V. L. Aust  
Credit Manager  
Omaha Plant

VLA:mc

Ex. G 9

Appendix 30



(Photostatic copy)

February 22, 1956

(Stamped)

RECEIVED Feb. 5, 1954 - 8

St. Louis, Missouri  
February 3, 1954

Mr. R. A. Bliss - Pocatello

Re: Hacer W. & Catherine Nalder  
962 Church Street,  
Layton, Utah

Bob, Andy asked me to try to get the information concerning the above that you asked for in your letter of January 5.

I wrote the Kellogg Company at Battle Creek, Michigan and finally the letter was forwarded to their office at Omaha, Nebraska. Today their credit manager at Omaha called me and gave me the following information.

The Nalders still owe the Kellogg Company approximately \$5100.

Kellogg has released the chattel mortgage which you made reference to in your letter.

Kellogg now holds a second mortgage on the Nalder's property.

Sometime ago the Nalders entered a suit against the Kellogg Company.

Kellogg has countered with a suit of their own. The amounts of both of these suits are unknown.

The credit man who called us (whose name I didn't catch) was personally acquainted with the Nalders. He certainly did not have a very high opinion of the Nalders and referred to Mrs. Nalder as the "troublemaker."

Bob, this is the information just as it was received. Here's

hoping it will be helpful in arriving at your decision concerning these folks.

Best wishes.

Ralph  
R. J. Musec

mw

Ex. G 10

## Appendix 31

cc: V. N. Boothe  
Pocatello, Idaho  
January 25, 1954

A. M. Stevens — St. Louis

\* \* \* \*

I would like to handle this contact for Veran, but we are temporarily stopped by a chattel mortgage which is still outstanding on the books. It is a mortgage the Nalders gave the Kellogg Sales Company on March 26, 1951. It was recorded April 4, 1951 in file No. 11183 and is for \$42,825.

Kelloggs is out of business in Utah and I do not know how to reach them to find out if they are willing to release their mortgage. Therefore, could you give me some help on getting this mortgage released, or could you let me know how to contact Kellogg so that we might try to get it released. Any suggestions or help you can give me on this will be appreciated.

R. S. Bliss  
Pocatello Branch

dlw

(In handwriting)  
Nalder  
2-10-54

L-7

## Appendix 32

## 1952 TURKEY CROP

### *Sales*

935 Dressed .....	\$8,044.01
51 turkeys, dressed weight,	
@ 55c .....	386.40

Total Sales .....	\$8,430.41
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Turkeys purchased, 1018 .....	900.00
Feed .....	4,476.00
Brooder expenses, i.e. electricity....	101.80
Herder .....	180.00
Processing .....	935.00

6,592.80

Net profit .....	\$ 1,837.61
Average profit per taurkey (986)....	\$ 1.86

### *Computation of Loss*

Turkeys which would have been raised .....	14,000
Mortality loss,	
applied to 14,000 (03.1%)....	434
Turkeys actually raised .....	986

1,420

12,580

### *Net Loss*

12,580 @ \$1.86 .....	\$23,398.80
Minus taxes, insurance and depreciation .....	594.80

\$22,804.80

Ex. N 1

## Appendix 33

## 1953 TURKEY CROP

### *Sales*

1127 Live .....	\$8,754.35
100 @ \$9.00 retail .....	900.00

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Total Sales .....	\$ 9,654.35
-------------------	-------------

Turkeys purchased, 1430 .....	1,244.10
Feed .....	6,125.59
Brooder expenses, i.e., electricity....	143.00
Herder .....	180.00

---

Total costs .....	7,692.69
-------------------	----------

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Net Profit .....	\$ 1,961.35
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Average profit per turkey .....	1.60
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### *Computation of Loss*

Turkeys which would have been raised .....	14,000
--	--------

Mortality loss, applied to 14,000 (5.1%) .....	714
--	-----

Turkeys actually raised .....	1227
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	1,941
--	-------

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	12,059
--	--------

### *Net Loss*

12,059 @ \$1.60 .....	19,294.40
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Minus taxes, insurance and depreciation .....	594.40
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	\$18,700.40
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Ex. N 2

## Appendix 34

## 1954 TURKEY CROP

Sales, 1969 turkeys .....		\$15,322.66
Turkeys purchased, 2200 .....	\$1,691.60	
Feed .....	8,630.28	
Brooder Expenses, i.e., electricity....	140.00	
Herder .....	90.00	
	<hr/>	
Total costs .....		10,551.88
		<hr/>
Net profit .....		4,770.78
Average profit per turkey		
(1969 turkeys) .....		2.42
<i>Computation of Loss</i>		
Turkeys which would have been		
raised .....		14,000
Mortality loss applied to 14,000		
(10.5%) .....	1470	
Number actually raised .....	1969	
	<hr/>	
		3,439
		<hr/>
		10,561
<i>Net Loss</i>		
10,561 @ \$2.42 .....		\$25,557.62
Minus taxes, insurance and		
depreciation .....		594.00
		<hr/>
		\$24,963.62
		Ex. N-3

## Appendix 35

## DAMAGES

1952 .....	Ex N 1	\$23,398.80
1953 .....	Ex N 2	19,294.40
1954 .....	Ex N 3	25,557.62

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\$68,250.82

## MITIGATION OF DAMAGES

Rent on ranch not required

3 years @ \$1,200.....\$ 3,600.00

Salary earned by H. Wm. Nalder

1952 ..... 1,700.00

1953 ..... 2,450.00

1954 ..... 2,450.00

---

10,200.00

Net Loss .....

58,050.82

Minus 3 years taxes, insurance and  
depreciation .....

1,782.00

---

\$56,268.82

Ex. N-4

## Appendix 36