STATE OF MINNESOTA — FIRST JUDICIAL DISTRICT

COUNTY OF SCOTT — IN DISTRICT COURT

First National Bank of Montgomery, Plaintiff,

vs. RETURN TO ORDER TO SHOW CAUSE

Jerome Daly, Defendant.

Comes now the undersigned and for his return to this Court's Order to show cause dated January 8,1969, why I should not file in the office of the clerk of hte above Court a transcript of all entries made in my docket together with all other process and papers, and shows this Court as follows:

1. I have not allowed the Appeal in this case and forwarded the process papers and evidence to the Clerk because the Appeal statute MSA 532.38 was not complied with nor was $2.00 in lawful money of the United States deposited with the Clerk of this Caurt for my Appeal fee. I granted a hearing to the parties on January 22,1969 at 7:00 pm at which time Plaintiff did not appear nor was any continuance requested by Plaintiff.

Pursuant to that hearing I have taken evidence from the Defendant Jerome Daly and have filed my decision as to the validity of the two Federal Reserve Notes that were deposited with the Clerk of the District Court.

A copy of that decision is attached hereto; it speaks for itself.

Martin V. Mahoney

January 24,1969

Martin V. Mahoney
Justice of the Peace
Credit River Township
Scott County,Minnesota

STATE OF MINNESOTA

COUNTY OF SCOTT

IN DISTRICT COURT

FIRST JUDICIAL DISTRICT

First National Bank of
Montgomery, Minnesota,

Plaintiff

-vs-

Jerome Daly,

Defendant

_A_F_F_I_D_A_V_I_T_

* *

STATE OF MINNESOTA)
) ss
COUNTY OF LE SUEUR)

Theodore R. Mellby, being duly sworn, on oath, deposes and states:

I am the attorney for plaintiff in the above entitled action.

On December 9, 1968, judgment for defendant in the above entitled action was entered in Justice Court, Credit River Township, County of Scott, Justice Martin V. Mahoney.

Plaintiff has duly appealed said judgment. On January 7, 1969, I received from Justice Martin V. Mahoney, Notice of Refusal to Allow Appeal, a copy of which is attached hereto as Exhibit "A"

No previous application has been made for the order requested or for a similar order.

/s/ Theodore R. Mellby
Theodore R. Mellby

Subscribed and sworn to
before me this 7th day of
January, 1969

Wilma V. Fortney
Wilma V. Fortney, Notary Public
Le Sueur County, Minnesota
My commission expires, November 23, 1971

STATE OF MINNESOTA
COUNTY OF SCOTT

IN JUSTICE COURT
TOWNSHIP OF CREDIT RIVER
JUSTICE, MARTIN V. MAHONEY

First National Bank of Montgomery, Plaintiff,

vs. NOTICE OF REFUSAL TO ALLOW APPEAL

Jerome Daly, Defendant

TO: Hugo L. Hentges, Clerk of District Court, Plaintiff, First National Bank of Montgomery and Defendant Jerome Daly:

You will Please take Notice that the undersigned Justice of the Peace, Martin V. Mahoney, hereby, pursuant to law, refuses to allow the Appeal in the above entitled action, and refuses to make an entry of such allowance in the undersigned's Docket. The undersigned also refuses to file in the office of the clerk of the District Court in and for Scott County, Minnesota a transcript of all the entries made in my Docket, together with all process and other papers relating to the action and filed with me as Justice of the Peace.

The undersigned concludes and determines that M.S.A.532.38 was not complied with within 10 days after entry of Judgment in my Justice of the Peace Court. Subdivision 4 thereof requires that $2.00 shall be paid within 10 days to the Clerk of the District Court, for the use of the Justice before whom the cause was tried.

Two so-called "One Dollar" Federal REserve Notes issued by the Federal Reserve Bank of San Francisco L 12782836 and Federal Reserve Bank of Minneapolis ~~Serial~~ ~~Numbers~~ serial no. I 80410697A were deposited with the Clerk of the District Court to be tendered to me.

These Federal Reserve Notes are not lawful money within the contemplation of the Constitution of the United States and are null and void. Further the Notes on their face are not redeemable in Gold or Silver Coin nor is there a fund set aside any where for the redemption of said Notes.

However, this is a determination of a question of Law and

Exh. A

Fact by the undersigned pursuant to the authority vested in me by the Constitution of the United States and the Constitution of the State of Minnesota. Plaintiff is entitled to be accorded full due process of Law before the Court in this present determination not to allow the Appeal.

If Plaintiff will file a brief on the Law and the Facts with this Court within 10 days, or if Plaintiff will file an application for a full and Complete hearing before this Court on this determination a prompt hearing will be set and if Plaintiff can satisfy this Court that said Notes are lawful money issued in pursuance of and under the authority of the Constitution of the United States of America the undersigned will stand ready and willing to reverse himself in this determination.

TAKE NOTICE AND GOVERN YOURSELVES ACCORDINGLY

BY THE COURT

Dated January 6,1969

MARTIN V. MAHONEY
JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP
SCOTT COUNTY,MINNESOTA

MEMO

I am bound by oath to support the Constitution of the United States and all Laws passed pursuant thereto and the Constitution and Laws of Minnesota not in conflict therewith. This is an important Case to both parties and involves issues, apparently, not previously decided before. It is also importaht to the public. The Clerk of the District Court is an officer of the Judicial Branch of theState of Minnesota. His act is the Act of the State. U.S.Constitution Articie 1 Section 10 provides "No State Shall make any thing but Gold and Silver Coin a Tender in Payment of Debts." The tender of the two Federal Reserve Notes runs counter to the fundamental Law of the land, the Constitution of the United States of America It appears on the face of it that the Notes are ineffectual for

any purpose and that I am not justified in taking any steps toward the allowance of an Appeal in this case.

It is, however, the Order of this Court that the parties are entitled to a full hearing before this Court, and, if requested a full hearing will be granted.

Martin V. Mahoney
Justice of the Peace
Credit River Township
Scott County, Minnesota

January 6, 1969

STATE OF MINNESOTA

COUNTY OF SCOTT

IN JUSTICE COURT

TOWNSHIP OF CREDIT RIVER
MARTIN V. MAHONEY, JUSTICE

First National Bank of Montgomery,

Plaintiff,

vs.

JUDGMENT AND DECREE

Jerome Daly,

Defendant.

The above entitled action came on before the Court and a Jury of 12 on December 7,1968 at 10:00 A.M. Plaintiff appeared by its President Lawrence V. Morgan and was represented by its Counsel Theodore R. Mellby. Defendant appeared on his own behalf.

A Jury of Talesmen were called, impanneled and sworn to try the issues in this Case. Lawrence V. Morgan was the only witness called for Plaintiff and Defendant testified as the only witness in his own behalf.

Plaintiff brought this as a Common Law action for the recovery of the possession of Lot 19, Fairview Beach, Scott County,Minn. Plaintiff claimed title to the Real Property in question by foreclosure of a Note and Mortgage Deed dated May 8,1964 which Plaintiff claimed was in default at the time foreclosure proceedings were started.

Defendant appeared and answered that the Plaintiff created the money and credit upon its own books by bookeeping entry as the consideration for the Note and Mortgage of May 8,1964 and alleged failure of consideration for the Mortgage Deed and alleged that the Sheriff's sale passed no title to Plaintiff.

The issues tried to the Jury were whether there was a lawful consideration and whether Defendant had waived his rights to complain about the consideration having paid on the Note for almost 3 years.

Mr. Morgan admitted that all of the money or credit which was used as a consideration was created upon their books, that this was standard banking practice exercised by their bank in combination with the Federal Reserve Bank of Minneapolis, another private Bank, further that he knew of no United States Statute or Law that gave the Plaintiff the authority to do this. Plaintiff further claimed that Defendant by using the ledger book created credit and by paying

on the Note and Mortgage waived any right to complain about the Consideration and that Defendant was estopped from doing so.

At 12:15 on December 7,1968 the Jury returned a unaminous verdict for the Defendant.

Now therefore, by virtue of the authority vested in me pursuant to the Declaration of Independence, the Northwest Ordinance of 1787, the Constitution of the United States and the Constitution and laws of the State of Minnesota not inconsistent therewith;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That Plaintiff is not entitled to recover the possession of Lot 19, Fairview Beach, Scott County, Minnesota according to the Plat thereof on file in the Register of Deeds office.

2. That because of failure of a lawful consideration the Note and Mortgage dated May 8,1964 are null and void.

3. That the Sheriff's sale of the above described premises held on June 26,1967 is null and void, of no effect.

4. That Plaintiff has no right, title or interest in said premises or lien thereon, as is above described.

5. That any provision in the Minnesota Constitution and any Minnesota Statute limiting the Jurisdiction of this Court is repugnant to the Constitution of the United States and to the Bill of Rights of the Minnesota Constitution and is null and void and that this Court has Jurisdiction to render complete Justice in this Cause.

6. That Defendant is awarded coats in the sum of $75.00 and execution is hereby issued therefore.

7. A 10 day stay is granted.

8. The following memorandum and any supplemental memorandum made and filed by this Court in support of this Judgment is hereby made a part hereof by reference.

BY THE COURT

Dated December 9,1968

MARTIN V. MAHONEY
JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP
SCOTT COUNTY, MINNESOTA

MEMORANDUM

The issues in this case were simple. There was no material dispute on the facts for the Jury to resolve.

Plaintiff admitted that it, in combination with the Federal Reserve Bank of Minneapolis, which are for all practical purposes, because of there interlocking activity and practices, and both being Banking Instutions Incorporated under the Laws of the United States, are in the Law to be treated as one and the same Bank, did create the entire $14,000.00 in money or credit upon its own books by bookeeping entry. That this was the Consideration used to support the Note dated May 8,1964 andthe Mortgage of the same date. The money and credit first came into existance when they created it. Mr. Morgan admitted that no United States Law or Statute existed which gave him the right to do this. A lawful consideration must exist and be tendered to support the Note. See Anheuser-Busch Brewing Co. v. Emma Mason, 44 Minn. 318, 46 N.W. 558. The Jury found there was no lawful consideration and I agree. Only God can created something of value out of nothing.

Even if Defendant could be charged with waiver or estoppel as a matter of Law this is no defense to the Plaintiff. The Law leaves wrongdoers where it finds them. See sections 50, 51 and 52 of Am Jur 2d "Actions" on page 584 -"no action will lie to recover on a claim based upon, or in any manner depending upon, a fraudulent, illegal, or immoral transaction or contract to which Plaintiff was a party.

Plaintiff's act of creating credit is not authorized by the Constitution and Laws of the United States, is unconstitutional and void, and is not a lawful consideration in the eyes of the Law to support any thing or upon which any lawful rights can be built.

Nothing in the Constitution of the United States limits the Jurisdiction of this Court, which is one of original Jurisdiction with right of trial by Jury guaranteed. This is a Common Law Action. Minnesota cannot limit or impair the power of this Court to render Complete Justice between the parties. Any provisions in the Constitution and laws of Minnesota which attempt to do so are repugnant to the

Constitution of the United States and ~~and~~ void. No question as to the Jurisdiction of this Court was raised by either party at the trial. Both parties were given complete liberty to submit any and all facts and law to the Jury, at least in so far as they saw fit.

No complaint was made by Plaintiff that Plaintiff did not recieve a fair trial. From the admissions made by Mr. Morgan the path of duty was made direct and clear for the Jury. Their Verdict could not reasonably have been otherwise. Justice was rendered completely and without denial, promptly and without delay, freely and without purchase, conformable to the laws in this Court on December 7,1968.

BY THE COURT

December 9,1968

MARTIN V. MAHONEY
JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP
SCOTT COUNTY, MINNESOTA

Note: It has never been doubted that a Note given on a Consideration which is prohibited by law is void. It has been determined, independent of Acts of Congress, that sailing under the license of an enemy is illegal. The emmission of Bills of Credit upon the books of these private Corporations, for the purposes of private gain is not warranted by the Constitution of the United States and is unlawful. See Craig v. Mo. 4 Peters Reports 912. This Court can tread only that path which is marked out by duty. M.V.M.

STATE OF MINNESOTA

COUNTY OF SCOTT

IN JUSTICE COURT

TOWNSHIP OF EAGLE CREEK

First National Bank of Montgomery, Minnesota,

Plaintiff

-vs-

COMPLAINT

Jerome Daly,

Defendant

* *

I.

That the defendant is in possession of Lot 19, Fairview Beach, according to the recorded Plat thereof on file and of record in the office of the Register of Deeds in and for the County of Scott and State of Minnesota, and was the owner in fee thereof at the time of the execution of the mortgage hereinafter mentioned.

II.

That on May 8, 1964, defendant made and delivered to plaintiff a mortgage of said premises to secure the payment of a promissory note for Fourteen Thousand and no/hundredths ($14,000.00) Dollars, then made and delivered by defendant to plaintiff: that on April 21, 1967, said mortgage was recorded in the office of the Register of Deeds for said County as document #113731.

III.

That thereafter, default having been made in the payment of the principal and interest of said note and mortgage, plaintiff duly foreclosed said mortgage by advertisement under a power therein, and duly caused the same to be sold by the Sheriff of said County at public auction on June 24, 1967, in conformity with the Statute in such case made and provided; that at said sale plaintiff was the purchaser of said premises and said Sheriff duly made and delivered his official certificate of said sale as provided by Minnesota Statutes 580.12: that on July 7, 1967, said certificate was

recorded in the office of the Register of Deeds for said County as documents #114393 and #114394.

IV.

That more than one (1) year has elapsed since that date and no redemption has been made therefrom and the time for redemption therefrom has expired.

V.

That by reason thereof and of the Statute in such case made and provided, plaintiff is the owner in fee and entitled to the immediate possession of said premises.

VI.

That defendant withholds possession thereof from plaintiff.

WHEREFORE, plaintiff demands judgment for the restitution of said premises and costs and disbursements.

MCGUIRE & MELLBY

/s/ Theodore R. Mellby
Theodore R. Mellby
Attorney for Plaintiff
Montgomery, Minnesota 56069
Tele: 364-7327

STATE OF MINNESOTA

COUNTY OF SCOTT

IN JUSTICE COURT

TOWNSHIP OF CREDIT RIVER
MARTIN V. MAHONEY, JUSTICE

First National Bank of Montgomery,

Plaintiff

-vs-

REPLY

Jerome Daly,

Defendant

* *

1.

Denies each and every allegation

WHEREFORE plaintiff prays that Defendant take nothing by his pretended Counterclaim and that plaintiff be awarded judgment against defendant pursuant to its complaint including attorneys fees, interest, costs and disbursements.

McGUIRE & MELLBY

BY Theodore P. Mellby
Theodore P. Mellby
Attorney for Plaintiff
Montgomery, Minnesota 56069
Tel: (612) 364-7327

STATE OF MINNESOTA

COUNTY OF SCOTT

IN JUSTICE COURT

TOWNSHIP OF CREDIT RIVER
MARTIN V. MAHONEY, JUSTICE

First National Bank of Montgomery, Plaintiff,

vs.

AMENDED

ANSWER AND COUNTERCLAIM

Jerome Daly Defendant.

Defendant, Jerome Daly, for his Answer and Counterclaim herein states and alleges:

I.

Defendant denies generally each and every matter and thing in Plaintiff's Complaint except as is hereinafter alleged.

II.

Alleges that Defendant is now and has been at all times herein material the owner in fee of the premises described in the Complaint and now is in possession thereof.

III.

Alleges that on or about May 8,1964 Defendant made and delivered a promisory note in the sum of $14,000.00 along with a mortgage to secure payment of the alleged note, however, Defendant alleges that said Note and Mortgage are void because said Note and Mortgage are not supported by any lawful consideration nor did Defendant recieve any lawful consideration for said Note and Mortgage.

IV.

Alleges specifically that the Plaintiff, through its agents, created, unlawfully, by bookeeping entry upon the leger books of said Bank, the sum of $14,000.00 in money and credit by which it attempted to give and grant as a lawful consideration for said Note of $14,000.00. That said activity by said Bank is unlawful, unconstitutional and void.

V.

That the Federal Reserve Banking Act and the National Banking Act,in so far as they are attempted legislation by the United States authorizing Federal Reserve and National Banks as Banking Corporations, is unconstitutional and void and not necessary and proper for carrying into execution the powers vested in the United States Gov. by the people. That on the contrary the said corporations

are set up, maintained and permitted to exist as artifices, tricks and devices for the purpose of swindel, fraud, forgery and theft and also usury and to further usurious practices. That all the foregoing unlawful practices apply to plaintiff in this case.

VI.

That Plaintiff is engaged with the Federal Reserve system of creating unlawfully, money and credit by bookeeping entry upon its books as it did in this case, all of which is unconstitutional and void in violation of laws relating to forgery and usury.

VII.

That said Note dated on or about May 8,1964 is all without lawful consideration and is void.

VIII.

That the recording of said Mortgage and the Sheriff's sale constitutes slander of title of ~~Plaintiffs~~ Defendant's property.

Wherefore, Defendant demands Judgment as follows:

1. That Defendant be adjudged not guilty, with Judgment entered for Defendant to that effect, together with Costs taxed against Plaintiff and that an execution issue therefore.

2. That the said $14,000.00 Noe be declared null and void as not founded upon a lawful consideration.

3. That said Mortgage and Sheriff's Sale be likewise declared null and void as not founded upon a lawful consideration.

4. That Plaintiff has no right, title or interest in said premises or lien thereon.

5. That Plaintiff is not entitled to recover the possession of the premises described in the Comnlaint.

Jerome Daly
28 East Minnesota Street
Savage,Minnesota

November 30,1968

STATE OF MINNESOTA

COUNTY OF SCOTT

IN JUSTICE COURT

TOWNSHIP OF CREDIT RIVER
MARTIN V. MAHONEY, JUSTICE

First National Bank of Montgomery, Plaintiff,

vs.

ANSWER AND COUNTERCLAIM

Jerome Daly Defendant.

Defendant, Jerome Daly, for his Answer and Counterclaim herein states and alleges:

I.

Defendant denies generally each and every matter and thing in Plaintiff's Complaint except as is hereinafter alleged.

II.

Alleges that Defendant is now and has been at all times herein material the owner in fee of the premises described in the Complaint and now is in possession thereof.

III.

Alleges that on or about May 8,1964 Defendant made and delivered a promisory note in the sum of $14,000.00 along with a mortgage to secure payment of the alleged note, however, Defendant alleges that said Note and Mortgage are void because said Note and Mortgage are not supported by any lawful consideration nor did Defendant recieve any lawful consideration for said Note and Mortgage.

IV.

Alleges specifically that the Plaintiff, through its agents, created, unlawfully, by bookeeping entry upon the leger books of said Bank, the sum of $14,000.00 in money and credit by which it attempted to give and grant as a lawful consideration for said Note of $14,000.00. That said activity by said Bank is unlawful, unconstitutional and void.

V.

That the Federal Reserve Banking Act and the National Banking Act,in so far as they are attempted legislation by the United States authorizing Federal Reserve and National Banks as Banking Corporations, is unconstitutional and void and not necessary and proper for carrying into execution the powers vested in the United States Gov. by the people. That on the contrary the said corporations

are set up, maintained and permitted to exist as artifices, tricks and devices for the purpose of swindel, fraud, forgery and theft and also usury and to further usurious practices. That all the foregoing unlawful practices apply to plaintiff in this case.

VI.

That Plaintiff is engaged with the Federal Reserve system of creating unlawfully, money and credit by bookeeping entry upon its books as it did in this case, all of which is unconstitutional and void in violation of laws relating to forgery and usury.

VII.

That said Note dated on or about May 8,1964 is all without lawful consideration and is void.

VIII.

That the recording of said Mortgage and the Sheriff's sale constitutes slander of title of ~~Plaintiffs~~ Defendant's property.

Wherefore, Defendant demands Judgment as follows:

1. That Defendant be adjudged not guilty, with Judgment entered for Defendant to that effect, together with Costs taxed against Plaintiff and that an execution issue therefore.

2. That the said $14,000.00 Noe be declared null and void as not founded upon a lawful consideration.

3. That said Morggage and Sheriff's Sale be likewise declared null and void as not founded upon a lawful consideration.

4. That Plaintiff has no right, title or interest in said premises or lien thereon.

November 30,1968

Jerome Daly
28 East Minnesota Street
Savage,Minnesota

STATE OF MINNESOTA
COUNTY OF SCOTT

IN JUSTICE COURT
TOWNSHIP OF CREDIT RIVER
JUSTICE, MARTIN V. MAHONEY

First National Bank of Montgomery, Plaintiff,

vs. NOTICE OF REFUSAL TO ALLOW APPEAL

Jerome Daly, Defendant

TO: Hugo L. Hentges, Clerk of District Court, Plaintiff, First National Bank of Montgomery and Defendant Jerome Daly:

You will Please take Notice that the undersigned Justice of the Peace, Martin V. Mahoney, hereby, pursuant to law, refuses to allow the Appeal in the above entitled action, and refuses to make an entry of such allowance in the undersigned's Docket. The undersigned also refuses to file in the office of the clerk of the District Court in and for Scott County, Minnesota a transcript of all the entries made in my Docket, together with all process and other papers relating to the action and filed with me as Justice of the Peace.

The undersigned concludes and determines that M.S.A.532.38 was not complied with within 10 days after entry of Judgment in my Justice of the Peace Court. Subdivision 4 thereof requires that $2.00 shall be paid within 10 days to the Clerk of the District Court, for the use of the Justice before whom the cause was tried.

Two so-called "One Dollar" Federal REserve Notes issued by the Federal Reserve Bank of San Francisco L 127 82836, ~~Serial Numbers~~ and Federal Reserve Bank of Minneapolis Serial No. I 80410 697A were deposited with the Clerk of the District Court to be tendered to me.

These Federal Reserve Notes are not lawful money within the contemplation of the Constitution of the United States and are null and void. Further the Notes on their face are not redeemable in Gold or Silver Coin nor is there a fund set aside any where for the redemption of said Notes.

However, this is a determination of a question of Law and

Fact by the undersigned pursuant to the authority vested in me by the Constitution of the United States and the Constitution of the State of Minnesota. Plaintiff is entitled to be accorded full due process of Law before the Court in this present determination not to allow the Appeal.

If Plaintiff will file a brief on the Law and the Facts with this Court within 10 days, or if Plaintiff will file an application for a full and Complete hearing before this Court on this determination a prompt hearing will be set and if Plaintiff can satisfy this Court that said Notes are lawful money issued in pursuance of and under the authority of the Constitution of the United States of America the undersigned will stand ready and willing to reverse himself in this determination.

TAKE NOTICE AND GOVERN YOURSELVES ACCORDINGLY

BY THE COURT

Dated January 6,1969

MARTIN V. MAHONEY
JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP
SCOTT COUNTY,MINNESOTA

MEMO

I am bound by oath to support the Constitution of the United States and all Laws passed pursuant thereto and the Constitution and Laws of Minnesota not in conflict therewith. This is an important Case to both parties and involves issues, apparently, not previously decided before. It is also important to the public. The Clerk of the District Court is an officer of the Judicial Branch of theState of Minnesota. His act is the Act of the State. U.S.Constitution Articie 1 Section 10 provides "No State Shall make any thing but Gold and Silver Coin a Tender in Payment of Debts." The tender of the two Federal Reserve Notes runs counter to the fundamental Law of the land, the Constitution of the United States of America It appears on the face of it that the Notes are ineffectual for

any purpose and that I am not justified in taking any steps toward the allowance of an Appeal in this case.

It is, however, the Order of this Court that the parties are entitled to a full hearing before this Court, and, if requested a full hearing will be granted.

Martin V. Mahoney
Justice of the Peace
Credit River Township
Scott County, Minnesota

January 6, 1969

STATE OF MINNESOTA
COUNTY OF SCOTT

IN JUSTICE COURT
TOWNSHIP OF CREDIT RIVER
JUSTICE:
MARTIN V. MAHONEY

First National Bank of Montgomery,
Plaintiff,

-vs-

Jerome Daly,
Defendant.

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND JUDGMENT

- - - - -

The above-entitled action came on before the Court on January 22, 1969 at 7:00 P.M., pursuant to Motion and Notice of Motion and Order to Show Cause, as follows:

To: Plaintiff above named and to its Attorney Theodore R. Melby

Sirs:

You will please take notice that the Defendant, Jerome Daly, will move the above named Court at the Credit River Township Village Hall, Scott County, Minnesota before Justice Martin V. Mahoney at 7:00 P.M. on Wednesday, January 22, 1969 to make Findings of Fact, Conclusions of Law and Order and Judgment refusing to allow Appeal on the grounds that the two One Dollar Federal Reserve Notes are unlawful and void and are not a deposit of Two Dollars in lawful money of the United States to perfect the Appeal, and to make the Court's refusal to allow appeal absolute.

/s/ Jerome Daly
Jerome Daly
Attorney for himself
28 East Minnesota Street
Savage, Minnesota

ORDER

On application of Defendant Jerome Daly, it appearing that an exigency exists because this Court is Ordered to show cause at Glencoe, Minnesota on January 24, 1969 why this Court should not allow the Appeal herein, therefore,

IT IS HEREBY ORDERED that Plaintiff appear before this Court on January 22, 1969 at 7:00 P.M. at the Credit River Town Hall, Scott County, Minnesota, and Show Cause why this Court should not, at a hearing to be held at the time when both sides will be given the opportunity to present evidence, grant the Motion and relief requested by Defendant, Jerome Daly, and why this Court's Notice of Refusal to Allow Appeal herein should not be made absolute.

Service of the above Order shall be made upon Defendant, its Attorney or Agents.

BY THE COURT

/s/ Martin V. Mahoney
MARTIN V. MAHONEY
JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP

January 20, 1969

An action for the recovery of the possession of Real Property was brought before this Court for trial on December 7, 1968 at 10:00 A.M., by Jury. The decision of this Court was as follows:

JUDGMENT AND DECREE

The above entitled action came on before the Court and a Jury of 12 on

December 7, 1969 at 10:00 A.M. Plaintiff appeared by its President Lawrence V. Morgan and was represented by its Counsel Theodore R. Melby. Defendant appeared on his own behalf.

A Jury of Talesmen were called, impaneled and sworn to try the issues in this Case. Lawrence V. Morgan was the only witness called for Plaintiff and Defendant testified as the only witness in his own behalf.

Plaintiff brought this as a Common Law action for the recovery of the possession of Lot 19, Fairview Beach, Scott County, Minn. Plaintiff claimed title to the Real Property in question by foreclosure of a Note and Mortgage Deed dated May 8, 1964 which Plaintiff claimed was in default at the time foreclosure proceedings were started.

Defendant appeared and answered that the Plaintiff created the money and credit upon its own books by bookkeeping entry as the consideration for the Note and Mortgage of May 8, 1964 and alleged that the Sheriff's Sale passed no title to Plaintiff.

The issues tried to the Jury were whether there was a lawful consideration and whether Defendant had waived his rights to complain about the consideration having paid on the Note for almost 3 years.

Mr. Morgan admitted that all of the money or credit which was used as a consideration was created upon their books, that this was standard banking practice exercised by their bank in combination with the Federal Reserve

Bank of Minneapolis, another private bank, further that he knew of no United States Statute or Law that gave the Plaintiff the authority to do this.

Plaintiff's act of creating credit is not authorized by the Constitution and Laws of the United States, is unconstitutional and void, and is not a lawful consideration in the eyes of the Law to support any thing or upon which any lawful rights can be built.

Nothing in the Constitution of the United States limits the Jurisdiction of this Court, which is one of original Jurisdiction with right of trial by Jury guaranteed. This is a Common Law Action. Minnesota cannot limit or impair the power of this Court to render Complete Justice between the parties. Any provisions in the Constitution and laws of Minnesota which attempt to do so are repugnant to the Constitution of the United States and are void. No question as to the Jurisdiction of this Court was raised by either party at the trial. Both parties were given complete liberty to submit any and all facts and law to the Jury, at least in so far as they saw fit.

Plaintiff further claimed that Defendant by using the ledger book created credit and by paying on the Note and Mortgage waived any right to complain about the Consideration and that Defendant was estopped for doing so.

At 12:15 on December 7, 1968 the Jury returned a unanimous verdict for the Defendant.

Now therefore, by virtue of the authority vested in me pursuant to the Declaration of Independence, and the Northwest Ordinance of 1787, the Constitution of the United States and the Constitution and laws of the State of Minnesota not inconsistent therewith:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That Plaintiff is not entitled to recover the possession of Lot 19, Fairview Beach, Scott County, Minnesota according to the Plat thereof on file in the Register of Deeds office.

2. That because of failure of a lawful consideration the Note and Mortgage dated May 8, 1964 are null and void.

3. That the Sheriff's sale of the above described premises held on June 26, 1967 is null and void, of no effect.

4. That Plaintiff has no right, title or interest in said premises or lien thereon, as is above described.

5. That any provision in the Minnesota Constitution and any Minnesota Statute limiting the Jurisdiction of this Court is repugnant to the Constitution of the United States and to the Bill of Rights of the Minnesota Constitution and is null and void and that this Court has Jurisdiction to render complete Justice in this Cause.

6. That Defendant is awarded costs in the sum of $75.00 and execution is hereby issued therefor.

7. A 10 day stay is granted.

8. The following memorandum and any supplemental memorandum made and filed by this Court in support of this Judgment is hereby made a part hereof by reference.

BY THE COURT

/s/ Martin V. Mahoney
MARTIN V. MAHONEY
JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP
SCOTT COUNTY, MINNESOTA

Dated December 9, 1968

MEMORANDUM

The issues in this case were simple. There was no material dispute on the facts for the Jury to resolve.

Plaintiff admitted that it, in combination with the Federal Reserve Bank of Minneapolis, which are for all practical purposes, because of their interlocking activity and practices, and both being Banking Institutions Incorporated under the Laws of the United States, are in the Law to be treated as one and the same Bank, did create the entire $14,000.00 in money or credit upon its own books by bookkeeping entry. That this was the Consideration used to support the Note dated May 8, 1964 and the Mortgage of the same date. The money and credit first came into existance when they created it. Mr. Morgan admitted that no United States Law or Statute existed which gave him the right to do this. A lawful consideration must exist and be tendered to support the Note. See

Anheuser-Busch Brewing Co. v. Emma Mason, 44 Minn. 318, 46 N.W. 558. The Jury found there was no lawful consideration and I agree. Only God can create something of value out of nothing.

Even if Defendant could be charged with waiver or estoppel as a matter of Law this is no defense to the Plaintiff. The Law leaves wrongdoers where it finds them. See sections 50, 51 and 52 of Am Jur 2d "Actions" on page 584 - " no action will lie to recover on a claim based upon, or in any manner depending upon, a fraudulent, illegal, or immoral transaction or contract to which Plaintiff was a party."

No complaint was made by Plaintiff that Plaintiff did not receive a fair trial. From the admissions made by Mr. Morgan the path of duty was made direct and clear for the Jury. Their Verdict could not reasonably have been otherwise. Justice was rendered completely and without denial, promptly and without delay, freely and without purchase, conformable to the laws in this Court on December 7, 1968.

BY THE COURT

/s/ Martin V. Mahoney
MARTIN V. MAHONEY
JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP
SCOTT COUNTY, MINNESOTA

December 9, 1968

Note: It has never been doubted that a Note given on a Consideration which is prohibited by law is void. It has been determined, independent of Acts of Congress, that sailing under the

license of an enemy is illegal. The emmission of Bills of Credit upon the books of these private Corporations, for the purposes of private gain is not warranted by the Constitution of the United States and is unlawful. See Craig v. Mo. 4 Peters Reports 912. This Court can tread only that path which is marked out by duty. M.V.M.

On January 6, 1969 this Court filed a Notice of Refusal to Allow Appeal with the Clerk of the District Court, Hugo L. Hentges, for the County of Scott and State of Minnesota, which is as follows:

NOTICE OF REFUSAL TO ALLOW APPEAL

TO: Hugo L. Hentges, Clerk of District Court, Plaintiff, First National Bank of Montgomery and Defendant Jerome Daly:

You will Please take Notice that the undersigned Justice of the Peace, Martin V. Mahoney, hereby, pursuant to law, refuses to allow the Appeal in the above entitled action, and refuses to make an entry of such allowance in the undersigned's Docket. The undersigned also refuses to file in the office of the clerk of the District Court in and for Scott County, Minnesota, a transcript of all the entries made in my Docket, together with all process and other papers relating to the action and filed with me as Justice of the Peace.

The undersigned concludes and determines that M.S.A. 532.38 was not complied with within 10 days after entry of Judgment in my Justice of the

Peace Court. Subdivision 4 thereof requires that $2.00 shall be paid within 10 days to the Clerk of the District Court, for the use of the Justice before whom the cause was tried.

Two so-called "One Dollar" Federal Reserve Notes issued by the Federal Reserve Bank of San Francisco L11278283C and Federal Reserve Bank of Minneapolis Serial No. I80410697A were deposited with the Clerk of the District Court to be tendered to me.

These Federal Reserve Notes are not lawful money within the contemplation of the Constitution of the United States and are null and void. Further the Notes on their face are not redeemable in Gold or Silver Coin nor is there a fund set aside anywhere for the redemption of said Notes.

However, this is a determination of a question of Law and Fact by the undersigned pursuant to the authority vested in me by the Constitution of the United States and the Constitution of the State of Minnesota. Plaintiff is entitled to be accorded full due process of Law before the Court in this present determination not to allow the Appeal.

If Plaintiff will file a brief on the Law and the Facts with this Court within 10 days, or if Plaintiff will file an application for a full and Complete hearing before this Court on the determination, a prompt hearing will be set and if plaintiff can satisfy this Court that said Notes are lawful money issued in pursuance of and under the authority of the Constitution of the United States

of America the undersigned will stand ready and willing to reverse himself in this determination.

TAKE NOTICE AND GOVERN YOURSELVES ACCORDINGLY.

BY THE COURT

/s/ Martin V. Mahoney
MARTIN V. MAHONEY
JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP
SCOTT COUNTY, MINNESOTA

Dated January 6, 1969

MEMO

I am bound by oath to support the Constitution of the United States and laws passed pursuant thereto and the Constitution and Laws of Minnesota not in conflict therewith. This is an important Case to both parties and involves issues, apparently, not previously decided before. It is also important to the public. The Clerk of the District Court is an officer of the Judicial Branch of the State of Minnesota. His act is the Act of the State. U. S. Constitution Article 1 Section 10 provides "No State Shall make any thing but Gold and Silver Coin a Tender in Payment of Debts." The tender of the two Federal Reserve Notes runs counter to the fundamental Law of the land, the Constitution of the United States of America. It appears on the face of it that the Notes are ineffectual for any purpose and that I am not justified in taking any steps toward the allowance of an Appeal in this case.

It is, however, the Order of this Court that the parties are entitled to a full hearing before this Court, and, if requested a full hearing will be granted.

/s/ Martin V. Mahoney
Martin V. Mahoney
Justice of the Peace
Credit River Township
Scott County, Minnesota
January 6, 1969

Minnesota Statutes Annotated 532.38 required that the Appellant, First National Bank of Montgomery deposit with the Clerk of the District Court within ten (10) days, Two ($2.00) Dollars (lawful money of the United States) for payment to the Justice of the Peace before whom the cause was tried. This is one of the conditions for the allowance of an appeal.

Two One ($1.00) Dollar Federal Reserve Notes were deposited with the Clerk of the District Court. One was issued by the Federal Reserve Bank of San Francisco, bearing Serial No. L12782836 and the other on deposit was issued by the Federal Reserve Bank of Minneapolis bearing Serial No. I80410697A A specimen, for illustrative purposes, is as follows:

This Court determined that said Notes on their face were contrary to Article 1, Section 10 of the Constitution of the United States and also, based upon the evidence deduced at the hearing on December 7, 1968, the Notes were without any lawful consideration and therefore were void; however, this Court indicated it would give the Plaintiff, First National Bank of Montgomery, a full and complete hearing with reference to this issue.

No hearing was requested by Plaintiff, First National Bank. This Court was ordered to show cause before the District Court. The Order to Show Cuase is as follows:

STATE OF MINNESOTA — IN DISTRICT COURT
COUNTY OF SCOTT — FIRST JUDICIAL DISTRICT

First National Bank of Montgomery, Minnesota,
Plaintiff,
vs
Jerome Daly,
Defendant.

ORDER TO SHOW CAUSE.

* *

On reading the application for an Order attached hereto, and on Motion and Affidavit of Theodore R. Mellby, Attorney for Plaintiff, due showing having been made that an exigency exists.

IT IS ORDERED, that Martin V. Mahoney, Justice of the Peace, Credit River Township, County of Scott, State of Minnesota, appear in person before the above Court at 10:00 A. M., Friday, January 17, 1969, at the Special Term of Court to be held in the Court House in the City of Shakopee, County of

Scott, State of Minnesota, or as soon thereafter as counsel can be heard, to show cause why he should not file in the office of the Clerk of District Court, First Judicial District, County of Scott, State of Minnesota, a transcript of all the entries made in his docket, together with all process and other papers relating to the above identified cause of action in his possession or the possession of any other Justice of the Peace of the State of Minnesota.

LET THIS ORDER, APPLICATION FOR ORDER, AFFIDAVIT, all heretofore attached, be served on Martin V. Mahoney by leaving with him copies of the same and exhibiting this original ORDER with the signature of the Judge of District Court hereto affixed, service to be made forthwith.

BY THE COURT:

/s/ Harold E. Flynn
Judge of District Court

Dated at Shakopee, Minnesota
this 8th day of January, 1969

Therefore, upon Motion of Defendant Jerome Daly, this Court ordered a hearing before this Court on January 22, 1969 for the purposes of making Findings of Fact and Conclusions of Law.

Pursuant thereto, the above-entitled action came on for hearing before this Court on January 22, 1969 at 7:00 P. M. The First National Bank of Montgomery made no appearance although service of the Motion and Order was served, upon

Ralph Hendrickson, its Cashier, on January 20, 1969. No continuance was requested by Plaintiff or its Attorney.

The Defendant appeared by and on behalf of himself.

After waiting for one hour for the Bank or its representative to appear the Court received the testimony of Defendant bearing upon the issue of the validity of the Federal Reserve Notes.

Now, Therefore, based upon all the files, records and proceedings herein, and the evidence offered, this Court makes the following Findings of Fact, Conclusions of Law, Judgment and Determination with reference to the allowance of an appeal:

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DETERMINATION

1. That the Federal Reserve Banking Corporation is a United States Corporation with twelve (12) banks throughout the United States, including New York, Minneapolis and San Francisco. That the First National Bank of Montgomery is also a United States Corporation, incorporated and existing under the laws of the United States and is a member of the Federal Reserve System, and more specifically, of the Federal Reserve Bank of Minneapolis.

2. That becuase of the interlocking control activities, transactions and practices, the Federal Reserve Banks and the National Banks are for all practical purposes, in the law, one and the same bank.

3. As is evidenced from the book "The Federal Reserve System; Its Purposes and Functions", pages 74 to 78 and 177 and 180, put out by the Board of Governors of the Federal Reserve System, Washington, D. C., 1963, and from other evidence adduced herein, the said Federal Reserve Banks and National Banks create money and credit upon their books and exercise the ultimate prerogative of expanding and reducing the supply of money or credit in the United States. The actual pages of the Federal Reserve Manual are reproduced herein on pages 38 to 46 ____. See especially page 75 of the Manual.

This creation of money or credit upon the Books of the Banks constitutes the creation of fiat money by bookkeeping entry.

Ninety percent or more of the credit never leaves the books of the Banks so they need produce no specie as backing.

When the Federal Reserve Banks and National Banks acquire United States Bonds and Securities, State Bonds and Securities, State Subdivision Bonds and Securities, mortgages on private Real property and mortgages on private personal property, the said banks create the money and credit upon their books by bookkeeping entry. The first time that the money comes into existance is when they create it on their bank books by bookeeping entry. The banks create it out of nothing. No substantial fund of gold or silver is back of it, or any fund at all.

The mechanics followed in the acquisition of United States Bonds are as follows: The Federal Reserve Bank places its name on a United States Bond and goes to its banking books and credits the United States Government for an equal amount of the face value of the bonds. The money or credit first comes into existance when they create it on the books of the bank. National Banks do the same except they must have One ($1.00) Dollar in Credit on hand for every Four ($4.00) Dollars they create.

The Federal Reserve Bank of Minneapolis obtains Federal Reserve Notes in denominations of One ($1.00) Dollar, Five, Ten, Twenty, Fifty, One Hundred, Five Hundred, One Thousand, Ten Thousand, and One Hundred Thousand Dollars for the cost of the printing of each note, which is less than one cent. The Federal Reserve Bank must deposit with the Treasurer of the United States a like amount of Bonds for the Notes it receives The Bonds are without lawful consideration, as the Federal Reserve Bank created the money and credit upon their books by which they acquired the Bond. With their bookkeeping created credit, National Banks obtain these notes from the Federal Reserve Banks.

The net effect of the entire transaction is that the Federal Reserve Bank and the National Banks obtain Federal Reserve Notes comparable to the ones they placed on file with the Clerk of District Court, and a specimen of which is above, for the cost of printing only. Title 31 U.S.C., Section 462 attempts to make Federal Reserve Notes a legal

tender for all debts, public and private. See page 72 . From 1913 down to date, the Federal Reserve Banks and the National Banks are privately owned. As of March 18,1968, all gold backing is removed from the said Federal Reserve Notes. No gold or silver backs up these notes.

The Federal Reserve Notes in question in this case are unlawful and void upon the following grounds:

A. Said Notes are fiat money, not redeemable in gold or silver coin upon their face, not backed by gold or silver, and the notes are in want of some real or substantial fund being provided for their payment in redemption. There is no mode provided for enforcing the payment of the same. There is no mode provided for the enforcement of the payment of the Notes in anything of value.

B. The Notes are obviously not gold or silver coin.

C. The sole consideration paid for the One Dollar Federal Reserve Notes is in the neighborhood of nine-tenths of one cent, and therefore, there is no lawful consideration behind said Notes.

D. That said Federal Reserve Notes do not conform to Title 12, United States Code, Sections 411 and 418. Title 31 USC, Section 462, insofar as it attempts to make Federal Reserve Notes and circulating Notes of Federal Reserve Banks and National Banking Associations a legal tender for all debts, public and private, it is unconstitutional and void, being contrary to Article 1, Section 10, of the Constitution of the

United States, which prohibits any State from making anything but gold and silver coin a tender, or impairing the obligation of contracts.

Now, therefore, by virtue of the authority vested in me pursuant to the Declaration of Independence the Northwest Ordinance of 1787, the Constitution of the United States of America and the Constitution of the State of Minnesota;

It is hereby DETERMINED, ORDERED AND ADJUDGED, that the Appeals Statutes of the State of Minnesota for Civil Appeals from this Court to the District Court is not complied with within 10 days after entry of Judgment. Therefore the Appeal is not allowed by this Court and my docket so shows.

BY THE COURT

Martin V. Mahoney

MARTIN V. MAHONEY
JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP
SCOTT COUNTY, MINNESOTA

Dated: February 5, 1969

MEMORANDUM

The applicable parts of the Declaration of Independence and the U.S.Constitution are as follows:

66. THE DECLARATION OF INDEPENDENCE
July 4, 1776

(F. N. Thorpe, ed. *Federal and State Constitutions,* Vol. I, p. 3 ff. The text is taken from the version in the Revised Statutes of the United States, 1878 ed., and has been collated with the facsimile of the original as printed in the original Journal of the old Congress.)

On June 7, 1776, Richard Henry Lee of Virginia introduced three resolutions one of which stated that the "colonies are, and of right ought to be, free and independent States." On the 10th a committee was appointed to prepare a declaration of independence; the committee consisted of Jefferson, John Adams, Franklin, Sherman and R. R. Livingston. This committee brought in its draft on the 28th of June, and on the 2nd of July a resolution declaring independence was adopted. July 4 the Declaration of Independence was agreed to, engrossed, signed by Hancock, and sent to the legislatures of the States. The engrossed copy of the Declaration was signed by all but one signer on August 2. On the Declaration, see C. L. Becker, *The Declaration of Independence,* esp. ch. v with its analysis of Jefferson's draft; H. Friedenwald, *The Declaration of Independence;* J. H. Hazelton, *Declaration of Independence;* J. Sanderson, *Lives of the Signers to the Declaration;* R. Frothingham, *Rise of the Republic,* ch. xi.; C. H. Van Tyne, *The War of Independence, American Phase.*

In Congress, July 4, 1776,

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA,

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it

is their duty, to throw off such Government, and to provide new Guards for their future security.—Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws of Naturalization of Foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our People, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislature.

He has affected to render the Military independent of and superior to the Civil Power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their acts of pretended legislation;

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislature, and declaring themselves invested with Power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most

barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People.

Nor have We been wanting in attention to our Brittish brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

JOHN HANCOCK.

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

☆

WE,
THE PEOPLE OF THE UNITED STATES,
IN ORDER TO
FORM A MORE PERFECT UNION,
ESTABLISH JUSTICE,
INSURE DOMESTIC TRANQUILLITY,
PROVIDE FOR
THE COMMON DEFENCE,
PROMOTE THE GENERAL WELFARE,
AND SECURE
THE BLESSINGS OF LIBERTY
TO OURSELVES
AND OUR POSTERITY,
DO ORDAIN AND ESTABLISH THIS
CONSTITUTION
FOR THE UNITED STATES OF
AMERICA.

ARTICLE I

Section 1

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.

Section 8

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; — And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 10

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

ARTICLE III

Section 1

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State; — between Citizens of different States, — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

ARTICLE VI

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

AMENDMENTS

ARTICLE I

[THE FIRST TEN ARTICLES PROPOSED 25 SEPTEMBER 1789; DECLARED IN FORCE 15 DECEMBER 1791]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

ARTICLE V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

ARTICLE IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XIII

[PROPOSED 1 FEBRUARY 1865; DECLARED RATIFIED 18 DECEMBER 1865]

SECTION 1

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2

Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV

[PROPOSED 16 JUNE 1866; DECLARED RATIFIED 28 JULY 1868]

SECTION 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The division and separation of the three great powers of government, the Executive, the Legislative and the Judicial, and the principle that these powers should be forever kept separate and distinct is of vital importance to the maintenance and establishment of a free government, without which this Republic cannot possibly survive.

The particular wording of the Declaration of Independence which set up an absolute cut off with the British form of Government is contained in the first two paragraphs thereof.

Thereafter the Constitution was ordained and established as a law for the government by the People of the United States.

All legislative powers granted are vested in the Congress of the United States

consisting of a House of Representatives and a Senate elected as representatives of all the people.

"Judicial Power" is defined in Blacks' Law Dictionary as the authority vested by Courts and Judges, as distinguished from the Executive and Legislative power.

"Cases and Controversies" is defined in Blacks' Law Dictionary - "This term as used in the Constitution of the United States embraces claims or contentions of litigants brought before the Court for adjudication by regular proceedings for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs; and whenever the claim or contention of a party takes such a form that the Judicial Power is capable of acting upon it, it has become a case or controversy. See Interstate Commerce Commission vs. Brimson, 154 U.S. 447, 14 Sup. Crt. 1125, 38 Law Ed. 1047; Smith vs. Adams 130 U.S. 1679 Supreme Court 566 32 L Ed. 895.

Under our form of governemnt every American, individually or by representation is the high and supreme sovereign authority. The authority of each of the three departments of government is defined and established.

It is entirely fitting and proper to observe that in all instances between the states and the United States, and the people, there is no such thing as the idea of a compact between the people on one side and the government on the other. The compact is that of the people with each other to produce and constitute a government.

To suppose that any government can be a party to a compact with the whole people, is supposing it to have an existance before it can have a right to exist.

The only instance in which a compact can take place between the people and those who exercise the government, is that the people shall pay them, while they choose to employ them.

A Constitution is the property of the nation and more specifically of the individual, and not those who exercise the government. All the Constitutions of America are declared to be established in the authority of the people.

The authority of the Constitution is grounded upon the absolute, God-given free agency of each individual, and this is the basis of all powers granted, reserved or withheld in the authorization of every word, phrase, clause or paragraph of the Constitution. Any attempt by Congress, the President or the Courts to limit, change or enlarge even the most claimed insignificant provision is therefore ultra vires and void ab initio.

When considering the United States Constitution, one must absolutely and completely clear his mind of all British, monarchial, papal, clergical, continental, financial, or other alien influences or conceptions of government, the rights of the individual and what is Constitutional.

Our Constitution stands absolute and alone.

It must be read in the light of all engagements entered into before its adoption including the Declaration of Independence and the Declaration of Resolves of the First Continental Congress and the privileges and immunities secured by Common Law, confirmed by Magna Charta and other English Charters, excepting therefrom all clerical, papal and monarchial nonsense.

No one applying the Constitution to any situation has any business, right or duty to look in any direction for sovereignty but toward the people. Any attempt or inclination to do so is a violation of one's oath and continuing duty to uphold, maintain and support the Constitution of the United States of America.

See Waring vs. The Mayor of Savannah, 60 Georgia, Page 93, where it is quoted as follows:

"In this State, as well as in all republics, it is not the Legislature, however transcendent its powers, who are supreme-- but the people--and to suppose that they may violate the fundamental law, is, as has been most eloquently expressed. "to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of delegated power may do, not only what their powers do not authorize, but what they forbid." The law is made by the Legislature, but applied by the Courts.

See generally Mr. Justice Story's commentories on the Constitution found in Story on the Constitution, Vol. 1, Section 198 through 280 on the History of the Revolution and the Confederation, origin of the Confederation, analysis of the Articles of the Confederation and the Decline and Fall of the Confederation including the reasons for it, which in chief was a debasement of our money and currency by the banks, similar to what is taking place in the United States today.

For authority to support the proposition that an Act of Congress in violation of the Constitution confers no rights or privileges see 16 Am Jur 2d "Constitutional Law" Sections 177 thru 179 contained herein on pages 49 to 52 _

Article 1, Section 10 of the United States Constitution provides that no

State shall make anything but gold and silver coin a legal tender in payment of debts.

The act of the Clerk of the District Court is the act of the State. The Clerk of the District Court is the agent of the Judicial Branch of the Government of the State of Minnesota. See Briscoe et al vs. The Bank of the Commonwealth of Kentucky 11 Peters Reports at Page 319, "A State can act only through its agents; and it would be absurd to say that any act was not done by a State which was done by its authorized agents"

For the Justice Fees the bank deposited with the Clerk of District Court the two Federal Reserve Notes. The Clerk tendered the Notes to me. My sworn duty compelled me to refuse the tender. This is contrary to the Constitution of the United States. The States have no power to make bank notes a legal tender. See 36 Amer Jur on Money, Section 13, attached hereto, pages 51 to 54 . Only gold and silver coin is a lawful tender.

See also 36 Amer. Jur. on Money, Section 9, attached hereto, page 51 ___ Bank Notes are a good tender as money unless specifically objected to. Their consent and usage is based upon the convertability of such notes to coin at the pleasure of the holder upon presentation to the bank for redemption. When the inability of a bank to redeem its notes is openly avowed they instantly lose their character as money and their circulation as currency ceases.

There is also no lawful consideration for these notes to circulate as money. The banks actually

obtained these notes for the cost of the printing. There is no lawful consideration for said Notes.

A lawful consideration must exist for a Notes. See 17 Amer. Jur. on Contracts, Section 85, page 55 and also Sections 215, 216 and 217 of 11 Amer. Jur. 2nd on Bills and Notes, pages 57 to 60. As a matter of fact, the "Notes" are not Notes at all, as they contain no promise to pay.

The activity of the Federal Reserve Banks of Minneapolis, San Francisco and the First National Bank of Montgomery is contrary to public policy and the Constitution of the United States and constitutes an unlawful creation of money and credit and the obtaining of money and credit for no valuable consideration. The activity of said banks in creating money and credit is not warranted by the Constitution of the United States.

The Federal Reserve and National Banks exercise an exclusive monopoly and privilege of creating credit and issuing their Notes at the expense of the public, which does not receive a fair equivalent. This scheme is obliquely designed for the benefit of an idle monopoly to rob, blackmail and oppress the producers of wealth.

The Federal Reserve Act and the National Bank Act is in its operation and effect contrary to the whole letter and spirit of the Constitution of the United States, confers an unlawful and unnecessary power on private parties; holds all of our fellow citizens in dependence; is subversive

to the rights and liberties of the people. It has defied the lawfully constituted Government of the United States. The Federal Reserve and National Banking Acts and Sec. 462 of Title 31, U.S.C. are not necessary and proper for carrying into execution the legislative powers granted to Congess or any other powers vested in the Government of the United States; but, on the contrary, are subversive to the rights of the People in their rights to life, liberty and Property. The afore-mentioned acts of Congress are unconstitutional and void and I so hold.

The meaning of the Constitutional provision "No State Shall make anything but Gold and Silver Coin a tender in payment of debts" is direct, clear, unambigious and without any qualification. This Court is without authority to interpolate any exception. My duty is simply to execute it, as written, and to pronounce the legal result. From an examination of the case of Edwards v. Kearzev, 96 U.S. 595, herein on pages 61 to 66, the Federal Reserve Notes (fiat money), which are attempted to be made a legal tender, are exactly what the authors of the Constitution of the United States intended to prohibit. No State can make these Notes a legal tender. Congress is incompetent to authorize a State to make the Notes a legal tender. For the effect of binding Constitutional provisions see Cooke v. Iverson 108 M. 388 and State v. Sutton 63 M. 147. See pages 67 to 68. This fraudulent Federal Reserve System and National Banking System has impaired the obligation of Contract, promoted disrespect for the Constitu-

tion and Law and has shaken society to its foundations.

The Court is at a loss, because of the non-appearance of Plaintiff to determine, upon what legal theory, Plaintiff could possibly claim that the Notes in question are a legal tender, If they have any validity it must come from the Constitution of the United States and laws passed pursuant thereto. Inquiry was made of Mr. Daly as to what laws these Notes could be possibly based upon to sustain their validity. To aid the Court he presented the following: See pages 69 to 72 containing Section 411, 412, 417, 418, 420 or USC Title 12 and Title 31 USC Sec. 462.

On the one hand section 411 holds and states that the Notes are to be used for the purpose of making advances to Federal Reserve Banks through Federal Reserve Agents and for no other purposes. Then Title 31 Section 462 states "All --- Federal Reserve Notes and circulating Notes of Federal Reserve Banks and National Banking Associations heretofore or hereafter issued, shall be legal tender for all debts public and private."

The Constitution states, "No State shall make anything but Gold and silver Coin a legal tender in payment of debts." The above referred to enactments of Congress state that the Notes are a legal tender. There is a direct conflict between the Constitution and the Acts of Congress. If the Constitu-

tion is not controlling then Congress is above and has superior authority from the Constitution and the People who ordained and established it.

Title 31 USC Section 432 is in direct conflict with the Constitution insofar, at least, that it attempts to make Federal Reserve Notes a Legal Tender, the Constitution is the Supreme Law of the Land. Sec. 432 is not a law which is made in pursuance of the U. S. Constitution. It is unconstitutional and void, and, I so hold. Therefore, the two Federal Reserve Notes are null and void for any lawful purpose so far as this case is concerned and are not a valid deposit of $2.00 with the Clerk of the District Court for the purpose of effecting an Appeal from this Court to the District Court. I hold that this case has not been lawfully removed from this Court and Jurisdiction thereof is still vested in this Court.

However, there is a second ground of invalidity of these Federal Reserve Notes previously discussed and that is the Notes are invalid because on no theory are they based upon a valid, adequate or lawful consideration.

At the hearing scheduled for January 22, 1969 at 7:00 P. M., Mr. Morgan, nor anyone else from or representing the Bank, attended to aid this Court in making a correct determination.

Mr. Morgan appeared at the trial on December 7, 1968 and appeared as a witness to be candid, open, direct, experienced and truthful. He testified

to 20 years of experience with the Bank of America in Los Angeles, the Marquette National Bank of Minneapolis and the Plaintiff in this case. He seemed to be familiar with the operations of the Federal Reserve System. He freely admitted that his Bank created all of the money or credit upon its books with which it acquired the Note and Mortgage of May 8, 1964. The credit first came into existence when the Bank created it upon its books. Further he freely admitted that no United States Law gave the bank the authority to do this. There was obviously no lawful consideration for the Note. The Bank parted with absolutely nothing except a little ink. In this case the evidence was on January 22, 1969 that the Federal Reserve Banks obtain the Notes for the cost of the printing only. This seems to be confirmed by Title 12 USC Section 420. The cost is about

9/10ths of a cent per Note, regardless of the amount of the Note. The Federal Reserve Banks create all of the Money and Credit upon their books by bookkeeping entry by which they acquire United

States and State Securities. The collateral required to obtain the Notes is, by section 412, USC, Title 12, a deposit of a like amount of Bonds; Bonds which the Banks acquired by creating money and credit by bookkeeping entry.

No rights can be acquired by fraud. The Federal Reserve Notes are acquired through the use of unconstitutional statutes and fraud.

The Common Law requires a lawful consideration for any Contract or Note. These Notes are void for failure of a lawful consideration at Common Law, entirely apart from any Constitutional Considerations. Upon this ground the Notes are ineffectual for any purpose. This seems to be the principle objection to paper fiat money and the cause of its depreciation and failure down through the ages. If allowed to continue, Federal Reserve Notes will meet the same fate. From the evidence introduced on January 22, 1969, this Court finds that as of March 18, 1968, all Gold and Silver backing is removed from Federal Reserve Notes.

The law leaves wrongdoers where it finds them. See 1 Amer. Jur. 2nd on Actions, Sections 50, 51 and 52, which are included herein on pages 73 To 75

This Court further observes that the jurisdiction of this Court is conferred by Article 6, Sec. 1 of the Minnesota Constitution; "Sec. 1, The Judicial power of the state is hereby vested in a Supreme Court, a District Court, a Probate Court, and such other Courts, minor judicial officers and commissioners with jurisdiction inferior to the District Court as the legislature may establish." Pursuant thereto an Act of the legislature created this Court.

Nothing in the Constitution or laws of the United States limits the jurisdiction of this Court. The Constitution of Minnesota does not limit the jurisdiction of this Court. It therefore

has complete Jurisdiction to render justice in this cause in accordance with and agreeable to the Supreme Law of the Land. See 16 Am Jur 2d on Constitutional Law Sections 210 thru 222. Pages 77 to 83, hereto. "When a Court is created by Act of the Legislature the Judicial Power is conferred by the Constitution and not by the Act creating the Court. If its Jurisdiction is to be limited it must be limited by the Constitution." See Minn. Const. "Bill of Rights. In any event the Bank has not raised any question as to the jurisdiction of this Court.

Slavery and all its incidents, including Peonage, thralldom and debt created by fraud is universally prohibited in the United States. This case represents but another refined form of Slavery by the Bankers. Their position is not supported by the Constitution of the United States. The People have spoken their will in terms which cannot be misunderstood. It is indispensable to the preservation of the Union and independence and liberties of the people that this Court adhere only to the mandates of the Constitution and administer it as written. I therefore hold the Notes in question void and not effectual for any purpose.

January 30,1969.

BY THE COURT

Martin V. Mahoney

MARTIN V. MAHONEY
JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP
SCOTT COUNTY, MINNESOTA

hold only a fraction of their deposits as reserves and the fact that payments made with the proceeds of bank loans are eventually redeposited with banks make it possible for additional reserve funds, as they are deposited and invested through the banking system as a whole, to generate deposits on a multiple scale.

An Apparent Banking Paradox?

The foregoing discussion of the working of the banking system explains an apparent paradox that is the source of much confusion to banking students. On the one hand, the practical experience of each individual banker is that his ability to make the loans or acquire the investments making up his portfolio of earning assets derives from his receipt of depositors' money. On the other hand, we have seen that the bulk of the deposits now existing have originated through expansion of bank loans or investments by a multiple of the reserve funds available to commercial banks as a group. Expressed another way, increases in their reserve funds are to be thought of as the ultimate source of increases in bank lending and investing power and thus of deposits.

The statements are not contradictory. In one case, the day-to-day aspect of a process is described. In a bank's operating experience, the demand deposits originating in loans and investments move actively from one bank to another in response to money payments in business and personal transactions. The deposits seldom stay with the bank of origin.

The series of transactions is as follows: When a bank makes a loan, it credits the amount to the borrower's deposit account; the depositor writes checks against his

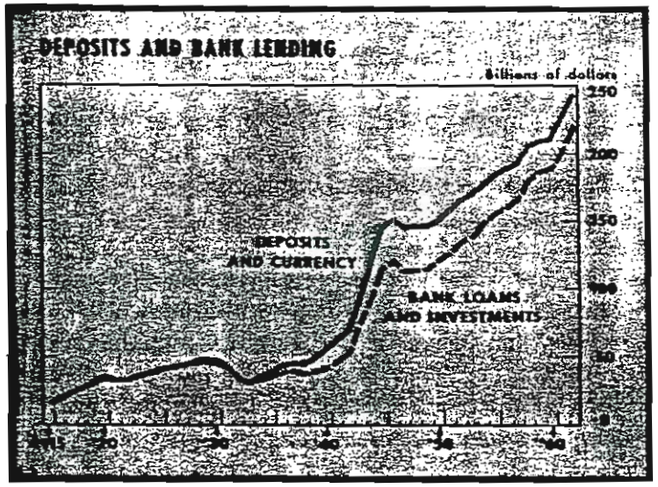
account in favor of various of his creditors who deposit them at their banks. Thus the lending bank is likely to retain or receive back as deposits only a small portion of the money that it lent, while a large portion of the money that is lent by other banks is likely to be brought to it by its customers.

From the point of view of the individual bank, therefore, the statement that the ability of a single bank to lend or invest rests largely on the volume of funds brought to it by depositors is correct. Taking the banking system as a whole, however, demand deposits originate in bank loans and investments in accordance with an authorized multiple of bank reserves. The two inferences about the banking process are not in conflict; the first one is drawn from the perspective of one bank among many, while the second has the perspective of banks as a group.

The commercial banks as a whole can create money only if additional reserves are made available to them. The Federal Reserve System is the only instrumentality endowed by law with discretionary power to create (or extinguish) the money that serves as bank reserves or as the public's pocket cash. Thus, the ultimate capability for expanding or reducing the economy's supply of money rests with the Federal Reserve.

New Federal Reserve money, when it is not wanted by the public for hand-to-hand circulation, becomes the reserves of member banks. After it leaves the hands of the first bank acquiring it, as explained above, the new reserve money continues to expand into deposit money as it passes from bank to bank until deposits stand in some established multiple of the additional reserve funds that Federal Reserve action has supplied.

How the process of expansion in deposits and bank loans and investments has worked out over the years is depicted by the accompanying chart. The curve "deposits and currency" relates to the public's holdings of demand deposits, time deposits, and currency. Time deposits are included because commercial banks in this country generally engage in both a time deposit and a demand deposit business and do not segregate their loans and investments behind the two types of deposits.



Additional Aspects of Bank Credit Expansion

At this stage of our discussion, three other important aspects of the functioning of the banking system must be noted. The first is that bank credit and monetary expansion on the basis of newly acquired reserves takes place only

through a series of banking transactions. Each transaction takes time on the part of individual bank managers and, therefore, the deposit-multiplying effect of new bank reserves is spread over a period. The banking process thus affords some measure of built-in protection against unduly rapid expansion of bank credit should a large additional supply of reserve funds suddenly become available to commercial banks.

The second point is that for expansion of bank credit to take place at all there must be a demand for it by creditworthy borrowers — those whose financial standing is such as to entail a likelihood that the loan will be repaid at maturity — and/or an available supply of low-risk investment securities such as would be appropriate for banks to purchase. Normally these conditions prevail, but there are times when demand for bank credit is slack, eligible loans or securities are in short supply, and the interest rate on bank investments has fallen with the result that banks have increased their preference for cash. Such conditions tend to slow down bank credit expansion. In general, market conditions for bankable paper and attitudes of bankers with respect to the market exert an important influence on whether, with a given addition to the volume of bank reserves, expansion of bank credit will be faster or slower.

Thirdly, it must be kept in mind that reserve banking power to create or extinguish high-powered money is exercised through a market mechanism. The Federal Reserve may assume the initiative in creating or extinguishing bank reserves, or the member banks may take the initiative through borrowing or repayment of borrowing at the Federal Reserve.

Sometimes the forces of initiative work against one another. At times this counteraction may work to avoid an abrupt impact on the flow of credit and money of pressures working to expand or contract the volume of bank reserves. At other times, banks' desires to borrow may tend to bring about either larger or smaller changes in bank reserves than are desirable from the viewpoint of public policy, especially in periods when banks' willingness to borrow is changing rapidly in response to market forces. The relation between reserve banking initiative and member bank initiative in changing the volume of Federal Reserve credit was discussed in Chapter III.

These additional aspects of bank credit expansion are significant because they indicate that in practice we cannot expect bank credit and money to expand or contract by any simple multiple of changes in bank reserves. Expansion or contraction takes place under given market conditions, and these have an influence on the public's preferences or desires for money and on the banks' preferences for loans and investments. Market conditions are modified in the course of credit expansion or contraction, but the reactions of the public and of the banks will influence the extent and nature of the changes in money and credit that are attained.

Management of Reserve Balances

In managing its reserve balances, an individual commercial bank constantly watches offsetting inflows and outflows of deposits that result from activities of depositors and borrowers. It estimates their net impact on its deposits and its reserve position. Its day-to-day management

CHAPTER X

RELATION OF RESERVE BANKING TO CURRENCY.

The Federal Reserve System is responsible for providing an elastic supply of currency. In this function it pays out currency in response to the public's demand and absorbs redundant currency.

AN important purpose of the Federal Reserve Act was to provide an elastic supply of currency — one that would expand and contract in accordance with the needs of the public. Until 1914 the currency consisted principally of notes issued by the Treasury that were secured by gold or silver and of national bank notes secured by specified kinds of U.S. Government obligations, along with gold and silver coin. These forms of currency were so limited in amount that additional paper money could not easily be supplied when the nation's business needed it. As a result, currency would become hard to get and at times command a premium. Currency shortages, together with other related developments, caused several financial crises or panics, such as the crisis of 1907.

One of the tasks of the Federal Reserve System is to

prevent such crises by providing a kind of currency that responds in volume to the needs of the country. The Federal Reserve note is such a currency.

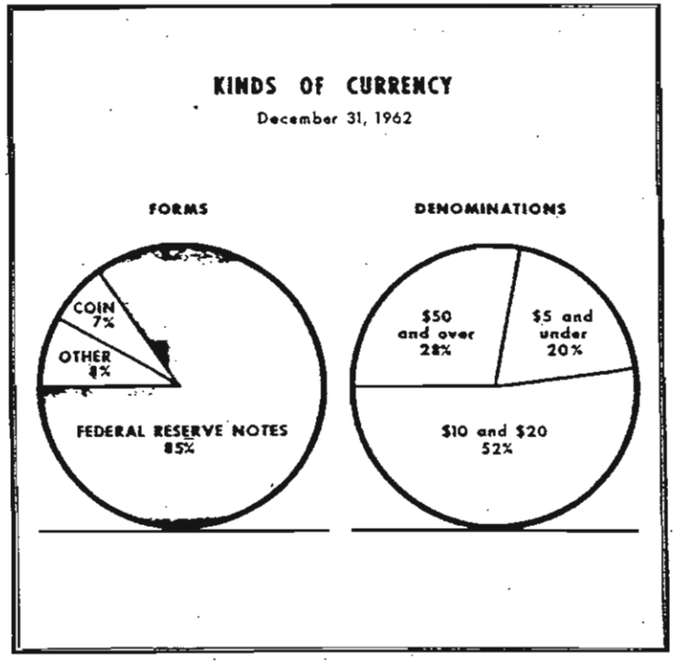
The currency mechanism provided under the Federal Reserve Act has worked satisfactorily: currency moves into and out of circulation automatically in response to an increase or decrease in the public demand. The Treasury, the Federal Reserve Banks, and the thousands of local banks throughout the country form a system that distributes currency promptly wherever it is needed and retires surplus currency when the public demand subsides.

How Federal Reserve Notes Are Paid Out

Federal Reserve notes are paid out by a Federal Reserve Bank to a member bank on request, and the amount so paid out is charged to the member bank's reserve account. Any Federal Reserve Bank, in turn, can obtain the needed notes from its Federal Reserve Agent, a representative of the Board of Governors of the Federal Reserve System, who is located at the Federal Reserve Bank and has custody of its unissued notes.

The Reserve Bank obtaining notes must pledge with the Federal Reserve Agent an amount of collateral at least equal to the amount of notes issued. This collateral may consist of gold certificates, U.S. Government securities, and eligible short-term paper discounted or purchased by the Reserve Bank. The amount of notes that may be issued is subject to an outside limit in that a Reserve Bank must have gold certificate reserves of not less than 25 per cent of its Federal Reserve notes in circulation (and also of its deposit liabilities). Gold certificates pledged as collateral with the Federal Reserve Agent and gold certifi-

cates deposited by the Reserve Bank with the Treasury of the United States as a redemption fund for Federal Reserve notes both are counted as a reserve against notes.



As our monetary system works, currency in circulation increases when the public satisfies its larger needs by withdrawing cash from banks. When these needs decline and member banks receive excess currency from their depositors, the banks redeposit it with the Federal Reserve Banks, where they receive credit in their reserve accounts. The Reserve Banks can then return excess notes

to the Federal Reserve Agents and redeem the assets they had pledged as collateral for the notes.

As of mid-1963 the total amount of currency in circulation outside the Treasury and the Federal Reserve was $35.5 billion, of which $30.3 billion — or six-sevenths — was Federal Reserve notes. All of the other kinds of currency in circulation are Treasury currency. Such currency includes United States notes (a remnant of Civil War financing), various issues of paper money in process of retirement, silver certificates, silver coin, nickels, and cents.

Until 1963, Federal Reserve notes were not authorized for issue in denominations of less than $5. Hence, all of the $1 and $2 bills, as well as some bills of larger denominations, were in other forms of paper money, chiefly silver certificates and United States notes. A law passed in 1963 permits the Federal Reserve to issue notes in denominations as low as $1, and silver certificates will eventually be retired.

All kinds of currency in circulation in the United States are legal tender, and the public makes no distinction among them. It may be said that the Federal Reserve has endowed all forms of currency with elasticity since they are all receivable at the Federal Reserve Banks whenever the public has more currency than it needs and since they may all be paid out by the Reserve Banks when demand for currency increases. In the subsequent discussion reference will be made to the total of currency in circulation rather than to any particular kind.

Demand for Currency

It has already been stated that the amount of currency in circulation changes in response to changes in the pub-

D. Effect of Totally or Partially Unconstitutional Statutes

1. Total Unconstitutionality

§ 177. Generally.

The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law,[1] but is wholly void,[2] and ineffective for any purpose;[10] since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it,[11] an unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed.[12] Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted.[13]

Since an unconstitutional law is void, the general principles follow that it imposes no duties,[14] confers no rights,[15] creates no office,[16] bestows no power or

Del Sordo, 16 NJ 530, 109 A2d 631; Fearon v Treanor, 272 NY 268, 5 NE2d 815, 109 ALR 1229; State v Weddington, 188 NC 643, 125 SE 257, 37 ALR 573; State v Williams, 146 NC 618, 61 SE 61; Daniels v Homer, 139 NC 219, 51 SE 992; State ex rel. Sathre v Board of University & School Lands, 65 ND 687, 262 NW 60; State v First State Bank, 52 ND 231, 202 NW 391; Wilson v Fargo, 48 ND 447, 186 NW 263; Uren v Bagley, 118 Or 77, 245 P 1074, 46 ALR 1173; Templeton v Linn County, 22 Or 313, 29 P 795; State v Kofines, 33 RI 211, 80 A 432; Beaufort County v Jasper County, 220 SC 469, 68 SE2d 421; Parker v Bates, 216 SC 52, 56 SE2d 723; Gaud v Walker, 214 SC 451, 53 SE2d 316; Rio Grande Lumber Co. v Darke, 50 Utah 114, 167 P 241; Shea v Olson, 185 Wash 143, 53 P2d 615, 111 ALR 998, affd on reh 186 Wash 700, 59 P2d 1183, 111 ALR 1011; Uhden v Greenough, 181 Wash 412, 43 P2d 983, 98 ALR 1181; State v Pitney, 79 Wash 608, 140 P 918; State Road Com. v County Ct. 112 W Va 98, 163 SE 815; Booten v Pinson, 77 W Va 412, 89 SE 985; Van Dyke v Tax Com. 217 Wis 528, 259 NW 700, 98 ALR 1332.

A reasonable doubt in favor of the validity of a statute is enough to sustain it. McGlaughlin v Warfield, 180 Md 75, 23 A2d 12.

6. Nashville v Cooper, 6 Wall (US) 247, 18 L ed 851; Cap. F. Bourland Ice Co. v Franklin Utilities Co. 180 Ark 770, 22 SW 2d 993, 68 ALR 1018; Davis v Florida Power Co. 64 Fla 246, 60 So 759; Des Moines v Manhattan Oil Co. 193 Iowa 1096, 184 NW 823, 188 NW 921, 23 ALR 1322; Naudzius v Lahr, 253 Mich 216, 234 NW 581, 74 ALR 1189; Hopper v Britt, 203 NY 144, 96 NE 371; Lynn v Nichols, 122 Misc 170, 202 NYS 401, affd 210 App Div 812, 205 NYS 935; Jones v Crittenden, 4 NC (1 Car L Repos 385); Minsinger v Rau, 236 Pa 327, 84 A 902; State ex rel. Richards v Moorer, 152 SC 455, 150 SE 269, cert den 281 US 691, 74 L ed 1120, 50 S Ct 238; Wingfield v South Carolina Tax Com. 147 SC 116, 144 SE 846; State ex rel. Reuss v Giessel, 260 Wis 524, 51 NW2d 547.

Unless a statute is in positive conflict with some designated or identified provision of the constitution, it should not be held unconstitutional. State ex rel. Johnson v Goodgame, 91 Fla 871, 108 So 836, 47 ALR 118.

A school code which is the product of the deliberate thought of a commission of prominent citizens who worked upon it for several years, and has been passed by two legislatures after prolonged consideration before final approval by the governor, will not be set aside as unconstitutional unless the violations of the fundamental law are so glaring that there is no escape. Minsinger v Rau, 236 Pa 327, 84 A 902.

7. § 146, supra.

8. Chicago, I. & L. R. Co. v Hackett, 228 US 559, 57 L ed 966, 33 S Ct 581; United States v Realty Co. 163 US 427, 41 L ed 215, 16 S Ct 1120; Huntington v Worthen, 120 US 97, 30 L ed 588, 7 S Ct 469; Norton v Shelby County, 118 US 425, 30 L ed 178, 6 S Ct 1121; Ex parte Royall, 117 US 241, 29 L ed 868, 6 S Ct 734; Hirsh v Block, 50 App DC 56, 267 F 614, 11 ALR 1238, cert den 254 US 640, 65 L ed 452, 41 S Ct 13; Texas Co. v State, 31 Ariz 485, 254 P 1060, 53 ALR 258; Quong Ham Wah Co. v Industrial Acci. Com. 184 Cal 26, 192 P 1021, 12 ALR 1190, error dismd 255 US 445, 65 L ed 723, 41 S Ct 373; State ex rel. Nuveen v Greer, 88 Fla 249, 102 So 739, 37 ALR 1298; Commissioners of Roads & Revenues v Davis, 213 Ga 792, 102 SE2d 180; Grayson-Robinson Stores, Inc. v Oneida, Ltd. 209 Ga 613, 75 SE2d 161, cert den 346 US 823, 98 L ed 348, 74 S Ct 39; State v Garden City, 74 Idaho 513, 265 P2d 328; Security Sav. Bank v Connell, 198 Iowa 564, 200 NW 8, 36 ALR 486; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Opinion of Justices, 269 Mass 611, 168 NE 536, 66 ALR 1477; State ex rel. Miller v O'Malley, 342 Mo 641, 117 SW2d 319; Garden of Eden Drainage Dist. v Bartlett Trust Co. 330 Mo 554, 50 SW2d 627, 84 ALR 1078; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; Daly v Beery, 45 ND 287, 178 NW 104; Threadgill v Cross, 26 Okla 403, 109 P 558; Atkinson v Southern Exp. Co. 94 SC 444, 78 SE 516; Ex parte Hollman, 79 SC 6, 60 SE 19; Henry County v Standard Oil Co. 167 Tenn 485, 71 SW2d 683, 93 ALR 1483; Peay v Nolan, 157 Tenn 222, 7 SW2d 815, 60 ALR 408; State v Candland, 36 Utah 406, 104 P 285; Miller v State Entomologist (Miller v Schoene) 146 Va 175, 135 SE 813, 67 ALR 197, affd 276 US 272, 72 L ed 568, 48 S Ct 246; Bonnett v Vallier, 136 Wis 193, 116 NW 885.

A discriminatory law is, equally with the other laws offensive to the constitution, no law at all. Quong Ham Wah Co. v Industrial Acci. Com. 184 Cal 26, 192 P 1021, 12 ALR 1190, error dismd 255 US 445, 65 L ed 723, 41 S Ct 373.

As to the effect of unconstitutionality of statutes creating and defining crimes, see Criminal Law (1st ed § 307).

9. Ex parte Royall, 117 US 241, 29 L ed 868, 6 S Ct 734; Ex parte Siebold, 100 US 371, 25 L ed 717; Cohen v Virginia, 6 Wheat (US) 264, 5 L ed 257; State ex rel. Nuveen v Greer, 88 Fla 249, 102 So 739, 37 ALR 1298; Commissioners of Roads & Revenues v Davis, 213 Ga 792, 102 SE2d 180; Grayson-Robinson Stores, Inc. v Oneida, Ltd. 209 Ga 613, 75 SE2d 161, cert den 346 US 823, 98 L ed 348, 74 S Ct 39; Hillman v Pocatello, 74 Idaho 69, 256 P2d 1072; Henderson v Lieber, 175 Ky 15, 192 SW 830, 9 ALR 620; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Opinion of Justices, 269 Mass 611, 168 NE 536, 66 ALR 1477; Michigan State Bank v Hastings, 1 Dougl (Mich) 225; Garden of Eden Drainage Dist. v Bartlett Trust Co. 330 Mo 554, 50 SW2d 627, 84 ALR 1078; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; State v Tufly, 20 Nev 427, 22 P 1054; State v Williams, 146 NC 618, 61 SE 61; Daly v Beery, 45 ND 287, 178 NW 104; Atkinson v Southern Exp. Co. 94 SC 444, 78 SE 516; Ex parte Hollman, 79 SC 9, 60 SE 19; Henry County v Standard Oil Co. 167 Tenn 485, 71 SW2d 683, 93 ALR 1483; Peay v Nolan, 157 Tenn 222, 7 SW2d 815, 60 ALR 408; Miller v Davis, 136 Tex 299, 150 SW2d 973, 136 ALR 177; Almond v Day, 197 Va 419, 89 SE2d 851; Miller v State Entomologist (Miller v Schoene) 146 Va 175, 135 SE 813, 67 ALR 197, affd 276 US 272, 72 L ed 568, 48 S Ct 246; Servonitz v State, 133 Wis 231, 113 NW 277.

Unconstitutionality is illegality of the highest order. Board of Zoning Appeals v Decatur Company of Jehovah's Witnesses, 233 Ind 83, 117 NE2d 115.

10. State v One Oldsmobile Two-Door Sedan, 227 Minn 280, 35 NW2d 525. Compare Swift v Calnan, 102 Iowa 206, 71 NW 233, holding that while no right may be based upon an unconstitutional statute, part of its provisions may be considered in construing other provisions confessedly good, in arriving at the correct interpretation of the latter.

11. State ex rel. Miller v O'Malley, 342 Mo 641, 117 SW2d 319.

12. Chicago, I. & L. R. Co. v Hackett, 228 US 559, 57 L ed 966, 33 S Ct 581; Norton v Shelby County, 118 US 425, 30 L ed 178, 6 S Ct 1121; Louisiana v Pilsbury, 105 US 278, 26 L ed 1090; Gunn v Barry, 15 Wall (US) 610, 21 L ed 212; Hirsh v Block, 50 App DC 56, 267 F 614, 11 ALR 1238, cert den 254 US 640, 65 L ed 452, 41 S Ct 13; Morgan v Cook, 211 Ark 755, 202 SW2d 355; Texas Co. v State, 31 Ariz 485, 254 P 1060, 53 ALR 258; Connecticut Baptist Convention v McCarthy, 128 Conn 701, 25 A2d 656; Commissioners of Roads & Revenues v Davis, 213 Ga 792, 102 SE2d 180; Grayson-Robinson Stores, Inc. v Oneida, Ltd. 209 Ga 613, 75 SE2d 161, cert den 346 US 823, 98 L ed 348, 74 S Ct 39; Security Sav. Bank v Connell, 198 Iowa 564, 200 NW 8, 36 ALR 486; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Cooke v Iverson, 108 Minn 388, 122 NW 251; Clark v Grand Lodge, B. R. T. 328 Mo 1084, 43 SW2d 404, 88 ALR 150; St. Louis v Polar Wave Ice & Fuel Co. 317 Mo 907, 296 SW 993, 54 ALR 1082; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; Daly v Beery, 45 ND 287, 178 NW 104; State ex rel. Tharel v Board of Comrs. 188 Okla 184, 107 P2d 542; Atkinson v Southern Exp. Co. 94 SC 444, 78 SE 516; Henry County v Standard Oil Co. 167 Tenn 485, 71 SW2d 683, 93 ALR 1483; State v Candland, 36 Utah 406, 104 P 285; Bonnett v Vallier, 136 Wis 193, 116 NW 885.

13. Commissioners of Roads & Revenues v Davis, 213 Ga 792, 102 SE2d 180; Grayson-Robinson Stores, Inc. v Oneida, Ltd. 209 Ga 613, 75 SE2d 161, cert den 346 US 823, 98 L ed 348, 74 S Ct 39; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Clark v Grand Lodge, B. R. T. 328 Mo 1084, 43 SW2d 404, 88 ALR 150.

14. Norton v Shelby County, 118 US 425, 30 L ed 178, 6 S Ct 1121; Security Sav. Bank v Connell, 198 Iowa 564, 200 NW 8, 36 ALR 486; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; Daly v Beery, 45 ND 287, 178 NW 104; Henry County v

authority on anyone,[17] affords no protection,[18] and justifies no acts performed under it.[19] A contract which rests on an unconstitutional statute creates no obligation to be impaired by subsequent legislation.[20]

No one is bound to obey an unconstitutional law[1] and no courts are bound to enforce it.[2]

A void act cannot be legally inconsistent with a valid one.[3] And an unconstitutional law cannot operate to supersede any existing valid law.[4] Indeed, insofar as a statute runs counter to the fundamental law of the land, it is superseded thereby.[5] Since an unconstitutional statute cannot repeal or in any way affect an existing one,[6] if a repealing statute is unconstitutional, the statute which it attempts to repeal remains in full force and effect.[7] And where a clause repealing a prior law is inserted in an act, which act is unconstitutional and void, the provision for the repeal of the prior law will usually fall with it and will not be permitted to operate as repealing such prior law.[8]

The general principles stated above apply to the constitutions as well as to the laws of the several states insofar as they are repugnant to the Constitution and laws of the United States.[9] Moreover, a construction of a statute which brings it in conflict with a constitution will nullify it as effectually as if it had, in express terms, been enacted in conflict therewith.[10]

Standard Oil Co. 167 Tenn 485, 71 SW2d 683, 93 ALR 1483; State v Candland, 36 Utah 406, 104 P 285.

15. Chicago, I. & L. R. Co. v Hackett, 228 US 559, 57 L ed 966, 33 S Ct 581; Norton v Shelby County, 118 US 425, 30 L ed 178, 6 S Ct 1121; Hirsch v Block, 50 App DC 56, 267 F 614, 11 ALR 1238, cert den 254 US 640, 65 L ed 452, 41 S Ct 13; Smith v Costello, 77 Idaho 205, 290 P2d 742, 56 ALR2d 1020; Security Sav. Bank v Connell, 198 Iowa 564, 200 NW 8, 36 ALR 486; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Garden of Eden Drainage Dist. v Bartlett Trust Co. 330 Mo 554, 50 SW2d 627, 84 ALR 1078; St. Louis v Polar Wave Ice & Fuel Co. 317 Mo 907, 296 SW 993, 54 ALR 1082; Watkins v Dodson, 159 Neb 745, 68 NW2d 508; Henry County v Standard Oil Co. 167 Tenn 485, 71 SW2d 683, 93 ALR 1483.

Under Nebraska law an unconstitutional statute is an utter nullity, is void from the date of its enactment, and is incapable of creating any rights. Propst v Board of Education Lands & Funds (DC Neb) 103 F Supp 457, app dismd 343 US 901, 96 L ed 1321, 72 S Ct 636, reh den 343 US 937, 96 L ed 1344, 72 S Ct 769.

As to the effect of, and rights under, a judgment based upon an unconstitutional law, see JUDGMENTS (Rev ed § 19); as to the res judicata effect of such a judgment, see JUDGMENTS (Rev ed § 356).

16. Norton v Shelby County, 118 US 425, 30 L ed 178, 6 S Ct 1121; Security Sav. Bank v Connell, 198 Iowa 564, 200 NW 8, 36 ALR 486; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244.

17. Felix v Wallace County, 62 Kan 832, 62 P 667; Henderson v Lieber, 175 Ky 15, 192 SW 830, 9 ALR 620; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; Daly v Beery, 45 ND 287, 178 NW 104.

18. Huntington v Worthen, 120 US 97, 30 L ed 588, 7 S Ct 469; Norton v Shelby County, 118 US 425, 30 L ed 178, 6 S Ct 1121; Smith v Costello, 77 Idaho 205, 290 P2d 742, 56 ALR2d 1020; Highway Comrs. v Bloomington, 253 Ill 164, 97 NE 280; Security Sav. Bank v Connell, 198 Iowa 564, 200 NW 8, 36 ALR 486; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; St. Louis v Polar Wave Ice & Fuel Co. 317 Mo 907, 296 SW 993, 54 ALR 1082; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; State v Williams, 146 NC 618, 61 SE 61; Daly v Beery, 45 ND 287, 178 NW 104; Atkinson v Southern Exp. Co. 94 SC 444, 78 SE 516; State v Candland, 36 Utah 406, 104 P 285; Bonnett v Vallier, 136 Wis 193, 116 NW 885.

As to the limitations to which this rule is subject, see § 178, infra.

19. Osborn v Bank of United States, 9 Wheat (US) 738, 6 L ed 204; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Board of Managers v Wilmington, 237 NC 179, 74 SE2d 749; State ex rel. Tharel v Board of Comrs. 188 Okla 184, 107 P2d 542; Sharber v Florence, 131 Tex 341, 115 SW2d 604.

20. A contract executed solely for the purpose of complying with the provisions of an unconstitutional statute is not valid, and the person who under its terms is obligated to comply with the provisions of the unconstitutional act is entitled to relief. Cleveland v Clements Bros. Constr. Co. 67 Ohio St 197, 65 NE 885; Jones v Columbian Carbon Co. 132 W Va 219, 51 SE2d 790.

Generally, as to the application to invalid contracts of the obligation of contracts guaranty, see § 439, infra.

1. Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; State ex rel. Clinton Falls Nursery Co. v Steele County, 181 Minn 427, 232 NW 737, 71 ALR 1190; St. Louis v Polar Wave Ice & Fuel Co. 317 Mo 907, 296 SW 993, 54 ALR 1082; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; Amyot v Caron, 88 NH 394, 190 A 134; State v. Williams, 146 NC 618, 61 SE 61; Daly v Beery, 45 ND 287, 178 NW 104.

2. Chicago, I. & L. R. Co. v Hackett, 228 US 559, 57 L ed 966, 33 S Ct 581; United States v Realty Co. 163 US 427, 41 L ed 215, 16 S Ct 1120; Payne v Griffin (DC Ga) 51 F Supp 588; Hammond v Clark, 136 Ga 313, 71 SE 479; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; State v Williams, 146 NC 618, 61 SE 61; Daly v Beery, 45 ND 287, 178 NW 104.

Only the valid legislative intent becomes the law to be enforced by the courts. State ex rel. Clarkson v Phillips, 70 Fla 340, 70 So 367; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244.

3. Re Spencer, 228 US 652, 57 L ed 1010, 33 S Ct 709; Board of Managers v Wilmington, 237 NC 179, 74 SE2d 749.

§ 178. Protection of rights.

The actual existence of a statute prior to a determination that it is unconstitutional is an operative fact and may have consequences which cannot justly be ignored; when a statute which has been in effect for some time is declared unconstitutional, questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, and of public policy in the light of the nature both of the statute and of its previous application, demand examination.[11] It has been said that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.[12]

The general rule is that an unconstitutional act of the legislature protects no one.[13] It is said that all persons are presumed to know the law, meaning that ignorance of the law excuses no one; if any person acts under an unconstitutional statute, he does so at his peril and must take the consequences.[14]

Rights acquired under a statute while it is duly adjudged to be constitutional are valid legal rights that are protected by the constitution, not by judicial decision. But rights acquired under a statute that has not been adjudged valid

4. Chicago, I. & L. R. Co. v Hackett, 228 US 559, 57 L ed 966, 33 S Ct 581; Berry v Summers, 76 Idaho 446, 283 P2d 1093; Board of Managers v Wilmington, 237 NC 179, 74 SE2d 749; State v Savage, 96 Or 53, 184 P 567, 189 P 427.

5. Thiede v Scandia Valley, 217 Minn 218, 14 NW2d 400.

6. State v One Oldsmobile Two-Door Sedan, 227 Minn 280, 35 NW2d 525.

7. State v One Oldsmobile Two-Door Sedan, supra.

8. See § 185, infra.

9. Gunn v Barry, 15 Wall (US) 610, 21 L ed 212; Cohen v Virginia, 6 Wheat (US) 264, 5 L ed 257.

10. Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Gilkeson v Missouri P. R. Co. 222 Mo 173, 121 SW 138; Peay v Nolan, 157 Tenn 222, 7 SW2d 815, 60 ALR 408.

11. Chicot County Drainage Dist. v Baxter State Bank, 308 US 371, 84 L ed 329, 60 S Ct 217, reh den 309 US 695, 84 L ed 1035, 60 S Ct 581.

12. Chicot County Drainage Dist. v Baxter State Bank, supra.

13. § 177, supra.

14. Sumner v Beeler, 50 Ind 341.

This warning has been so phrased as to present the actual concept underlying the utter nullity of an invalid law by a holding to the effect that all persons are held to notice that all statutes are subject to all express and implied applicable provisions of the constitution, and also that should a conflict between a statute and any express or implied provision of the constitution be duly adjudged, the constitution by its own superior force and authority would render the statute invalid from its enactment, and further that the courts have no power to control the effect of the constitution in nullifying a statute that is adjudged to be in conflict with any of the express or implied provisions of the constitution. State ex rel. Nuveen v Greer, 88 Fla 249, 102 So 739, 37 ALR 1298.

ly and lawfully current in commercial transactions as the equivalent of legal tender coin and paper money.[16]

§ 8. "Currency;" "Specie;" "Current Funds;" "Dollar."—The term "currency" has been held to include bank bills,[17] and has been limited, in some jurisdictions, to bank bills or other paper money which passes at par as a circulating medium in the business community as and for the constitutional coin of the country.[18] It has also been held, however, that it includes both coin and paper money and is practically synonymous with "money," and that the only practical distinction between paper money and coined money, as currency, is that coined money must generally be received, paper money may generally be specially refused in payment of debt, but a payment in either is equally made in money.[19]

The word "specie" means gold or silver coins of the coinage of the United States.[20]

The term "current funds" means current money, par funds, or money circulating without any discount,[1] and is intended to cover whatever is receivable and current by law as money, whether in the ferm of notes or coin.[2]

The term "dollar" means money, since it is the unit of money in this country,[3] and in the absence of qualifying words, it cannot mean promissory notes or bonds or other evidences of debt.[4] The term also refers to specific coins of the value of one dollar.[5]

§ 9. Bank Notes.—The courts are not agreed whether bank notes are to be classed as money, but the weight of authority and the better reason supports the rule that bank notes constitute a part of the common currency of the country[6] and ordinarily pass as money.[7] They are a good tender as money unless specially objected to.[8] They are not, like bills of exchange, considered as mere securities or documents for debts,[9] and generally, they are classed

[16] See supra, § 2.

[17] Howe v. Hartness, 11 Ohio St 449, 78 Am Dec 312.

[18] Woodruff v. Mississippi, 162 US 291, 40 L ed 973, 16 S Ct 820; Galena Ins. Co. v. Kupfer, 28 Ill 332, 81 Am Dec 284.

[19] Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.

Generally as to bank notes as money, see infra, § 9.

[20] Belford v. Woodward, 158 Ill 122, 41 NE 1097, 29 LRA 592.

[1] Galena Ins. Co. v. Kupfer, 28 Ill 332, 81 Am Dec 284; Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.

[2] Woodruff v. Mississippi, 162 US 291, 40 L ed 973, 16 S Ct 820.

At one time, shortly after the first issue in this country of notes declared to have the quality of legal tender, it was a common practice of drawers of bills of exchange or checks, or makers of promissory notes, to indicate whether the same were to be paid in gold or silver or in such notes; and the term "current funds" was used to designate any of these, all being current and declared by positive enactment to be legal tender. Ibid.

[3] See supra, § 5.

[4] 27 Ohio Jur pp. 125, 126, § 2.

[5] United States v. Van Auken, 96 US 366, 24 L ed 852.

[6] Bank of United States v. Bank of Georgia, 10 Wheat(US) 333, 6 L ed 334; Howe v. Hartness, 11 Ohio St 449, 78 Am Dec 312; Vick v. Howard, 136 Va 101, 116 SE 465, 31 ALR 240; Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.

Anno: 4 Ann Cas 630.

See PAYMENT [Also 21 RCL p. 39, § 36].

[7] Bank of United States v. Bank of Georgia, 10 Wheat(US) 333, 6 L ed 334; Howe v. Hartness, 11 Ohio St 449, 78 Am Dec 312; Crutchfield v. Robins, 5 Humph (Tenn) 15, 42 Am Dec 417; Ross v. Burlington Bank, 1 Alk(Vt) 43, 15 Am Dec 664; Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.

Anno: 4 Ann Cas 630.

Bank notes lawfully issued and actually current at par in lieu of coin are treated as money because they flow as such through the channels of trade and commerce without question. Woodruff v. Mississippi, 162 US 291, 40 L ed 973, 16 S Ct 820; Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773. Anno: 4 Ann Cas 630.

Bank notes are regarded as money to the extent that they will pass by a bequest of cash. Anno: 52 Am Dec 448.

See also 7 Am Jur 283, BANKS, §§ 400 et seq.

[8] See infra, § 13.

See PAYMENT [Also 21 RCL p. 40, § 36].

[9] Bank of United States v. Bank of Georgia, 10 Wheat(US) 333, 6 L ed 334; Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.

as money even in criminal proceedings, where, as a rule, the greatest strictness of construction prevails.[10] However, notwithstanding the generally prevailing rule that bank notes are money, there is considerable authority, especially among the earlier cases, which maintains the rule that bank notes are not to be classed as money.[11]

Even under the majority rule, all bank notes are not necessarily money.[12] They circulate as such only by the general consent and usage of the community.[13] This consent and usage is based upon the convertability of such notes into coin, at the pleasure of the holder, upon their presentation to the bank for redemption.[14] This fact is the vital principle which sustains their character as money. As long as they are in fact what they purport to be, payable on demand, common consent gives them the ordinary attributes of money.[15] But, upon the failure of the bank by which they were issued, when its doors are closed, and its inability to redeem its bills is openly avowed, they instantly lose the character of money, their circulation as currency ceases with the usage and consent upon which it rested, and the notes become the mere dishonored and depreciated evidences of debt.[16]

The power of states to make bank notes legal tender is discussed in a subsequent section.[17]

§ 10. Certificates of Deposit, Negotiable Instruments, etc.—Certificates of deposits or other vouchers for money deposited in solvent banks, payable on demand, are a most convenient medium of exchange, and are extensively used in commercial and financial transactions to represent the money thus deposited, and as the equivalent thereof, and are considered in most transactions as money.[18] Similarly, a certified check, while not a legal medium of payment, is a substitute for money which is commonly and generally used in business and commercial transactions and likewise in legal proceedings and may be considered as so much money. Thus, it has been held that under a statute authorizing a money deposit in lieu of an undertaking, the deposit of a certified check is a sufficient compliance with the statute,[19] and it has also been held that where the question involved is whether negotiable paper was purchased with money, an uncertified check received and presently paid in cash is equivalent to money.[20]

Generally as to bills of exchange, see 7 Am Jur 790, BILLS AND NOTES, § 6.

[10] State v. Finnegean, 127 Iowa 286, 103 NW 155, 4 Ann Cas 628; State v. Kube, 20 Wis 217, 91 Am Dec 390.

Anno: 4 Ann Cas 630.

See 18 Am Jur 574, EMBEZZLEMENT, § 6; 32 Am Jur 987, LARCENY, § 77.

[11] Hamilton v. State, 60 Ind 193, 28 Am Rep 653.

Anno: 4 Ann Cas 630.

[12] Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.

[13] Westfall v. Braley, 10 Ohio St 188, 75 Am Dec 509.

[14] Howe v. Hartness, 11 Ohio St 449, 78 Am Dec 312; Westfall v. Braley, 10 Ohio St 188, 75 Am Dec 509.

Money includes only such bank notes as are current de jure et de facto at the locus in quo; that is, bank notes which are issued for circulation by authority of law, and are in actual and general circulation at par with coin, as a substitute for coin, interchangeable with coin; bank notes which actually represent dollars and cents, and are paid and received for dollars and cents at their legal standard value. Whatever is at a discount—that is, whatever represents less than the standard value of coined dollars and cents at par—does not properly represent dollars and cents, and is not money. Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.

[15, 16] Westfall v. Braley, 10 Ohio St 188, 75 Am Dec 509.

[17] See infra, § 13.

[18] Allibone v. Ames, 9 SD 74, 68 NW 165, 33 LRA 585; State v. McFetridge, 84 Wis 473, 54 NW 1, 998, 20 LRA 223.

Anno: Ann Cas 1912C 356.

Generally as to the definition and nature of certificates of deposit, see 7 Am Jur 351, BANKS, §§ 491 et seq.

[19] Smith v. Field, 19 Idaho 553, 114 P 668, Ann Cas 1912C 354.

[20] Poorman v. Woodward, 21 How(US) 266, 16 L ed 161.

III. COINAGE, ISSUANCE, AND REGULATION

§ 11. Generally.—It is obvious that a uniform monetary system is an essential requisite of modern commerce, and that governmental control and regulation is necessary in order to secure such uniformity. The powers of various governmental authorities in this connection,[1] and particular matters and subjects of regulation,[2] are considered in the following sections. The establishment of a standard unit of value is discussed in a prior section.[3]

The issuance of bank notes is discussed under another title.[4]

§ 12. By Federal Government.—In order that money throughout the United States may be uniform, the Federal Government is given, by the Constitution of the United States, the exclusive power to coin money and regulate its value and the value of foreign coin. Congress has the power to make all laws which shall be necessary and proper to carry into effect these powers.[5] Hence, Congress may establish a uniform national currency, declare of what it shall consist, endow that currency with the character and qualities of money having a defined legal value, by requiring its acceptance at its face value as legal tender in the discharge of all debts, and regulate the value of such money, unless by so doing property is taken without due process of law.[6] Moreover, Congress, under its power to provide a currency for the entire country, may deny the quality of legal tender to foreign coins, and may provide by law against the imposition on the community of counterfeit and base coin, and may restrain by suitable enactments circulation as money of any notes not issued under its own authority.[7]

§ 13. By States.—By the Constitution of the United States, the several states are prohibited from coining money,[8] emitting bills of credit,[9] or making anything but gold and silver coin a tender in payment of debts.[10] Thus,

[1] See infra, §§ 12 et seq.

[2] See infra, §§ 12 et seq.

[3] See supra, § 5.

[4] See 7 Am Jur 284, Banks, § 402.

[5] Perry v. United States, 294 US 330, 79 L ed 912, 55 S Ct 432, 95 ALR 1335; Norman v. Baltimore & O. R. Co. 294 US 240, 79 L ed 885, 55 S Ct 407, 95 ALR 1352, affirming 265 NY 37, 191 NE 726, 92 ALR 1523; Ling Su Fan v. United States, 218 US 302, 54 L ed 1049, 31 S Ct 21, 30 LRA(NS) 1176; Legal Tender Case, 110 US 421, 28 L ed 204, 4 S Ct 122; United States v. Ballard, 14 Wall.(US) 457, 20 L ed 845; Legal Tender Cases, 12 Wall.(US) 457, 20 L ed 287; Veazie Bank v. Fenno, 8 Wall.(US) 533, 19 L ed 482; United States v. Marigold, 9 How.(US) 560, 13 L ed 257; Federal Land Bank v. Wilmarth, 218 Iowa 339, 252 NW 507, 94 ALR 1338.

Authority to impose requirements of uniformity and parity is an essential feature of the control over the currency vested in Congress. Norman v. Baltimore & O. R. Co. 294 US 240, 79 L ed 885, 55 S Ct 407, 95 ALR 1352, affirming 265 NY 37, 191 NE 726, 92 ALR 1523.

As to the power of the Federal Government to regulate the value of coin, generally, see infra, § 15.

As to powers of the Federal Government with respect to matters of revenue, finance, and currency, generally, see United States [Also 26 RCL p. 1426, § 17].

[6] Legal Tender Case, 110 US 421, 28 L ed 204, 4 S Ct 122; Norman v. Baltimore & O. R. Co. 265 NY 37, 191 NE 726, 92 ALR 1523, affirmed in 294 US 240, 79 L ed 885, 55 S Ct 407, 95 ALR 1352.

As to what money constitutes legal tender, see infra, § 18.

[7] Legal Tender Case, 110 US 421, 28 L ed 204, 4 S Ct 122; Veazie Bank v. Fenno, 8 Wall.(US) 533, 19 L ed 482.

It is against public policy to allow individuals or corporations to issue notes as a common currency or circulating medium without express legislative sanction. Thomas v. Richmond, 12 Wall.(US) 349, 20 L ed 453.

[8] Norman v. Baltimore & O. R. Co. 294 US 240, 79 L ed 885, 55 S Ct 407, 95 ALR 1352; Legal Tender Case, 110 US 421, 28 L ed 204, 4 S Ct 122; Craig v. Missouri, 4 Pet.(US) 410, 7 L ed 903.

Anno: 31 ALR 246.

As to fiscal management of states, generally, see States [Also 25 RCL p. 394, §§ 27 et seq.].

[9] See infra, § 17.

[10] Legal Tender Case, 110 US 421, 28 L ed 204, 4 S Ct 122; Sturges v. Crowninshield, 4 Wheat.(US) 122, 4 L ed 529; Townsend v. Townsend, Peck(Tenn) 1, 14 Am Dec 722.

Anno: 31 ALR 246.

The states cannot declare what shall be money, or regulate its value, since whatever power there is over the currency is vested in Congress. Norman v. Baltimore & O. R. Co. 294 US 240, 79 L ed 885, 55 S Ct 407, 95

states have no power to make bank notes legal tender,[11] except in payment of debts and dues owing the state.[12]

As a general rule, the extent of a state's power as to currency is limited to the right to establish banks, to regulate or prohibit the circulation, within the state, of foreign notes, and to determine in what the public dues shall be paid,[13] and inasmuch as a state is prohibited from coining money, the money which it may coin cannot be circulated as such. A creditor will be under no obligation to receive it in discharge of his debt; and if any statutory provision of the state is framed, with a view of forcing the circulation of such coin, by suspending the interest or postponing the debt of a creditor where it is refused, such statute is void, because it acts on the thing prohibited and comes directly in conflict with the Constitution.[14] Similarly, applying the prohibition against making anything but gold or silver coin a legal tender in the payment of debts, a state statute providing that a creditor must, on penalty of delay, indorse his consent on an execution, to receive property in payment of his debt, is invalid.[15]

§ 14. By Municipalities.—It seems well established that a municipal corporation in a state in which it is against public policy, as well as express law, for any person or corporate body to issue small bills to circulate as currency has no implied power to issue such bills. Moreover, such power is not conferred by a clause in the city charter, authorizing the borrowing of money.[16]

§ 15. Value of Coin.—The power to regulate the value of coin may be exercised by Congress from time to time as the value of the metal changes, for the power to regulate the value of money coined, and of foreign coinage, is not exhausted by a single initial regulation.[17] Thus, it has been held that Congress may issue coins of the same denominations as those already current by law, but of less intrinsic value than those, by reason of containing a less weight of the precious metals, and thereby enable debtors to discharge their debts by the payment of coins of the lesser real value.[18]

ALR 1352, affirming 265 NY 37, 191 NE 726, 92 ALR 1523.

If a state establishes a tender law it must be for coin the value of which is regulated by Congress. Anno: 31 ALR 246.

[11] Markle v. Hatfield, 2 Johns.(NY) 455, 3 Am Dec 446; Westfall v. Braley, 10 Ohio St 188, 75 Am Dec 509; Thorp v. Wegefarth, 56 Pa 82, 93 Am Dec 789; Bayard v. Shunk, 1 Watts & S(Pa) 92, 37 Am Dec 441; Wainwright v. Webster, 11 Vt 576, 34 Am Dec 707; Tancil v. Seaton, 28 Gratt(Va) 601, 26 Am Rep 380.

[12] Woodruff v. Trapnall, 10 How(US) 190, 13 L ed 383.

[13] Woodruff v. Trapnall, 10 How(US) 190, 13 L ed 383.

The expression "intended to circulate as money," as used in provisions of some state Constitutions to the effect that "the legislature shall, in no case, have power to issue treasury warrants, treasury notes, or paper of any description intended to circulate as money," implies that the paper in question must have a fitness for general circulation as a substitute for money in the common transactions of business; it does not apply to warrants made payable to an individual to whom the state is indebted, although the state may direct its officers to receive such warrants in payment of debts due the state. Houston & T. C. R. Co. v. Texas, 177 US 66, 44 L ed 672, 20 S Ct 545.

[14] Craig v. Missouri, 4 Pet.(US) 410, 7 L ed 903.

The prohibition of Art. 1, § 10, of the United States Constitution, expressly forbidding states to coin money or make anything but gold and silver legal tender for the payment of debts, takes from the paper of state banks all coercive circulation, and leaves it to stand on the credit of the banks. Veazie Bank v. Fenno, 8 Wall.(US) 533, 19 L ed 482. Anno: 31 ALR 246.

[15] Bally v. Gentry, 1 Mo 164, 13 Am Dec 484.

[16] Thomas v. Richmond, 12 Wall.(US) 349, 20 L ed 453.

As to the right of municipal corporations generally to borrow money or incur indebtedness, see Municipal Corporations [Also 19 RCL p. 779, § 84].

[17] Legal Tender Cases, 12 Wall.(US) 457, 20 L ed 287.

[18] Legal Tender Case, 110 US 421, 28 L ed 204, 4 S Ct 122; United States v. Ballard, 14 Wall.(US) 457, 20 L ed 845.

the same rule has been applied with regard to an option to purchase property at the price offered to the optionor by a third person.[8]

G. Consideration

1. In General; Necessity

§ 85. Generally; definitions and nature of consideration.

Technically, consideration is defined as some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other.[10] Again, consideration for a promise is defined as an act or a forbearance; or the creation, modification, or destruction of a legal relation; or a return promise bargained for and given in exchange for the promise.[11] Consideration is, in effect, the price bargained[12] and paid for a promise[13]—that is, something given in exchange for the promise.[14] In some jurisdictions consideration is defined by statute.[15]

Generally, considerations are classified as "good" and "valuable."[16] A "good" consideration, sometimes called a "meritorious" consideration, is such as that of blood, or of natural love and affection, or of love and affection based on kindred by blood or marriage,[17] whereas a "valuable" consideration is generally understood as money or something having monetary value.[18]

Although historically the terms "quid pro quo" and "nudum pactum" applied only with regard to contracts which were at common law enforceable by an action of debt, these terms are now generally used with regard to the consideration for contracts generally—that is, consideration is referred to as the "quid pro quo," and any promise not supported by consideration is said to be "nudum pactum."[19] Consideration is, however, not identical with quid pro quo. The policy of the courts in requiring a consideration for the maintenance of a contract action appears to be to prevent the enforcement of gratuitous promises. It is said that when one receives a naked promise and such promise is broken, he is no worse off than he was; he gave nothing for it, he has lost nothing by it, and on its breach he has suffered no damage cognizable by courts. No benefit accrued to him who made the promise, nor was any injury sustained by him who received it. Such promises are not made within the scope of transactions intended to confer rights enforceable at law.[20] This argument loses much of its force because of the rule that the courts do not ordinarily inquire into the adequacy of the consideration, and any consideration, however slight, is legally sufficient to support even an onerous promise.[1] In view of this rule it has been said that consideration is as much a form as a seal at common law.[2]

At common law, a seal was deemed to dispense with, or raise a presumption of, consideration.[3] In most jurisdictions now, however, private seals have been abolished by statute and are declared to be without effect.[4] In addition, in jurisdictions which have adopted the Uniform Commercial Code,[5] the provision in the Code article on "Sales" that the affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument applies, and the law with respect to sealed instruments does not apply to such a contract or offer.[6]

§ 86. Necessity.

It is well settled, as a general rule, that consideration is an essential element of, and is necessary to the enforceability or validity of, a contract.[7] It fol-

specified sum and as much more than such sum as such stock may be sold for to any other person, was held in Huston v Harrington, 58 Wash 51, 107 P 874, to be too indefinite and uncertain, as to the price, to be enforced.

9. Slaughter v Mallet Land & Cattle Co. (CA5 Tex) 141 F 282, cert den 201 US 646, 50 L ed 903, 26 S Ct 761; Marske v Willard, 169 Ill 276, 48 NE 290; Hayes v O'Brien, 149 Ill 403, 37 NE 73; Levy v Peabody, 230 Mass 164, 130 NE 261; Nu-Way Service Stations v Vandenberg Bros. Oil Co. 283 Mich 551, 278 NW 683; Driebe v Ft. Penn Realty Co. 331 Pa 314, 200 A 62, 117 ALR 1091; Peerless Dept. Stores v George M. Snook Co. 123 W Va 77, 15 SE2d 169, 136 ALR 130; Goerke Motor Co. v Lonergan, 236 Wis 544, 295 NW 671.

Annotation: 136 ALR 139, 140.

10. Becker v Colonial Life Ins. Co. 153 App Div 382, 138 NYS 491.

58 Columbia L Rev 929 et seq.

It is said that the most widely used definition of "consideration" is a benefit to the promisor or a loss or detriment to the promisee. Test v Heaberlin, 254 Iowa 521, 118 NW2d 73.

11. Byerly v Duke Power Co. (CA4 NC) 217 F2d 803, citing Restatement, Contracts § 75.

12. La Flamme v Hoffman, 148 Me 444, 95 A2d 802; Re Sadler's Estate, 232 Miss 349, 98 So 2d 863; Coast Nat. Bank v Bloom, 113 NJL 597, 174 A 576, 95 ALR 528.

13. Howard College v Turner, 71 Ala 429; Re Sadler's Estate, 232 Miss 349, 98 So 2d 863; Coast Nat. Bank v Bloom, 113 NJL 597, 174 A 576, 95 ALR 528.

14. Phoenix Mut. L. Ins. Co. v Raddin, 120 US 183, 30 L ed 644, 7 S Ct 500; Re Sadler's Estate, 232 Miss 349, 98 So 2d 863; James v Fulcrod, 5 Tex 512.

15. Wilson v Blair, 65 Mont 155, 211 P 289, 27 ALR 1235; Clements v Jackson County Oil & Gas Co. 61 Okla 247, 161 P 216.

16. Thompson v Thompson, 17 Ohio St 649.

17. Williston, Contracts 3d ed § 110.

18. § 95, infra.

19. Contracts which were at common law enforceable by an action of debt generally derived their obligatory force from a duty imposed by law. This duty was based either on the form of the contract or on what was known as quid pro quo. By this was meant that the person owing the duty had received from the person to whom the duty was due something which he was bound to return or pay for. In the absence of quid pro quo, the engagement, except in the case of formal contracts, was termed "nudum pactum"—a phrase derived from the civil law. When the English courts finally declared that an action of assumpsit might be maintained for the nonperformance of a simple promise, they limited the right of action to cases in which there existed an element which came to be known as "consideration." Any promise not supported by a consideration they likewise termed "nudum pactum." The term "consideration" is thus in some respects analogous to the causa of the civil law and to quid pro quo in debt. In fact the latter term has sometimes been treated as though it were synonymous with consideration. Shackleford v Hendley, 1 AK Marsh (Ky) 496; Todd v Weber, 95 NY 181; Justice v Lang, 42 NY 493.

Williston, Contracts 3d ed §§ 99 et seq., 103.

For translation of legal phrases and maxims, see Am Jur 2d Desk Book, Document 185.

The consideration, in the legal sense of the word, of a contract is the quid pro quo, that which the party to whom a promise is made does or agrees to do in return for the promise. Phoenix Mut. L. Ins. Co. v Raddin, 120 US 183, 30 L ed 644, 7 S Ct 500.

20. Davis v Morgan, 117 Ga 504, 43 SE 732; Stonestreet v Southern Oil Co. 226 NC 261, 37 SE2d 676.

Williston, Contracts 3d ed §§ 99 et seq., 103.

1. § 102, infra.

2. Holmes, J., in Krell v Codman, 154 Mass 454, 28 NE 578.

3. See Seals (1st ed § 13).

4. See Seals (1st ed § 8).

5. See Am Jur 2d Desk Book, Document 130 (and supp).

6. Uniform Commercial Code § 2-203.

7. Tilley v Cook County (Tilley v Chicago) 103 US 155, 26 L ed 374; Heryford v Davis, 102 US 235, 26 L ed 160; Farrington v Tennessee, 95 US 679, 24 L ed 558; Chorpenning v United States, 94 US 397, 24 L ed 126; Byerly v Duke Power Co. (CA4 NC) 217 F2d 803; Lewis v Ogram, 149 Cal 505, 87 P 60; Davis v Seymour, 59 Conn 531, 21 A 1004; Porter v Title Guaranty & S. Co. 17 Idaho 364, 106 P 299; Leopold v Salkey, 89 Ill 412; Bright v Coffman, 15 Ind 371; Caylor v Caylor, 22 Ind App 666, 52 NE 465; Stewart v Todd, 190 Iowa 283, 173 NW 619, 20 ALR 1272, reh den 190 Iowa 296, 327, 180 NW 146, 20 ALR 1301; Neal v Coburn, 92 Me 139, 42 A 348; Harper v Davis, 115 Md 349, 80 A 1012; Hills v Snell, 104 Mass 173; De Moss v Robinson, 46 Mich 62, 8 NW 712; Wilson v Blair, 65 Mont 155, 211 P 289, 27 ALR 1235;

seal[17] or bond or specialty,[18] and the NIL does not destroy the significance of a seal[19] in states where a seal imparts a special quality to a writing. The mere fact, however, that a corporate instrument bears a seal does not necessarily establish the instrument as a specialty as in the case of an individual, since in such case the seal may be used only as a mark of genuineness.[20]

The Commercial Code—Commercial paper, declares that an instrument otherwise negotiable is within this article even though it is under a seal,[1] with the intent to place sealed instruments on the same footing as any other commercial paper without affecting any other statutes or rules of law relating to sealed instruments except so far as they are inconsistent.[2]

§ 214. Revenue stamps.[3]

Certain obligations for the payment of money come under the laws imposing stamp taxes, but instruments omitting required revenue stamps are valid unless the statute expressly invalidates them.[4] The revenue stamp is no part of a promissory note, and the omission of the stamp or failure to cancel the stamps does not affect its negotiability.[5]

III. CONSIDERATION

A. In General

§ 215. Generally.

This portion of the article treats of the necessity, sufficiency, and legality of consideration for a bill or note or an obligation thereon. Treated elsewhere are matters of consideration, or "value," for a transfer of a bill or note,[6] consideration for an extension or modification, as distinguished from a renewal instrument,[7] the effect of executory consideration on the unconditional nature of an order or promise,[8] the effect of the presence or absence of a statement of consideration,[9] and notice of, or from, the consideration.[10]

17. Alropa Corp. v Myers (DC Del) 55 F Supp 936; Clarke v Pierce, 215 Mass 552, 102 NE 1094.

18. Alropa Corp. v Myers (DC Del) 55 F Supp 936; Wooleyhan v Green, 34 Del 503, 155 A 602.

19. Balliet v Fetter, 314 Pa 284, 171 A 466.

20. Sigler v Mt. Vernon Bottling Co. (DC Dist Col) 158 F Supp 234, affd 104 App DC 260, 261 F2d 378.

1. Uniform Commercial Code § 3–113.

2. Comment to Uniform Commercial Code § 3–113.

See Otto v Powers, 177 Pa Super 253, 110 A2d 847.

3. *Practice Aids.*—Provision as to payment for revenue stamps. 2 Am Jur Legal Forms 2:748.

4. See State Taxes (1st ed §§ 12 et seq., 29).

5. Goodale v Thorn, 199 Cal 307, 249 P 11; Newhall Sav. Bank v Buck, 197 Iowa 732, 197 NW 986; Farmers Sav. Bank v Neel, 193 Iowa 685, 187 NW 555, 21 ALR 1116; Currie-McGraw Co. v Friedman, 135 Miss 701, 100 So 273; Bank of High Hill v Rockey (Mo App) 277 SW 573; Security State Bank v Brown, 110 Neb 237, 193 NW 336.

6. §§ 334 et seq. infra.

While the NIL defines "value" in terms of "consideration" (§ 216, infra); and uses the term "value" in describing the character of an original party for accommodation (§ 118, supra), in the Commercial Code "consideration" is distinguished from "value." The former refers to what the obligor has received for his obligation, and is important only on the question whether his obligation can be enforced against him. (Comment 1 to Uniform Commercial Code § 3–408). "Value" is important only on the question whether the holder who has acquired that obligation qualifies as a particular kind of holder. Comment 2 to Uniform Commercial Code § 3–303.

7. §§ 302 et seq., infra.

8. § 141, supra.

9. §§ 90, 145, 168, 189, supra.

10. §§ 452 et seq., infra.

Like any other contract, a negotiable instrument requires a consideration as between the original parties, or a recognized substitute therefor,[11] but such an instrument is presumed to have been issued for a valuable consideration.[12]

B. What Constitutes

§ 216. Generally.

The general principles as to what constitutes consideration for a contract, full discussion of which appears in another article,[13] apply in determining what constitutes consideration for a bill or note. Any consideration,[14] that is, any valuable consideration as distinguished from "good" consideration,[15] sufficient to support a simple contract, supports a negotiable instrument.

Thus, while nothing is a consideration unless it is known and agreed to as such by both parties,[16] and these definitions are not completely comprehensive,[17] consideration may be said to consist in any benefit to the promisor, or in a loss or detriment to the promisee,[18] or to exist when, at the desire of the

11. § 237, infra.

12. See Vol. 12.

13. See Contracts (1st ed §§ 75 et seq.).

14. Flores v Woodspecialties, Inc. 138 Cal App 2d 763, 292 P2d 626.

Under the heading, "What constitutes consideration," the NIL declares that value is any consideration sufficient to support a simple contract. Negotiable Instrument Law § 25. Compare Negotiable Instrument Law § 191, which states that "value" means valuable consideration.

Apart from the "except" clause relating to an antecedent obligation, other obligations on an instrument are subject to the ordinary rules of contract law relating to contracts not under seal, with respect to the necessity or sufficiency of consideration. Comment 3 to Uniform Commercial Code § 3–408.

15. Sullivan v Sullivan, 122 Ky 707, 92 SW 966; Campbell v Jefferson, 296 Pa 368, 145 A 912, 63 ALR 1180 (slight loss, inconvenience, or benefit is valuable); Re Smith, 226 Wis 556, 277 NW 141.

Courts often speak of "good" consideration in the sense of a sufficient or valuable consideration, rather than "good" in the technical and limited sense.

16. Philpot v Gruninger, 14 Wall (US) 570, 20 L ed 743; United Beef Co. v Childs, 306 Mass 187, 27 NE2d 962; Suske v Straka, 229 Minn 408, 39 NW2d 745 (while preexisting indebtedness would constitute consideration for a note, this is not so where plaintiff testified that the note was "a present"); Leach v Treber, 164 Neb 419, 82 NW2d 544 (detriment to promisee); First Nat. Bank v Chandler (Tex Civ App) 58 SW2d 1056, error dismd; Good v Dyer, 137 Va 114, 119 SE 277.

Consideration is the price voluntarily paid for a promisor's undertaking. Philpot v Gruninger, 14 Wall (US) 570, 20 L ed 743; Coast Nat. Bank v Bloom, 113 NJL 597, 174 A 576, 95 ALR 528 (bargained for and paid).

Consideration is a matter of contract, and that which is claimed to be such must be within the express or implied contemplation of the parties. Van Houten v Van Houten, 202 Iowa 1085, 209 NW 293.

It is a question of fact for the jury whether a note given by a practically helpless invalid to his nurse was a gift, or compensation for services rendered. Meginnes v McChesney, 179 Iowa 563, 160 NW 50.

17. Irwin v Lombard University, 56 Ohio St 9, 46 NE 63.

18. Howard v Tarr (CA8 Mo) 261 F2d 561 (applying Ohio law); Hance Hardware Co. v Howard, 40 Del 209, 8 A2d 30; Tegtmeyer v Mordlund, 259 Ill App 247; Kelley, Glover & Vale, Inc. v Heitman, 220 Ind 625, 44 NE2d 981, cert den 319 US 672, 87 L ed 1713, 63 S Ct 1320; First State Bank v Williams, 143 Iowa 177, 121 NW 702; Bryan v Glass, 6 La Ann 740; Amherst Academy v Cowls, 6 Pick (Mass) 427; Becker County Nat. Bank v Davis, 204 Minn 603, 284 NW 789; Leach v Treber, 164 Neb 419, 82 NW2d 544 (trouble, injury, inconvenience, prejudice, or detriment to promisee); Coast Nat. Bank v Bloom, 113 NJL 597, 174 A 576, 95 ALR 528; Cockrell v McKenna, 103 NJL 166, 134 A 687, 48 ALR 234; Mills v Bonin, 239 NC 498, 80 SE2d 365; L. A. Randolph Co. v Lewis, 196 NC 51, 144 SE 545, 62 ALR 1474; City Trust & Sav. Bank v Schwartz, 68 Ohio App 80, 22 Ohio Ops 176, 39 NE2d 548; First Nat. Bank v Boxley, 129 Okla 159, 264 P 184, 64 ALR 588; Van Bebber v Vechill, 166 Or 10, 109 P2d 1046; Campbell v Jefferson, 296 Pa 368, 145 A 912, 63 ALR 1180; Shayne of Miami, Inc. v Greybow, Inc. 232 SC 161, 101 SE2d 486.

A valuable consideration in the sense of the law may consist either in some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken

promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, the consideration being the act, abstinence, or promise.[19] It has been said generally that to give a consideration value for the supporting of a promise, it must be such as deprives the person to whom the promise is made of a right which he possessed before, or else confers upon the other party a benefit which he could not otherwise have had.[20]

Consideration may be given to the promisor or to some other person. It matters not from whom the consideration moves or to whom it goes. If it is bargained for as the exchange for the promise, the promise is not gratuitous.[1] Consideration need not move from the promisee,[2] and it need not be pecuniary or beneficial to the promisor.[3] Consideration moving to the promisor may be a benefit to a third person[4] or a detriment incurred on his behalf.[5]

Consideration is not always a fact question. If all the facts concerning the issue of consideration are without dispute, such issue becomes a question of law.[6]

§ 217. Adequacy.

The law concerns itself only with the existence of legal consideration for a bill or note. Mere inadequacy of the consideration is not within this concern,[7] in the absence of fraud,[8] mistake, undue influence,[9] mental incapacity of the

by the other. Howard v Tarr (CA8 Mo) 261 F2d 561 (applying Ohio law); Currie v Misa (Eng) LR 10 Exch 153; See Seth v Lew Hing, 125 Cal App 729, 14 P2d 537, 15 P2d 190, which also sets forth a statutory definition.

19. Becker County Nat. Bank v Davis, 204 Minn 603, 284 NW 789; Irwin v Lombard University, 56 Ohio St 9, 46 NE 63.

20. Westmont Nat. Bank v Payne, 108 NJL 133, 156 A 652.

1. Shayne of Miami, Inc. v Greybow, Inc. 232 SC 161, 101 SE2d 486 (quoting Restatement, CONTRACTS § 75(2)).

2. Flores v Woodspecialties, Inc. 138 Cal App 2d 763, 292 P2d 626; Hance Hardware Co. v Howard, 40 Del 209, 8 A2d 30.

3. Howard v Tarr (CA8 Mo) 261 F2d 561 (applying Ohio law); Moriconi v Flemming, 125 Cal App 2d 742, 271 P2d 182; Re Berbecker, 277 Ill App 201; Kelley, Glover & Vale, Inc. v Heitman, 220 Ind 625, 44 NE2d 981, cert den 319 US 672, 87 L ed 1713, 63 S Ct 1320; Chick v Trevett, 20 Me 462; Greenwood Leflore Hospital Com. v Turner, 213 Miss 200, 56 So 2d 496; Leach v Treber, 164 Neb 419, 82 NW2d 544; County Trust Co. v Mara, 242 App Div 206, 273 NYS 597, affd 266 NY 540, 195 NE 190; First Nat. Bank v Boxley, 129 Okla 159, 264 P 184, 64 ALR 588; Shayne of Miami, Inc. v Greybow, Inc. 232 SC 161, 101 SE2d 486; Ballard v Burton, 64 Vt 387, 24 A 769.

4. Bromfield v Trinidad Nat. Invest. Co. meyer v Nordlund, 259 Ill App 247; Greenwood Leflore Hospital Com. v Turner, 213 Miss 200, 56 So 2d 496; Coast Nat. Bank v Bloom, 113 NJL 597, 174 A 576, 95 ALR 528; First Nat. Bank v Boxley, 129 Okla 159, 264 P 184, 64 ALR 588; Swanson v Sanders, 75 SD 40, 58 NW2d 809; Barrett v Mahnken, 6 Wyo 541, 48 P 202.

5. Brainard v Harris, 14 Ohio 107; Third Nat. Bank & Trust Co. v Rodgers, 330 Pa 523, 198 A 320; Skagit State Bank v Moody, 86 Wash 286, 150 P 425, LRA1916A 1215.

6. Jones v Hubbard (Tex Civ App) 302 SW 2d 493, error ref n r e.

7. Walker v Winn, 142 Ala 560, 39 So 12; Poggetto v Bowen, 18 Cal App 2d 173, 63 P2d 857; Smock v Pierson, 68 Ind 405; Central Sav. Bank v O'Connor, 132 Mich 578, 94 NW 11; Campbell v Jefferson, 296 Pa 368, 145 A 912, 63 ALR 1180; Ballard v Burton, 64 Vt 387, 24 A 769; Good v Dyer, 137 Va 114, 119 SE 277; Hatten's Estate, 233 Wis 199, 288 NW 278.

8. Lorber v Tooley, 47 Cal App 2d 47, 117 P2d 421.

Inadequacy sufficient to shock the conscience constitutes in itself a badge of fraud. Harshbarger v Eby, 28 Idaho 753, 156 P 619; Wolford v Powers, 85 Ind 294; Hannon v Fink, 66 Okla 115, 167 P 1152; Rauschenbach v McDaniel's Estate, 122 W Va 632, 11 SE2d 852.

9. Shocket v Fickling, 229 SC 412, 93 SE 2d 203; Rauschenbach v McDaniel's Estate,

obligor,[10] or a statute requiring the quantum of consideration to be weighed.[11] The adequacy in fact, as distinguished from value in law, is for the parties to judge for themselves.[12] It is ordinarily immaterial that the consideration for a bill or note is inadequate as compared with the amount of the order or promise,[13] or that the obligor, knowing the circumstances or having an opportunity to inform himself, is disappointed in his expectations.[14]

Legal or valuable consideration may be of slight value,[15] or it may be a trifling benefit, loss, or act,[16] or it may be of value only to the promising party.[17] It may be of indeterminate value,[18] such as property the value of which is incapable of reduction to any fixed sum and is altogether a matter of opinion,[19] the good will of a business,[20] or an act which affords the promising party pleasure or gratification, pleases his fancy, or otherwise merits, in his judgment, his appreciation. However, it is obvious that in the case of a pecuniary or property consideration, there is a more objective standard by which the law can judge the nonexistence or gross inadequacy of value than in the case of satisfaction of desire or fancy.[1]

10. Rauschenbach v McDaniel's Estate, supra.

11. Herbert v Lankershim, 9 Cal 2d 409, 71 P2d 220 (statute providing that moral obligation is good consideration to the extent of the obligation but no further).

12. Philpot v Gruninger, 14 Wall (US) 570, 20 L ed 743; Price v Jones, 105 Ind 543, 5 NE 683; Amherst Academy v Cowls, 6 Pick (Mass) 427; Re Hore's Estate, 220 Minn 374, 19 NW2d 783, 161 ALR 1366; Ballard v Burton, 64 Vt 387, 24 A 769; Good v Dyer, 137 Va 114, 119 SE 277; Rauschenbach v McDaniel's Estate, 122 W Va 632, 11 SE2d 852 (purely a matter for the deceased maker to have determined, and his estate must pay the note); Hatten's Estate, 233 Wis 199, 288 NW 278; Sheldon v Blackman, 188 Wis 4, 205 NW 486.

There is no rule by which the courts can be guided if they undertake the determination of such adequacy. Wolford v Powers, 85 Ind 294.

13. Littlegreen v Gardner, 208 Ga 523, 67 SE2d 713; Re Hore's Estate, 220 Minn 374, 19 NW2d 783, 161 ALR 1366 (personal services may constitute sufficient consideration regardless of their economic value as compared to the amount of the note); Miller v McKenzie, 95 NY 575; Shocket v Fickling, 229 SC 412, 93 SE2d 203; Hatten's Estate, 233 Wis 199, 288 NW 278.

A note is valid as founded on sufficient consideration where, for a loan of $1,500 in gold coin, made at a time when that amount of gold would be worth $2,500 in paper currency, the note was executed for $2,500, without specifying in what kind of money it was payable. Cox v Smith, 1 Nev 161. Compare Turner v Young, 27 Ind 373.

Appreciation of the way in which medical services are performed will support a note to a doctor for an amount exceeding what Foxworthy v Adams, 136 Ky 403, 124 SW 381.

Valid consideration supporting a note need not be of balanced value with the instrument. Rauschenbach v McDaniel's Estate, 122 W Va 632, 11 SE2d 852.

14. Philpot v Gruninger, 14 Wall (US) 570, 20 L ed 743; Harshberger v Eby, 28 Idaho 753, 156 P 619; Smock v Pierson, 68 Ind 405; Hannon v Fink, 66 Okla 115, 167 P 1152.

15. First Nat. Bank v Trott, 236 Ill App 412; Smock v Pierson, 68 Ind 405; Good v Dyer, 137 Va 114, 119 SE 277.

Slight loss or inconvenience to the promisee upon his entering into the contract, or like benefit to the promisor, is deemed a valuable consideration. Campbell v Jefferson, 296 Pa 368, 145 A 912, 63 ALR 1180.

16. Ballard v Burton, 64 Vt 387, 24 A 769; Good v Dyer, 137 Va 114, 119 SE 277.

17. Smock v Pierson, 68 Ind 405.

18. Price v Jones, 105 Ind 543, 5 NE 683; Smock v Pierson, 68 Ind 405; Miller v Finley, 26 Mich 249; Sheldon v Blackman, 188 Wis 4, 205 NW 486.

19. Miller v Finley, 26 Mich 249.

20. Harshbarger v Eby, 28 Idaho 753, 156 P 619 (business, property, and good will); Smock v Pierson, 68 Ind 405 (even though business proves unsuccessful).

In Magee v Pope, 234 Mo App 191, 112 SW2d 891, it was held that the practice and good will of a physician was not a salable item and did not constitute consideration and the maker was entitled to cancellation of a note given therefor.

1. Wolford v Powers, 85 Ind 294; Foxworthy v Adams, 136 Ky 403, 124 SW 381; Hatten's

U. S., XX., 685); *Gunn* v. *Barry*, 15 Wall., 610 (82 U. S., XXL, 212); *Walker* v. *Whitehead*, 16 Wall., 314 (83 U. S., XXL, 357).

As to the position taken by the advocates of the "homestead exemption," that the States can exempt articles of necessity as against antecedent contracts, and that the amount of the exemption must necessarily be a matter of legislative discretion, we must admit that there would be great force in the second branch of this proposition, if the first were sound and could be successfully maintained. But it is completely answered by the cases already herein cited. A State cannot minister, even to the most pressing necessities of her citizens, by impairing the obligation of subsisting contracts. Whatever power a distinct civic community may have, in this respect, to the States of this Union it is prohibited by the express language of the National Constitution. In our view, the true doctrine, sustained by the great weight of authority is, that such property as was subject to execution at the time the debt was contracted, must continue subject to execution until the debt is paid, so long as it remains in the hands of the debtor.

Mr. **A. W. Tourgee**, for defendant in error:

The remedy embraces everything that the creditor may lawfully do or have done, in his behalf, upon a violation of the contract. All that is included in a suit or action, from the issue of process to the satisfaction of judgment, is a part and parcel of the creditor's remedy. If the term "obligation" includes the whole of the remedy, then any change in the conduct of an action or the enforcement of a judgment which tends, in any degree, to prevent, hinder, delay or render in any manner less speedy and efficacious, any part of the remedy, would be violative of the constitutional inhibition.

2 Kent, Com., 397; 3 Story, Com., sec. 1392, p. 268; *Sturges* v. *Crowninshield*, 4 Wheat., 122, 200, 201; *Mason* v. *Haile*, 12 Wheat., 370; *Beers* v. *Haughton*, 9 Pet., 329, 359; *Cook* v. *Moffat*, 5 How., 316.

Again; if a creditor has a right to subject the property of the debtor to the satisfaction of his claim, he has the right to subject the whole of it, not exempt at the date of his contract. Yet, in *Bronson* v. *Kinzie*, 1 How., 315, *Chief Justice* Taney, delivering the opinion of the court, says: "Undoubtedly the State may regulate the mode of proceeding in its courts at pleasure, both as to past and future contracts. It may, for example, shorten the periods within which claims may be barred. It may, if it think proper, direct that the necessary implements of agriculture or the tools of the mechanic, or articles of necessity in household furniture, like wearing apparel, be not liable to execution on judgments."

This language has been several times cited with approval.

Gunn v. *Barry*, 15 Wall., 610 (82 U. S., XXL, 212).

There is no human subtility which can distinguish between an exemption from execution against the person, and an exemption from execution against property. Both are a part of the remedy. If the State has power to exempt certain articles because they are necessaries, the power to define what are necessaries must be admitted.

There are certain decisions of the Supreme Courts of some of the States, which take the broad ground that the remedy is not within the obligation of a contract, to any extent whatever, and is, consequently, within the absolute control of the State. According to these, it is inconsistent to hold that the State cannot exempt from execution property which the debtor has an undoubted right to sell or incumber, up to the very hour of lien obtained by the creditor.

The most important of these cases are: *Morse* v. *Goold*, 11 N. Y., 281; *Jacobs* v. *Smallwood*, 63 N. C., 112; *Hill* v. *Kessler*, 63 N. C., 437; *Garrett* v. *Chesire*, 69 N. C., 396; *Wilson* v. *Sparks*, 72 N. C., 288; *Edwards* v. *Kearzey*, 75 N. C., 409.

The effect of what is termed the homestead provision of North Carolina, is not to deny the creditor's right, but to regulate the manner in which it shall be enforced. It does not prevent him from holding his debtor liable, but simply says that a certain portion of the debtor's real estate shall not be subject to sale during his life nor until the majority of his youngest child. It is not so much for the ease and comfort of the debtor, as for the benefit of the State that it was enacted; not to favor the debtor, but to prevent the evils of almost universal pauperism. The purpose of the provision is to prevent pauperism, ignorance and crime, by assuring the citizen of a sufficiency to prevent absolute want during his lifetime; not for his sake nor to prevent his creditor from having his due, but because the public weal demanded that the scath of the years of revolution should not fall upon unprotected heads, and the State be burdened with an unnumbered host of hopeless paupers, in consequence.

It affects the remedy of the creditor only incidentally, in the performance of a high public behest. The safety and health of the Commonwealth are above private right. The sacredness of private property disappears before the imperious demands of public necessity. When two rights are in conflict, the greater must prevail.

See, *Munn* v. *Ill.* (*ante*, 77); *R. R. Co.* v. *Iowa* (*ante*, 94); *Peik* v. *R. R. Co.* (*ante*, 97).

Mr. Justice **Swayne** delivered the opinion of the court:

The Constitution of North Carolina of 1868 took effect on the 24th of April in that year. Sections 1 and 2 of article X., declare that personal property of any resident of the State, of the value of $500, to be selected by such resident, shall be exempt from sale under execution or other final process issued for the collection of any debt; and that every homestead, and the buildings used therewith, not exceeding in value $1,000, to be selected by the owner, or, in lieu thereof, at the option of the owner, any lot in a city, town or village, with the buildings used thereon, owned and occupied by any resident of the State, and not exceeding in value $1,000, shall be exempt in like manner from sale for the collection of any debt under final process.

On the 22d of August, 1868, the Legislature passed an Act which prescribed the mode of laying off the homestead, and setting off the personal property so exempted by the Constitution. On the 7th of April, 1869, another Act was passed, which repealed the prior Act, and prescribed a different mode of doing what the prior

Act provided for. This latter Act has not been repealed or modified.

Three several judgments were recovered against the defendant in error: one on the 15th of December, 1868, upon a bond dated the 25th of September, 1865; another on the 10th of October, 1868, upon a bond dated February 27, 1866; and the third on the 7th of January, 1869, for a debt due prior to that time. Two of these judgments were docketed, and became liens upon the premises in controversy on the 16th of December, 1868. The other one was docketed, and became such lien on the 18th of January, 1869. When the debts were contracted for which the judgments were rendered, the exemption laws in force were the Acts of January 1, 1854, and of February 16th, 1859. The first-named Act exempted certain enumerated articles of inconsiderable value, and "such other property as the freeholders appointed for that purpose might deem necessary for the comfort and support of the debtor's family, not exceeding in value $50, at cash valuation." By the Act of 1859, the exemption was extended to fifty acres of land in the country, or two acres in a town, of not greater value than $500.

On the 22d of January, 1869, the premises in controversy were duly set off to the defendant in error, as a homestead. He had no other real estate, and the premises did not exceed $1,000 in value. On the 6th of March, 1869, the sheriff, under executions issued on the judgments, sold the premises to the plaintiff in error, and thereafter executed to him a deed in due form. The regularity of the sale is not contested.

The Act of August 22, 1868, was then in force. The Acts of 1854 and 1859 had been repealed. *Wilson* v. *Sparks*, 72 N. C., 308. No point is made upon these Acts by the counsel upon either side. We shall, therefore, pass them by without further remark.

The plaintiff in error brought this action in the Superior Court of Granville County, to recover possession of the premises so sold and conveyed to him. That court adjudged that the exemption created by the Constitution and the Act of 1868 protected the property from liability under the judgments, and that the sale and conveyance by the sheriff were, therefore, void. Judgment was given accordingly. The Supreme Court of the State affirmed the judgment. The plaintiff in error thereupon brought the case here for review. The only federal question presented by the record is, whether the exemption was valid as regards contracts made before the adoption of the Constitution of 1868.

The counsel for the plaintiff in error insists upon the negative of this proposition. The counsel upon the other side, frankly conceding several minor points, maintains the affirmative view. Our remarks will be confined to this subject.

The Constitution of the United States declares that "No State shall pass any * * * law impairing the obligation of contracts."

A contract is the agreement of minds, upon a sufficient consideration, that something specified shall be done, or shall not be done.

The lexical definition of "impair" is "to make worse; to diminish in quantity, value, excellence or strength; to lessen in power; to weaken; to enfeeble; to deteriorate."—Webster, Dic.

"Obligation" is defined to be "the act of obliging or binding; that which obligates; the binding power of a vow, promise, oath or contract," etc. Webster, Dic.

"The word is derived from the Latin word *obligatio*, tying up; and that from the verb *obligo*, to bind or tie up; to engage by the ties of a promise or oath, or form of law; and *obligo* is compounded of the verb *ligo*, to tie or bind fast, and the preposition *ob*, which is prefixed to increase its meaning." *Blair* v. *Williams*, 4 Litt., 35, and *Lapsley* v. *Brashears*, 4 Litt., 47. [Opinion in above cases, 4 Litt., 65].

The obligation of a contract includes every thing within its obligatory scope. Among these elements nothing is more important than the means of enforcement. This is the breath of its vital existence. Without it, the contract, as such, in the view of the law, ceases to be, and falls into the class of those "imperfect obligations," as they are termed, which depend for their fulfillment upon the will and conscience of those upon whom they rest. The ideas of right and remedy are inseparable. "Want of right and want of remedy are the same thing." 1 Bac. Abr., tit. Actions in General, letter B.

In *Von Hoffman* v. *Quincy*, 4 Wall., 535 [71 U. S., XVIII., 403], it was said: "A statute of frauds embracing pre-existing parol contracts not before required to be in writing would affect its validity. A statute declaring that the word 'ton' should, in prior as well as subsequent contracts, be held to mean half or double the weight before prescribed would affect its construction. A statute providing that a previous contract of indebtment may be extinguished by a process of bankruptcy would involve its discharge; and a statute forbidding the sale of any of the debtor's property under a judgment upon such a contract would relate to the remedy."

It cannot be doubted, either upon principle or authority, that each of such laws would violate the obligation of the contract, and the last not less than the first. These propositions seem to us too clear to require discussion. It is also the settled doctrine of this court, that the laws which subsist at the time and place of making a contract enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. This rule embraces alike those which affect its validity, construction, discharge and enforcement. *Von Hoffman* v. *Quincy* (*supra*), *McCracken* v. *Hayward*, 2 How., 608.

In *Green* v. *Biddle*, 8 Wheat., 1, this court said, touching the point here under consideration: "It is no answer, that the Acts of Kentucky now in question are regulations of the remedy, and not of the right to the lands. If these Acts so change the nature and extent of existing remedies as materially to impair the rights and interests of the owner, they are just as much a violation of the compact as if they overturned his rights and interests."

"One of the tests that a contract has been impaired is, that its value has by legislation been diminished. It is not by the Constitution to be impaired at all. This is not a question of degree or manner or cause, but of encroaching in any respect on its obligation—dispensing with any part of its force." *Bk.* v. *Sharp*, 6 How., 301.

It is to be understood that the encroachment thus denounced must be material. If it be not

material, it will be regarded as of no account.

These rules are axioms in the jurisprudence of this court. We think they rest upon a solid foundation. Do they not cover this case; and are they not decisive of the question before us?

We will, however, further examine the subject.

It is the established law of North Carolina that stay laws are void, because they are in conflict with the national Constitution. *Jacobs* v. *Smallwood*, 63 N. C., 112; *Jones* v. *Chittenden*, 1 L. Repos. (N. C.), 385: *Barnes* v. *Barnes*, 8 Jones, L. 366. This ruling is clearly correct. Such laws change a term of the contract by postponing the time of payment. This impairs its obligation, by making it less valuable to the creditor. But it does this solely by operating on the remedy. The contract is not otherwise touched by the offending law. Let us suppose a case. A party recovers two judgments—one against A, the other against B—each for the sum of $1,500, upon a promissory note. Each debtor has property worth the amount of the judgment, and no more. The Legislature thereafter passes a law declaring that all past and future judgments shall be collected "in four equal annual installments." At the same time, another law is passed, which exempts from execution the debtor's property to the amount of $1,500. The court holds the former law void and the latter valid. Is not such a result a legal solecism? Can the two judgments be reconciled? One law postpones the remedy, the other destroys it; except in the contingency that the debtor shall acquire more property—a thing that may not occur and that cannot occur if he die before the acquisition is made. Both laws involve the same principle and rest on the same basis. They must stand or fall together. The concession that the former is invalid cuts away the foundation from under the latter. If a State may stay the remedy for one fixed period, however short, it may for another, however long. And if it may exempt property to the amount here in question, it may do so to any amount. This, as regards the mode of impairment we are considering, would annul the inhibition of the Constitution, and set at naught the salutary restriction it was intended to impose.

The power to tax involves the power to destroy. *McCulloch* v. *Md.*, 4 Wheat., 416. The power to modify at discretion the remedial part of a contract is the same thing.

But it is said that imprisonment for debt may be abolished in all cases, and that the time prescribed by a statute of limitations may be abridged.

Imprisonment for debt is a relic of ancient barbarism. Cooper's Justinian, 638; 12 Tables, Tab. 3. It has descended with the stream of time. It is a punishment rather than a remedy. It is right for fraud, but wrong for misfortune. It breaks the spirit of the honest debtor, destroys his credit, which is a form of capital, and dooms him, while it lasts, to helpless idleness. Where there is no fraud, it is the opposite of a remedy. Every right-minded man must rejoice when such a blot is removed from the statute-book.

But upon the power of a State, even in this class of cases, see the strong dissenting opinion of Washington *J.*, in *Mason* v. *Haile*, 12 Wheat., 370.

Statutes of limitation are statutes of repose. They are necessary to the welfare of society. The lapse of time constantly carries with it the means of proof. The public as well as individuals are interested in the principle upon which they proceed. They do not impair the remedy, but only require its application within the time specified. If the period limited be unreasonably short, and designed to defeat the remedy upon pre-existing contracts, which was part of their obligation, we should pronounce the statute void. Otherwise, we should abdicate the performance of one of our most important duties. The obligation of a contract cannot be substantially impaired in any way by a state law. This restriction is beneficial to those whom it restrains, as well as to others. No community can have any higher public interest than in the faithful performance of contracts and the honest administration of justice. The inhibition of the Constitution is wholly prospective. The States may legislate as to contracts thereafter made, as they may see fit. It is only those in existence when the hostile law is passed that are protected from its effect.

In *Bronson* v. *Kinzie*, 1 How., 311, the subject of exemptions was touched upon but not discussed. There a mortgage had been executed in Illinois. Subsequently, the Legislature passed a law giving the mortgagor a year to redeem after sale under a decree, and requiring the land to be appraised, and not to be sold for less than two thirds of the appraised value. The law was held to be void in both particulars as to pre-existing contracts. What is said as to exemptions is entirely *obiter;* but, coming from so high a source, it is entitled to the most respectful consideration. The court, speaking through *Chief Justice* Taney, said: "A State may, if it thinks proper, direct that the necessary implements of agriculture, or the tools of the mechanic, or articles of necessity in household furniture, shall, like wearing apparel, not be liable to execution on judgments. Regulations of this description have always been considered in every civilized community as properly belonging to the remedy to be executed or not by every sovereignty, according to its own views of policy and humanity." He quotes with approbation the passage which we have quoted from *Green* v. *Biddle*. To guard against possible misconstruction, he is careful to say further: "Whatever belongs merely to the remedy may be altered according to the will of the State, provided the alteration does not impair the obligation of the contract. But, if that effect is produced, it is immaterial whether it is done by acting on the remedy, or directly on the contract itself. In either case, it is prohibited by the Constitution."

The learned *Chief Justice* seems to have had in his mind the maxim "*De minimis*," etc. Upon no other ground can any exemption be justified. "Policy and humanity" are dangerous guides in the discussion of a legal proposition. He who follows them far is apt to bring back the means of error and delusion. The prohibition contains no qualification, and we have no judicial authority to interpolate any. Our duty is simply to execute it.

Where the facts are undisputed, it is always the duty of the court to pronounce the legal result. *Merch. Bk.* v. *St. Bk.*, 10 Wall., 604 [77 U. S., XIX., 1008]. Here there is no question of legislative discretion involved. With the constitutional prohibition, even as expounded by the late *Chief Justice*, before us on one hand, and on the other the State Constitution of 1868, and the laws passed to carry out its provisions, we cannot hesitate to hold that both the latter do seriously impair the obligation of the several contracts here in question. We say, as was said in *Gunn* v. *Barry*, 15 Wall., 622 [82 U. S., XXI., 214], that no one can cast his eyes upon the new exemptions thus created without being at once struck with their excessive character, and hence their fatal magnitude. The claim for the retrospective efficacy of the Constitution or the laws cannot be supported. Their validity as to contracts subsequently made admits of no doubt. *Bronson* v. *Kinzie*, *supra*.

The history of the National Constitution throws a strong light upon this subject. Between the close of the War of the Revolution and the adoption of that instrument, unprecedented pecuniary distress existed throughout the country.

"The discontents and uneasiness, arising in a great measure from the embarrassment in which a great number of individuals were involved, continued to become more extensive. At length, two great parties were formed in every State, which were distinctly marked, and which pursued distinct objects with systematic arrangement." 5 Marshall, L. of Washington, 75. One party sought to maintain the inviolability of contracts, the other to impair or destroy them. "The emission of paper money, the delay of legal proceedings, and the suspension of the collection of taxes, were the fruits of the rule of the latter, wherever they were completely dominant." 5 Marshall, L. of Washington, 86.

"The system called justice was, in some of the States, iniquity reduced to elementary principles. * * * In some of the States, creditors were treated as outlaws. Bankrupts were armed with legal authority to be persecutors and, by the shock of all confidence, society was shaken to its foundations." Fisher Ames' Works; ed. of 1859, 120.

"Evidences of acknowledged claims on the public would not command in the market more than one fifth of their nominal value. The bonds of solvent men, payable at no very distant day, could not be negotiated but at a discount of thirty, forty or fifty per cent. per annum. Landed property would rarely command any price; and sales of the most common articles for ready money could only be made at enormous and ruinous depreciation.

State Legislatures, in too many instances, yielded to the necessities of their constituents, and passed laws by which creditors were compelled to wait for the payment of their just demands, on the tender of security, or to take property at a valuation, or paper money falsely purporting to be the representative of specie." Ramsey, Hist. U. S., 77.

"The effects of these laws interfering between debtors and creditors were extensive. They destroyed public credit and confidence between man and man, injured the morals of the people, and in many instances insured and aggravated the ruin of the unfortunate debtors for whose temporary relief they were brought forward." 2 Ramsey, Hist. S. C., 429.

Besides the large issues of continental money, nearly all the States issued their own bills of credit. In many instances the amount was very large. 2 Phillips' Hist. Sketches of Am. Paper Currency, 29. The depreciation of both became enormous. Only one per cent. of the "continental money" was assumed by the new government. Nothing more was ever paid upon it. Act of Aug. 4, 1790, sec. 4. 1 Stat. at L., 140. 2 Phillips' Hist. American Paper Currency 194. It is needless to trace the history of the emissions by the States.

The Treaty of Peace with Great Britain declared that "The creditors on either side shall meet with no lawful impediment to the recovery of the full amount in sterling money of all *bona fide* debts heretofore contracted." The British Minister complained earnestly to the American Secretary of State, of violations of this guaranty. Twenty-two instances of laws in conflict with it in different States were specifically named. 1 Am. St. Papers, pp. 195, 196 199, and 237. In South Carolina, "laws were passed in which property of every kind was made a legal tender in payment of debts, although payable according to contract in gold and silver. Other laws installed the debt, so that of sums already due, only a third and afterwards only a fifth, was securable in law." 2 Ramsey, Hist. S. C., 429. Many other States passed laws of a similar character. The obligation of the contract was as often invaded after judgment as before. The attacks were quite as common and effective in one way as in the other. To meet these evils in their various phases, the national Constitution declared that "No State should emit bills of credit, make anything but gold and silver coin a legal tender in payment of debts, or pass any law * * * impairing the obligation of contracts." All these provisions grew out of previous abuses. 2 Curt. Hist. of the Const. 366. See also the Federalist, Nos. 7 and 44. In the number last mentioned, Mr. Madison said that such laws were not only forbidden by the Constitution, but were "contrary to the first principles of the social compact, and to every principle of sound legislation."

The treatment of the malady was severe, but the cure was complete.

"No sooner did the new government begin its auspicious course than order seemed to arise out of confusion. Commerce and industry awoke, and were cheerful at their labors, for credit and confidence awoke with them. Everywhere was the appearance of prosperity, and the only fear was that its progress was too rapid to consist with the purity and simplicity of ancient manners." Fisher Ames' Works, *supra*, 122.

"Public credit was reanimated. The owners of property and holders of money freely parted with both, well knowing that no future law could impair the obligation of the contract." 2 Ramsey, Hist. sup. 433.

Chief Justice Taney, in *Bronson* v. *Kinzie*, *supra*, speaking of the protection of the remedy, said: "*It is this protection which the clause of the Constitution now in question mainly intended to secure.*"

The point decided in *Dart. Coll.* v. *Woodward*, 4 Wheat., 518, had not, it is believed, when the Constitution was adopted, occurred to anyone. There is no trace of it in the Federalist, nor in any other contemporaneous publication. It was

first made and judicially decided under the Constitution in that case. Its novelty was admitted by *Chief Justice* Marshall, but it was met and conclusively answered in his opinion.

We think the views we have expressed carry out the intent of contracts and the intent of the Constitution. The obligation of the former is placed under the safeguard of the latter. No State can invade it; and Congress is incompetent to authorize such invasion. Its position is impregnable, and will be so while the organic law of the nation remains as it is. The trust touching the subject with which this court is charged is one of magnitude and delicacy. We must always be careful to see that there is neither non-feasance nor misfeasance on our part.

The importance of the point involved in this controversy induces us to restate succinctly the conclusions at which we have arrived, and which will be the ground of our judgment.

The remedy subsisting in a State when and where a contract is made and is to be performed is a part of its obligation, and any subsequent law of the State which so affects that remedy as substantially to impair and lessen the value of the contract is forbidden by the Constitution, and is, therefore, void.

The judgment of the Supreme Court of North Carolina is reversed and the cause will be remanded, with directions to proceed in conformity to this opinion.

Mr. Justice **Clifford**, concurring:

I concur in the judgment in this case, upon the ground that the state law, passed subsequent to the time when the debt in question was contracted, so changed the nature and extent of the remedy for enforcing the payment of the same as it existed at the time as materially to impair the rights and interests which the complaining party acquired by virtue of the contract merged in the judgment.

Where an appropriate remedy exists for the enforcement of the contract at the time it was made, the State Legislature cannot deprive the party of such a remedy, nor can the Legislature append to the right such restrictions or conditions as to render its exercise ineffectual or unavailing. State Legislatures may change existing remedies, and substitute others in their place; and, if the new remedy is not unreasonable, and will enable the party to enforce his rights without new and burdensome restrictions, the party is bound to pursue the new remedy, the rule being, that a State Legislature may regulate at pleasure the modes of proceeding in relation to past contracts as well as those made subsequent to the new regulation.

Examples where the principle is universally accepted may be given to confirm the proposition. Statutes for the abolition of imprisonment for debt are of that character, and so are statutes requiring instruments to be recorded, and statutes of limitation.

All admit that imprisonment for debt may be abolished in respect to past contracts as well as future; and it is equally well settled that the time within which a claim or entry shall be barred may be shortened, without just complaint from any quarter. Statutes of the kind have often been passed; and it has never been held that such an alteration in such a statute impaired the obligation of a prior contract, unless the period allowed in the new law was so short and unreasonable as to amount to a substantial denial of the remedy to enforce the right. Ang., Lim., 6th ed., sec. 22; *Jackson* v. *Lamphire*, 3 Pet., 280.

Beyond all doubt, a State Legislature may regulate all such proceedings in its courts at pleasure, subject only to the condition that the new regulation shall not in any material respect impair the just rights of any party to a pre-existing contract. Authorities to that effect are numerous and decisive; and it is equally clear that a State Legislature may, if it thinks proper, direct that the necessary implements of agriculture, or the tools of the mechanic, or certain articles of universal necessity in household furniture, shall, like wearing apparel, not be liable to attachment and execution for simple contract debts. Regulations of the description mentioned have always been considered in every civilized community as properly belonging to the remedy, to be exercised or not by every sovereignty, according to its own views of policy and humanity.

Creditors as well as debtors know that the power to adopt such regulations reside in every State, to enable it to secure its citizens from unjust, merciless and oppressive litigation, and protect those without other means in their pursuits of labor, which are necessary to the well-being and the very existence of every community.

Examples of the kind were well known and universally approved both before and since the Constitution was adopted, and they are now to be found in the statutes of every State and Territory within the boundaries of the United States; and it would be monstrous to hold that every time some small addition was made to such exemptions, that the statute making it impairs the obligation of every existing contract within the jurisdiction of the State passing the law.

Mere remedy, it is agreed, may be altered, at the will of the State Legislature, if the alteration is not of a character to impair the obligation of the contract; and it is properly conceded that the alteration, though it be of the remedy, if it materially impairs the right of the party to enforce the contract, is equally within the constitutional inhibition. Difficulty would doubtless attend the effort to draw a line that would be applicable in all cases between legitimate alteration of the remedy, and provisions which, in the form of remedy, impair the right; nor is it necessary to make the attempt in this case, as the courts of all nations agree, and every civilized community will concede, that laws exempting necessary wearing apparel, the implements of agriculture owned by the tiller of the soil, the tools of the mechanic, and certain articles or utensils of a household character, universally recognized as articles or utensils of necessity, are as much within the competency of a State Legislature as laws regulating the limitation of actions, or laws abolishing imprisonment for debt. *Bronson* v. *Kinzie*, 1 How., 311.

Expressions are contained in the opinion of the court which may be construed as forbidding all such humane legislation, and it is to exclude the conclusion that any such views have my concurrence that I have found it necessary to

state the reasons which induced me to reverse the judgment of the state court.

Mr. Justice **Hunt**.

I concur in the judgment in this case, for the reasons following:

By the Constitution of North Carolina of 1868, the personal property of any resident of the State, to the value of $500, is exempt from sale under execution; also a homestead, the dwelling and buildings thereon, not exceeding in value $1,000.

The debts in question were incurred before the exemptions took effect. The court now holds that the exemptions are invalid. In this I concur, not for the reason that any and every exemption made after entering into a contract is invalid, but that the amount here exempted is so large, as seriously to impair the creditor's remedy for the collection of the debt.

I think that the law was correctly announced by *Chief Justice* Taney in *Bronson* v. *Kinzie*, 1 How., 311, when he said: "A State may, if it thinks proper, direct that the necessary implements of agriculture, the tools of a mechanic, or articles of necessity in household furniture, like wearing apparel, be not liable to execution on judgments."

The principle was laid down with the like accuracy by *Judge* Denio, in *Morse* v. *Goold*, 11 N. Y., 281, where he says: "There is no universal principle of law that every part of the property of a debtor is liable to be seized for the payment of a judgment against him. * * * The question is, whether the law which prevailed when the contract was made has been so far changed that there does not remain a substantial and reasonable mode of enforcing it in the ordinary and regular course of justice. Taking the mass of contracts and the situation and circumstances of debtors, as they are ordinarily found to exist, no one would probably say that exempting the team and household furniture of a householder to the amount of $150, from levy or execution, would directly affect the efficiency of remedies for the collection of debts." *Mr. Justice* Woodbury lays down the same rule in the *Bk.* v. *Sharp*, 6 How., 301.

In my judgment, the exemption provided for by the North Carolina Constitution is so large, that, in regard to the mass of contracts and the situation and circumstances of debtors as they are ordinarily found to exist, it would seriously affect the efficiency of remedies for the collection of debts, and that it must, therefore, be held to be void.

Dissenting, *Mr. Justice* **Harlan**.

Cited—96 U. S., 637; 102 U. S., 419; 107 U. S., 233, 750, 798; 108 U. S., 65; 5 Dill., 193, 213, 215, 418; 1 McCrary, 627; 66 Ind., 408, 509.

COUNTY OF RAY, *Plf. in Err.*,

v.

HORATIO D. VANSYCLE.

(Sec S. C., 6 Otto, 675-688.)

Missouri Constitution—estoppel as to county bonds.

1. The section of the Constitution of Missouri relating to municipal subscriptions, is a limitation upon the future power of the Legislature, and was not intended to retroact so as to have any controlling application to laws in existence when the Constitution was adopted.

2. When a county, on issuing its bonds to a railroad company, received payment therefor in stock of the company, which it continues to hold, and has paid interest on such bonds for several years, it is estopped from repudiating the acts of its agents in issuing the bonds, as against a *bona fide* holder thereof.

[No. 216.]

Argued Feb. 3, 1875. Decided Apr. 15, 1878.

IN ERROR to the Circuit Court of the United States for the Western District of Missouri.

Statement by Mr. Justice **Harlan**.

This was an action by Vansycle to recover the amount due on various interest coupons attached to bonds, issued in the year 1869, in the name of the County of Ray, Missouri, whereby that County acknowledged itself indebted to the St. Louis and St. Joseph Railroad Company in the sum of $1,000, which it promised to pay to that company or bearer, at the American Exchange Bank in New York, on the first day of January, 1879, with 8 per cent. interest, payable annually, upon the presentation and delivery of the coupons.

Each bond contained these recitals:

"This bond being issued under and pursuant to an order of the County Court of Ray County, made under the authority of the Constitution of the State of Missouri and the laws of the General Assembly of the State of Missouri, and authorized by a vote of the people of said County at a special election held for that purpose.

In testimony whereof the said County of Ray has executed this bond, by the presiding justice of the County Court of said County, under the order of said court, signing his name thereto, and by the clerk of said court, under order thereof, attesting the same, and affixing thereto the seal of said court. This done at the Town of Richmond, County of Ray, aforesaid, this second day of———, 1869.

(L. S.) C. W. NARRAMORE,
Presiding Justice of the County Court of Ray County, Missouri.

Attest: GEO. N. MCGEE,
Clerk of the County Court of Ray County, Missouri."

Vansycle was a lawful holder for value of the bonds, and received them without actual notice or knowledge of any defects or irregularities in their issue.

The main facts connected with the issue of the bonds, and out of which this suit arises, cover a period of more than ten years, commencing with the year 1859.

An Act of the General Assembly of the State of Missouri, approved December 5, 1859, and amended January 5, 1860, incorporated the Missouri River Valley Railroad Company, with power to construct a railroad from any point on the North Missouri Railroad in Randolph County, by way of Brunswick, in Chariton County; thence, through Carroll, Ray, Platte and Clay Counties, to Weston, in Platte County; and authorized the county court of any county in which any part of such railroad might be, to subscribe to the stock of the company to invest its funds in such stock, and raise the funds by tax to be voted by the legal voters of the county, in such manner as the county court might prescribe for the purpose of paying such stock. It was declared that the provisions of the general

The general principles stated above apply to the constitutions as well as to the laws of the several states insofar as they are repugnant to the Constitution and laws of the United States.[9] Moreover, a construction of a statute which brings it in conflict with a constitution will nullify it as effectually as if it had, in express terms, been enacted in conflict therewith.[10]

The Minnesota cases of *Cook v. Iverson* and *State v. Sutton* correctly set forth the binding effect of a constitutional provision.

L. O. COOKE v. SAMUEL G. IVERSON

108 Minnesota Reports

P. 388

Reported in 122 N.W. 251

"Every officer under a constitutional government must act according to law and subject to its restrictions, and every departure therefrom or disregard thereof must subject him to the restraining and controlling power of the people, acting through the agency of the judiciary; for it must be remembered that the people act through the courts, as well as through the executive or the legislature. One department is just as representative as the other, and the judiciary is the department which is charged with the special duty of determining the limitations which the law places upon all official action."

If a member of the executive department of the state is subject to the control of the judiciary in the discharge of purely ministerial duties, it logically follows that he is subject to such direction if he is threatening to execute an

[9] Gunn v Barry, 15 Wall (US) 610, 21 L ed 212; Cohen v Virginia, 6 Wheat (US) 264, 5 L ed 257.

[10] Flournoy v First Nat. Bank, 197 La. 1067, 3 So 2d 244; Gilkeson v Missouri P. R. Co. 222 Mo. 173, 121 SW 138; Peay v Nolan, 157 Tenn. 222, 7 SW 2d 815, 60 ALR 408.

unconstitutional statute, to the irreparable injury of a party in his person or property. Rippe v. Becker, 56 Minn. 100, 57 N.W. 331, 22 L.R.A. 857. If a statute be unconstitutional it is as if it never had been. Rights cannot be built up under it, and, if an executive officer attempts to enforce it, his act is his individual and not his official act, and he is subject to the control of the courts as would be a private individual. Cooley, Const. Lim. 250; Ex parte Young, 209 U.S. 123, 28 Sup. Ct. 441, 52 L. Ed. 714.

The pivotal question then is: Can the language of this constitutional prohibition be fairly construed as excepting therefrom the building by the state of free highways, including bridges? If it can be, it is our duty so to construe it. But it cannot be assumed that the framers of the constitution and the people who adopted it did not intend that which is the plain import of the language used. When the language of the constitution is positive and free from all ambiguity, all courts are not at liberty, by a resort to the refinements of legal learning, to restrict its obvious meaning to avoid the hardships of particular cases. We must accept the constitution as it reads when its language is unambiguous, for it is the mandate of the sovereign power. State v. Sutton, 63 Minn. 147, 65 N.W. 262, 30 L.R.A. 630, 56 Am. St. 459; Lindberg v. Johnson, 93 Minn. 267, 101 N.W. 74.

STATE ex rel. H. W. CHILDS, Attorney General v. JOHN B. SUTTON

63 Minnesota Reports

P. 147

Reported in 65 N.W. 262

In treating of constitutional provisions, we believe it is the general rule among courts to regard them as mandatory, and not to leave it to the will or pleasure of a legislature to obey or disregard them. Where the language of

§ 394. Federal reserve banks as depositaries for and fiscal agents of Home Owners' Loan Corporation.

The Federal Reserve banks are authorized, with the approval of the Secretary of the Treasury, to act as depositaries, custodians, and fiscal agents for the Home Owners' Loan Corporation. (Apr. 27, 1934, ch. 168, § 8, 48 Stat. 646.)

ABOLISHMENT OF HOME OWNERS' LOAN CORPORATION

For dissolution and abolishment of the Home Owners' Loan Corporation, referred to in the section, by act June 30, 1953, ch. 170, § 21, 67 Stat. 126, see note under section 1463 of this title.

§ 395. Federal reserve banks as depositaries, custodians and fiscal agents for Commodity Credit Corporation.

The Federal Reserve banks are authorized to act as depositaries, custodians, and fiscal agents for the Commodity Credit Corporation. (July 16, 1943, ch. 241, § 3, 57 Stat. 566.)

TRANSFER OF FUNCTIONS

Administration of program of Commodity Credit Corporation was transferred to Secretary of Agriculture by 1946 Reorg. Plan No. 3, § 501, eff. July 16, 1946, 11 F. R. 7877, 60 Stat. 1100. See note under section 713 of Title 15, Commerce and Trade.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of the Corporations of the Department of Agriculture, the boards of directors and officers of such corporations; the Advisory Board of the Commodity Credit Corporation; and the Farm Credit Administration or any agency, officer or entity of, under, or subject to the supervision of the Administration were excepted from the functions of officers, agencies and employees transferred to the Secretary of Agriculture by 1953 Reorg. Plan No. 2, § 1, eff. June 4, 1953, 18 F. R. 3219, 67 Stat. 633, set out as a note under section 511 of Title 5, Executive Departments and Government Officers and Employees.

FEDERAL RESERVE NOTES

§ 411. Issuance to reserve banks; nature of obligation; redemption.

Federal reserve notes, to be issued at the discretion of the Board of Governors of the Federal Reserve System for the purpose of making advances to Federal reserve banks through the Federal reserve agents as hereinafter set forth and for no other purpose, are authorized. The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal reserve banks and for all taxes, customs, and other public dues. They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve bank. (Dec. 23, 1913, ch. 6, § 16, 38 Stat. 265; Jan. 30, 1934, ch. 6, § 2 (b) (1), 48 Stat. 337; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704.)

REFERENCES IN TEXT

Phrase "hereinafter set forth" is from section 16 of the Federal Reserve Act, act Dec. 23, 1913. Reference probably means as set forth in sections 17 et seq. of the Federal Reserve Act. For distribution of the sections in this code see note under section 226 of this title, and the Tables.

CODIFICATION

Section is comprised of first par. of section 16 of act Dec. 23, 1913. Pars. 2—4, 5 and 6, 7, 8—11, 13 and 14 of section 16, and pars. 15—18 of section 16, as added June 21, 1917, ch. 32, § 8, 40 Stat. 238, are classified to sections 412—414, 415, 416, 418—421, 360, 248 (o) and 467, respectively, of this title.

Par. 12 of section 16, formerly classified to section 422 of this title, was repealed by act June 26, 1934, ch. 756, § 1, 48 Stat. 1225.

AMENDMENTS

1934—Act Jan. 30, 1934, omitted provision permitting redemption in gold, from last sentence.

CHANGE OF NAME

Act Aug. 23, 1935, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

CROSS REFERENCES

Gold coinage discontinued, see section 315b of Title 31, Money and Finance.

§ 412. Application for notes; collateral required.

Any Federal Reserve bank may make application to the local Federal Reserve agent for such amount of the Federal Reserve notes hereinbefore provided for as it may require. Such application shall be accompanied with a tender to the local Federal Reserve agent of collateral in amount equal to the sum of the Federal Reserve notes thus applied for and issued pursuant to such application. The collateral security thus offered shall be notes, drafts, bills of exchange, or acceptances acquired under the provisions of sections 82, 342—347, 347c, and 372 of this title, or bills of exchange endorsed by a member bank of any Federal Reserve district and purchased under the provisions of sections 348a and 353—359 of this title, or bankers' acceptances purchased under the provisions of said sections 348a and 353—359 of this title, or gold certificates, or direct obligations of the United States. In no event shall such collateral security be less than the amount of Federal Reserve notes applied for. The Federal Reserve agent shall each day notify the Board of Governors of the Federal Reserve System of all issues and withdrawals of Federal Reserve notes to and by the Federal Reserve bank to which he is accredited. The said Board of Governors of the Federal Reserve System may at any time call upon a Federal Reserve bank for additional security to protect the Federal Reserve notes issued to it. (Dec. 23, 1913, ch. 6, § 16, 38 Stat. 265; Sept. 7, 1916, ch. 461, 39 Stat. 754; June 21, 1917, ch. 32, § 7, 40 Stat. 236; Feb. 27, 1932, ch. 58, § 3, 47 Stat. 57; Feb. 3, 1933, ch. 34, 47 Stat. 794; Jan. 30, 1934, ch. 6, § 2 (b) (2), 48 Stat. 338; Mar. 6, 1934, ch. 47, 48 Stat. 398; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704; Mar. 1, 1937, ch. 20, 50 Stat. 23; June 30, 1939, ch. 256, 53 Stat. 991; June 30, 1941, ch. 264, 55 Stat. 396; May 25, 1943, ch. 102, 57 Stat. 85; June 12, 1945, ch. 186, § 2, 59 Stat. 237.)

CODIFICATION

Section is comprised of second par. of section 16 of act Dec. 23, 1913. For classification to this title of other paragraphs of section 16, see note under section 411 of this title.

AMENDMENTS

1945—Act of June 12, 1945, substituted ", or direct obligations of the United States." for proviso following "gold certificates" in first sentence which limited period during which direct obligations of the United States could be accepted as collateral security.

1943—Act May 25, 1943, substituted "until June 30, 1945" for "until June 30, 1943," in proviso.

1941—Act June 30, 1941, substituted "until June 30, 1943" for "until June 30, 1941" in proviso.

1939—Act June 30, 1939, substituted "until June 30, 1941" for "until June 30, 1939" in proviso.

1937—Act Mar. 1, 1937, extended until June 30, 1939, the period within which direct obligations of the United

the Secretary of the Treasury under section 913 of Title 31. Federal Reserve notes so deposited shall not be reissued except upon compliance with the conditions of an original issue. (Dec. 23, 1913, ch. 6, § 16, 38 Stat. 267; June 21, 1917, ch. 32, § 7, 40 Stat. 236; Aug. 23, 1935, ch. 614, § 203(a), 49 Stat. 704; June 30, 1961, Pub. L. 87–66, § 8(b), 75 Stat. 147.)

CODIFICATION

Section is comprised of seventh par. of section 16 of act Dec. 23, 1913. For classification to this title of other paragraphs of section 16, see note under section 411 of this title.

AMENDMENTS

1961—Pub. L. 87–66 provided for recovery of collateral upon payment of notes of series prior to 1928 and removed requirement of reserve or redemption fund for such notes.

CHANGE OF NAME

Act Aug. 23, 1935, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

§ 417. Custody and safe-keeping of notes issued to and collateral deposited with reserve agent.

All Federal Reserve notes and all gold certificates and lawful money issued to or deposited with any Federal Reserve agent under the provisions of the Federal Reserve Act shall be held for such agent, under such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe, in the joint custody of himself and the Federal Reserve bank to which he is accredited. Such agent and such Federal Reserve bank shall be jointly liable for the safe-keeping of such Federal Reserve notes, gold certificates, and lawful money. Nothing herein contained, however, shall be construed to prohibit a Federal Reserve agent from depositing gold certificates with the Board of Governors of the Federal Reserve System, to be held by such Board subject to his order, or with the Treasurer of the United States, for the purposes authorized by law. (June 21, 1917, ch. 32, § 7, 40 Stat. 236; Jan. 30, 1934, ch. 6, § 2 (b) (6), 48 Stat. 339; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704.)

REFERENCES IN TEXT

For distribution of the Federal Reserve Act, referred to in the text, in this code, see section 226 of this title and note thereunder.

AMENDMENTS

1934—Act Jan. 30, 1934, dropped the word "gold" wherever it appeared before words "gold certificates."

CHANGE OF NAME

Act Aug. 23, 1935, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

CROSS REFERENCES

Gold coinage discontinued, see section 315b of Title 31, Money and Finance.

§ 418. Printing of notes; denomination and form.

In order to furnish suitable notes for circulation as Federal reserve notes, the Comptroller of the Currency shall, under the direction of the Secretary of the Treasury, cause plates and dies to be engraved in the best manner to guard against counterfeits and fraudulent alterations, and shall have printed therefrom and numbered such quantities of such notes of the denominations of $1, $2, $5, $10, $20, $50, $100, $500, $1,000, $5,000, $10,000 as may be required to supply the Federal reserve banks. Such notes shall be in form and tenor as directed by the Secretary of the Treasury under the provisions of this chapter and shall bear the distinctive numbers of the several Federal reserve banks through which they are issued. (Dec. 23, 1913, ch. 6, § 16, 38 Stat. 267; Sept. 26, 1918, ch. 177, § 3, 40 Stat. 969; June 4, 1963, Pub. L. 88–36, title I, § 3, 77 Stat. 54.)

REFERENCES IN TEXT

In the original "this chapter" reads "this Act," meaning the Federal Reserve Act, act Dec. 23, 1913. For distribution of the Federal Reserve Act in this code, see note under section 226 of this title.

CODIFICATION

Section is comprised of eighth par. of section 16 of act Dec. 23, 1913. For classification to this title of other paragraphs of section 16, see note under section 411 of this title.

AMENDMENTS

1963—Pub. L. 88–36 inserted "$1, $2," following "notes of the denominations of".

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Secretary of the Treasury, made by 1950 Reorg. Plan No. 26, § 1, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 419. Place of deposit of notes prior to delivery to banks.

When such notes have been prepared, they shall be deposited in the Treasury, or in the designated depositary or mint of the United States nearest the place of business of each Federal reserve bank and shall be held for the use of such bank subject to the order of the Comptroller of the Currency for their delivery, as provided by this chapter. (Dec. 23, 1913, ch. 6, § 16, 38 Stat. 267; May 29, 1920, ch. 214, § 1, 41 Stat. 654.)

REFERENCES IN TEXT

In the original "this chapter" reads "this Act," meaning the Federal Reserve Act, act Dec. 23, 1913. For distribution of the Federal Reserve Act in this code, see note under section 226 of this title.

CODIFICATION

Section is comprised of ninth par. of section 16 of act Dec. 23, 1913. For classification to this title of other paragraphs of section 16, see note under section 411 of this title.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Secretary of the Treasury, made by 1950 Reorg. Plan No. 26, § 1, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 420. Control and direction of plates and dies by comptroller; expense of issue and retirement of notes paid by banks.

The plates and dies to be procured by the Comptroller of the Currency for the printing of such circulating notes shall remain under his control and direction, and the expenses necessarily incurred in executing the laws relating to the procuring of such notes, and all other expenses incidental to their issue and retirement, shall be paid by the Federal reserve banks, and the Board of Governors of the Federal Reserve System shall include in its estimate of expenses levied against the Federal reserve banks a sufficient amount to cover the expenses provided for in sections 411—416 and 418—421 of this title. (Dec. 23, 1913, ch. 6, § 16, 38 Stat. 267; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704.)

REFERENCES IN TEXT

In the original "provided for in sections 411—416 and 418—421 of this title" reads "herein provided for."

CODIFICATION

Section is comprised of tenth par. of section 16 of act Dec. 23, 1913. For classification to this title of other paragraphs of section 16, see note under section 411 of this title.

CHANGE OF NAME

Act Aug. 23, 1935, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Secretary of the Treasury, made by 1950 Reorg. Plan No. 26, § 1, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 421. Examination of plates and dies.

The examination of plates, dies, bed pieces, and so forth, and regulations relating to such examination of plates, dies, and so forth, of national-bank notes provided for in section 108 of this title, is extended to include notes provided for in sections 411—416 and 418—421 of this title. (Dec. 23, 1913, ch. 6, § 16, 38 Stat. 267.)

REFERENCES IN TEXT

In the original "provided for in sections 411—416 and 418—421 of this title" reads "herein provided for."

CODIFICATION

Section is comprised of eleventh par. of section 16 of act Dec. 23, 1913. For classification to this title of other paragraphs of section 16, see note under section 411 of this title.

§ 422. Repealed. June 26, 1934, ch. 756, § 1, 48 Stat. 1225.

Section, act Dec. 23, 1913, ch. 6, § 16, 38 Stat. 267, made permanent appropriations for printing notes besides authorizing the use of certain printing stock on hand December 23, 1913. See section 725 (b) of Title 31, Money and Finance.

CIRCULATING NOTES AND BONDS SECURING SAME

§ 441. Retirement of circulating notes by member banks; application for sale of bonds securing circulation.

At any time during a period of twenty years from December 23, 1915, any member bank desiring to retire the whole or any part of its circulating notes may file with the Treasurer of the United States an application to sell for its account, at par and accrued interest, United States bonds securing circulation to be retired. (Dec. 23, 1913, ch. 6, § 18, 38 Stat. 268.)

CODIFICATION

Section is comprised of first par. of section 18 of act Dec. 23, 1913. Pars. 2 and 3, 4, 5, and 7—9 of section 18 are classified to sections 442, 443, 444, and 446—448 of this title, respectively. Par. 6 of section 18, which was classified to section 445 of this title, was repealed by act June 12, 1945, ch. 186, § 3, 59 Stat. 236.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

§ 442. Purchase of bonds by reserve banks.

The Treasurer shall, at the end of each quarterly period, furnish the Board of Governors of the Federal Reserve System with a list of such applications, and the Board of Governors of the Federal Reserve System may, in its discretion, require the Federal reserve banks to purchase such bonds from the banks whose applications have been filed with the Treasurer at least ten days before the end of any quarterly period at which the Board of Governors of the Federal Reserve System may direct the purchase to be made: *Provided*, That Federal reserve banks shall not be permitted to purchase an amount to exceed $25,000,000 of such bonds in any one year, and which amount shall include bonds acquired under sections 301—308 and 341 of this title by the Federal reserve bank.

Provided further, That the Board of Governors of the Federal Reserve System shall allot to each Federal reserve bank such proportion of such bonds as the capital and surplus of such bank shall bear to the aggregate capital and surplus of all the Federal reserve banks. (Dec. 23, 1913, ch. 6, § 18, 38 Stat. 268; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704.)

CODIFICATION

Section is comprised of second and third pars. of section 18 of act Dec. 23, 1913. For classification to this title of other paragraphs of section 18, see note under section 441 of this title.

DERIVATION

Act Feb. 21, 1857, ch. 56, § 3, 11 Stat. 163.

CROSS REFERENCES

All coins and currencies of the United States to be legal tender for all debts, see sections 462 and 821 of this title.

§ 457. Gold coins of United States.

The gold coins of the United States shall be a legal tender in all payments at their nominal value when not below the standard weight and limit of tolerance provided by law for the single piece, and, when reduced in weight below such standard and tolerance, shall be a legal tender at valuation in proportion to their actual weight. (R. S. § 3585.)

DERIVATION

Act Feb. 12, 1873, ch. 131, § 14, 17 Stat. 426.

CROSS REFERENCES

Acquisition and use of gold in violation of law to subject the gold to forfeiture and subject person to penalty equal to twice the value of the gold, see section 443 of this title.

All coins and currencies of United States as legal tender, see sections 462 and 821 of this title.

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Provisions requiring obligations to be payable in gold declared against public policy, see section 463 of this title.

§ 458. Standard silver dollars; paid in silver.

Silver dollars coined under the Act of February 28, 1878, ch. 20, 20 Stat. 25, 26, together with all silver dollars coined by the United States, of like weight and fineness prior to the date of such Act, shall be a legal tender, at their nominal value, for all debts and dues public and private, except where otherwise expressly stipulated in the contract. But nothing in this section shall be construed to authorize the payment in silver of certificates of deposit issued under the provisions of sections 428 and 429 of this title. (Feb. 28, 1878, ch. 20, § 1, 20 Stat. 25.)

CODIFICATION

Section is from the first section of the Bland-Allison Coinage of Silver Act.

Portions of the original text omitted here provided for the coinage of silver dollars of the weight of 412½ grains Troy of standard silver with the devices and superscriptions provided by act Jan. 18, 1837, ch. 3, 5 Stat. 137; and for the purchase of bullion to be coined into silver dollars. The provision for the purchase of bullion was repealed by act July 14, 1890, ch. 708, § 5, 26 Stat. 289. The provision for the coinage of silver dollars was omitted as superseded or obsolete.

CROSS REFERENCES

All coins and currencies of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 463 of this title.

Obligations payable in any coin or currency which at the time is a legal tender notwithstanding a provision for payment in a particular kind of coin or currency, see section 463 of this title.

§ 459. Subsidiary silver coins.

The silver coins of the United States in existence June 9, 1879, of smaller denominations than $1 shall be a legal tender in all sums not exceeding $10 in full payment of all dues public and private. (June 9, 1879, ch. 12, § 3, 21 Stat. 8.)

CODIFICATION

Prior to its incorporation into the Code, this section read as follows: "The present silver coins of the United States of smaller denominations than one dollar shall hereafter be a legal tender in all sums not exceeding ten dollars in full payment of all dues public and private."

The twenty-cent piece, the coinage of which was authorized by act Mar. 3, 1875, ch. 143, § 1, 18 Stat. 478, was made a legal tender at its nominal value for any amount not exceeding five dollars in any one payment, by section 2 of that act. The act was repealed by act May 2, 1878, ch. 79, 20 Stat. 47.

CROSS REFERENCES

All coins and currencies of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 821 of this title.

§ 460. Minor coins.

The minor coins of the United States shall be a legal tender, at their nominal value for any amount not exceeding 25 cents in any one payment. (R. S. § 3587.)

DERIVATION

Act Feb. 12, 1873, ch 131, § 16, 17 Stat. 427.

CROSS REFERENCES

All coins and currencies of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 821 of this title.

§ 461. Commemorative coins.

CODIFICATION

Section, making certain enumerated commemorative coins legal tender, is omitted as executed in view of section 376a of this title discontinuing coinage and issuance of commemorative coins under acts enacted prior to Mar. 1, 1939.

Section was from acts Apr. 13, 1904, ch. 1253, § 6, 33 Stat. 176; June 1, 1916, ch. 91, § 1, 40 Stat. 594; May 10, 1920, ch. 176, § 1, 41 Stat. 595; May 10, 1920, ch. 177, § 1, 41 Stat. 595; May 12, 1920, ch. 182, § 1, 41 Stat. 597; Mar. 4, 1921, ch. 153, § 1, 41 Stat. 1263; Feb. 2, 1922, ch. 45, 42 Stat. 362; Jan. 24, 1923, ch. 35, § 1, 42 Stat. 1172; Feb. 26, 1923, ch. 113, § 1, 42 Stat. 1267; Mar. 17, 1924, ch. 58, § 1, 43 Stat. 23; Jan. 14, 1925, ch. 79, § 6, 43 Stat. 749; Feb. 24, 1925, ch. 302, §§ 1—3, 43 Stat. 965, 966; Mar. 3, 1925, ch. 482, § 4, 43 Stat. 1254; May 17, 1926, ch. 307, § 1, 44 Stat. 559; Mar. 7, 1928, ch. 135, § 1, 45 Stat. 196; June 15, 1933, ch. 82, § 1, 48 Stat. 149; May 9, 1934, ch. 265, §§ 1—4, 48 Stat. 679; May 14, 1934, ch. 286, §§ 1—3, 48 Stat. 776; May 26, 1934, ch. 355, §§ 1—4, 48 Stat. 807; June 21, 1934, ch. 695, §§ 1—4, 48 Stat. 1200; May 2, 1935, ch. 88, §§ 1—5, 49 Stat. 165, 166; May 3, 1935, ch. 90, §§ 1—4, 49 Stat. 174; June 5, 1935, ch. 176, 49 Stat. 324; Mar. 18, 1936, ch. 149, §§ 1—5, 49 Stat. 1165; Mar. 20, 1936, ch. 164, §§ 1—3, 49 Stat. 1167; Apr. 13, 1936, ch. 212, §§ 1—3, 49 Stat. 1205; May 5, 1936, ch. 300, §§ 1—3, 49 Stat. 1267; May 5, 1936, ch. 304, §§ 1—3, 49 Stat. 1259; May 6, 1936, ch. 331, §§ 1—3, 49 Stat. 1262, 1263; May 15, 1936, ch. 399, §§ 1—3, 49 Stat. 1276; May 15, 1936, ch. 402, §§ 1—3, 49 Stat. 1277, 1278; May 16, 1936, ch. 406, §§ 1—3, 49 Stat. 1352, 1353; May 28, 1936, ch. 466, §§ 1—3, 49 Stat. 1387, 1388; June 16, 1936, ch. 583, §§ 1—3, 49 Stat. 1522; June 16, 1936, ch. 584, §§ 1—3, 49 Stat. 1523; June 16, 1936, ch. 586, §§ 1—3, 49 Stat. 1524; June 24, 1936, ch. 760, §§ 1—3, 49 Stat. 1911; June 26, 1936, ch. 835, §§ 1—3, 49 Stat. 1972; June 26, 1936, ch. 837, §§ 1—3, 49 Stat. 1973; June 24, 1937, ch. 377, §§ 1—3, 50 Stat. 308; June 26, 1937, ch. 384, §§ 1—3, 50 Stat. 322, 323.

§ 462. Coins and currencies.

All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single

many cases the absence of authority affords a strong presumption against its having any legal foundation.[14]

§ 50. Actions contrary to public policy and practical considerations.

It does not follow, from the general statement that there is no wrong without a remedy, that a remedy is always obtainable in the courts.[15] Indeed, it is not sufficient for the maintenance of an action to remedy a supposed wrong that a technical right of action exists, unless it is at the same time practical, and in the interest of sound government to permit the action to prevail.[16] Practical considerations must at times determine the bounds of correlative rights and duties and the point beyond which the courts will decline to impose legal liability.[17] Thus, because of their legal unity, actions between husband and wife were ordinarily barred at common law;[18] and considerations of public policy forbid the bringing of actions against the state or its subdivisions, except with its consent.[19] The maxim that there is no wrong without a remedy is not applicable to acts which the written law has declared to be rightful,[20] especially things not malum in se, authorized by a valid act of the legislature and performed with due care and skill in strict conformity with the provisions of the act.[1] Public policy also forbids the maintenance of any suit in a court of justice, the trial of which would inevitably lead to the disclosure of matters which the law itself regards as confidential, and respecting which it will not allow the confidence to be violated.[2]

§ 51. Actions based upon plaintiff's wrongful, illegal, or immoral acts or conduct.

It is universally recognized that any conduct or any contract of an illegal, vicious, or immoral nature cannot be the proper basis for a legal or equitable proceeding,[3] and the parties will be left in the dilemma which they themselves devised.[4] The law does not permit one to profit by his own fraud or take advantage of his own wrong or found any claim on his own iniquity or acquire property by his own wrong,[5] and no court, particularly a court of equity,[6] will lend its aid to a party who grounds his action upon an immoral or illegal act[7]

14. Shearman v Folland (Eng) [1950] 2 KB 43, 18 ALR2d 652.

15. Pacific Steam Whaling Co. v United States, 187 US 447, 47 L ed 253, 23 S Ct 154.

16. Robertson v New Orleans & G. N. R. Co. 158 Miss 24, 129 So 100, 69 ALR 1180.

17. Comstock v Wilson, 257 NY 231, 177 NE 431, 76 ALR 676.

18. See HUSBAND AND WIFE (1st ed § 584).

19. See STATES, TERRITORIES, AND DEPENDENCIES (1st ed § 91).

20. Pietsch v Milbrath, 123 Wis 647, 101 NW 388, 102 NW 342.

1. Frazer v Chicago, 186 Ill 480, 57 NE 1055.

2. Totten v United States, 92 US 105, 23 L ed 605.

3. Miller v Miller (Ky) 296 SW2d 684, 65 [illegible]

4. Robenson v Yann, 224 Ky 56, 5 SW2d 271; Piechowiak v Bissell, 305 Mich 486, 9 NW2d 685.

5. Davis v Brown, 94 US 423, 24 L ed 204; Union Bank v Stafford, 12 How (US) 327, 13 L ed 1008; Watts v Malatesta, 262 NY 80, 186 NE 210, 88 ALR 1072; Riggs v Palmer, 115 NY 506, 22 NE 188; Byers v Byers, 223 NC 85, 25 SE2d 466; Merit v Losey, 194 Or 89, 240 P2d 933; Smith v Germania F. Ins. Co. 102 Or 569, 202 P 1088, 19 ALR 1444; Slater v Slater, 365 Pa 321, 74 A2d 179; Langley v Devlin, 95 Wash 171, 163 P 395, 4 ALR 32.

Hyams v Stuart King [1908] 2 KB (Eng) 696 (CA).

6. Finnie v Walker (CA2) 257 F 698, 5 ALR 831.

7. The Florida (Collins v The Florida) 101 US 37, 25 L ed 898; Hunter v Wheate, 53 App DC 206, 289 F 604, 31 ALR 980; Western U. Teleg. Co. v McLaurin, 108 Miss 273, 66 So 739; Pennington v Todd, 47 NJ Eq [illegible]

or an illegal contract,[8] or whose conduct in connection with the transaction upon which his claim is based is illegal or criminal.[9] No action can be founded upon acts which constitute a violation of criminal or penal laws of the state[10] or upon one's own dishonest, fraudulent,[11] or tortious act or conduct,[12] or upon his own moral turpitude.[13] Hence, an action will not lie to recover money or property which is the fruit of an employment involving a violation of law, where a recovery would have to be based on the illegal contract,[14] or to recover back the consideration given for the maintenance of illicit relations with the defendant.[15]

§ 52. — Where parties are in pari delicto.

The principle which precludes an action based upon the plaintiff's wrongful, immoral, or illegal act applies where both plaintiff and defendant were parties to such act; there may be times when the objection that the plaintiff has broken the law may sound ill in the mouth of the defendant,[16] yet, as a general rule under the doctrine of in pari delicto,[17] no action will lie to recover on a claim based upon, or in any manner depending upon, a fraudulent, illegal, or immoral transaction[18] or contract[19] to which the plaintiff was a party.[20] It is a trite and

8. Standard Oil Co. v Clark (CA2 NY) 163 F2d 917, cert den 333 US 873, 92 L ed 1149, 68 S Ct 901, 902.

9. Falconi v Federal Deposit Ins. Corp. (CA3 Pa) 257 F2d 287.

There is no recorded instance where a court of law or of equity has given aid or comfort to one wrongdoer against his fellow wrongdoer seeking a division of the loot. Piechowiak v Bissell, 305 Mich 486, 9 NW2d 685.

10. Capps v Postal Teleg.-Cable Co. 197 Miss 118, 19 So2d 491; Desmet v Sublett, 54 NM 355, 225 P2d 141; Lloyd v North Carolina R. Co. 151 NC 536, 66 SE 604; Stevens v Hallmark (Tex Civ App) 109 SW 2d 1106.

11. Picture Plays Theatre Co. v Williams, 75 Fla 556, 78 So 674, 1 ALR 1; D. I. Felsenthal Co. v Northern Assur. Co. 284 Ill 343, 120 NE 268, 1 ALR 602; Baltimore & O. S. W. R. Co. v Evans, 169 Ind 410, 82 NE 773.

12. Talbot v Seeman, 1 Cranch (US) 1, 2 L ed 15.

13. Levy v Kansas City (CA8) 168 F 524; Newton v Illinois Oil Co. 316 Ill 416, 147 NE 465, 40 ALR 1200.

14. Boylston Bottling Co. v O'Neill, 231 Mass 498, 121 NE 411, 2 ALR 902; Woodson v Hopkins, 85 Miss 171, 37 So 1000, 38 So 298; Buck v Albee, 26 Vt 184; Lemon v Grosskopf, 22 Wis 447.

Annotation: 2 ALR 906.

15. Hill v Freeman, 73 Ala 200; Monatt v Parker, 30 La Ann 585; Otis v Freeman, 199 Mass 160, 85 NE 168; Platt v Elias, 186 NY 374, 79 NE 1; Denton v English, 11 SCL (2 Nott & M'C) 581; Lanham v Meadows, 72 W Va 610, 78 SE 750.

16. Western U. Teleg. Co. v McLarvin, 10 Miss 273, 66 So 739.

17. Grapico Bottling Co. v Ennis, 140 M 502, 106 So 97, 44 ALR 124.

18. Hunter v Wheate, 53 App DC 206, 2 F 604, 31 ALR 980; Kearney v Webb, 27 Ill 17, 115 NE 844, 3 ALR 1631; Re Brow 147 Kan 395, 76 P2d 857, 116 ALR 101 (holding that such rule does not apply whe the one complained of is an official of t court, who seeks to retain to his own u certain moneys he acquired by his official mi conduct); Bowlan v Lumsford, 176 Okla 11 54 P2d 666 (plaintiff attempting to recov damages from a man who induced her to su mit to an operation which produced an abo tion where she was of full age and volunta ily consented to the operation); Gulf, C. & S F. R. Co. v Johnson, 71 Tex 619, 9 SW 60

A court will not extend aid to either of t parties to a criminal act or listen to the complaints against each other, but will lea them where their own act has placed ther Stone v Freeman, 298 NY 268, 82 NE 571, 8 ALR2d 304.

19. Ring v Spina (CA2 NY) 148 F2d 6 160 ALR 371; Reilly v Clyne, 27 Ariz 43 234 P 35, 40 ALR 1005; Berka v Woodwar 125 Cal 119, 57 P 777; Western U. Tel. C v Yopst, 118 Ind 248, 20 NE 222; Grapi Bottling Co. v Ennis, 140 Miss 502, 106 97, 44 ALR 124; Short v Bullion-Beck C. Min. Co. 20 Utah 20, 57 P 720; Rolle Murray, 112 Va 780, 72 SE 665.

Major v Canadian P. R. Co. 51 Ont L R 370, 67 DLR 341, aff'd 64 Can SC 367, DLR 242.

That which one promises to give for illegal or immoral consideration he can be compelled to give, and that which he given on such a consideration he cannot cover. Platt v Elias, 186 NY 374, 79 1.

commonplace maxim that where parties are equally in wrong the courts will not give one legal redress against the other but will leave them where it finds them.[1] Neither law nor equity interferes to relieve either of the persons who engage in fraudulent transactions, against the other from the consequences of their own misconduct.[2]

Some courts have applied the rule in pari delicto to transactions with a public officer or an official of the court,[3] but most take the position that the rule does not apply to prevent maintenance of an action against public officers for the recovery of money acquired by official misconduct.[4]

However, illegality is no defense when merely collateral to the cause of action sued on;[5] one offender against the law cannot set up as a defense to an action the fact that plaintiff was also an offender, unless the parties were engaged in the same illegal transaction. It is only in such a case that the maxim, "in pari delicto potior est conditio defendentis et possidentis," applies,[6] and not even then when the plaintiff's unlawful participation was innocent, being induced by the fraud of the defendant on which the action is based.[7] Nor will a plaintiff be barred of his action against the defendant by the fact that he has done a wrong to a third person.[8] Moreover, courts will grant relief against present wrongs and to enforce existing rights, although the property involved was acquired by some past illegal act.[9] It is generally agreed, although there is authority to the contrary,[10] that one who has entrusted another with money or property for an illegal use or purpose may maintain an action to recover such property or money so long as it has not been used by the person to whom it was given.[11]

There can be no recovery as between the parties on a contract made in violation of a statute, the violation of which is prohibited by a penalty, although the statute does not pronounce the contract void or expressly prohibit the same. Sandage v Studebaker Bros. Mfg. Co. 142 Ind 148, 41 NE 380.

Although a man may contract that a future event may come to pass over which he has no, or only a limited, power, including contracts for the conveyance of land that he does not own, an agreement that on its face requires an illegal act, either of the contractor or a third person, no more imposes a liability to damages for nonperformance than it creates an equity to compel the contractor to perform. Sage v Hampe, 235 US 99, 59 L ed 147, 35 S Ct 94.

20. Ford v Caspers (CA7 Ill) 128 F2d 884; Duncan v Dazey, 318 Ill 500, 149 NE 495.

1. Clark v United States, 102 US 322, 26 L ed 181; Re Brown's Estate, 147 Kan 395, 76 P2d 857, 116 ALR 1012; Smith v Smith, 68 Nev 10, 226 P2d 279.

Annotation: 116 ALR 1018.

2. Ford v Caspers (CA7 Ill) 128 F2d 884.

3. *Annotation:* 116 ALR 1019, 1023.

4. Re Sylvester, 195 Iowa 1329, 192 NW 442, 30 ALR 180; Re Brown's Estate, 147 Kan 395, 76 P2d 857, 116 ALR 1012; Berman v Coakley, 243 Mass 348, 137 NE 667, 26 ALR 92.

Annotation: 116 ALR 1023–1031.

5. Loughran v Loughran, 292 US 216, 78 L ed 1219, 54 S Ct 684, reh den 292 US 615, 78 L ed 1474, 54 S Ct 861.

6. Wallace v Cannon, 38 Ga 199.

7. Doe ex dem. Hutchinson v Horn, 1 Ind 363; Jekshewitz v Groswald, 265 Mass 413, 164 NE 609, 62 ALR 525; Cooper v Cooper, 147 Mass 370, 17 NE 892; Sears v Wegner, 150 Mich 388, 114 NW 224; Blossom v Barrett, 37 NY 434; Morrill v Palmer, 68 Vt 1, 33 A 829; Pollock v Sullivan, 53 Vt 507.

This principle is particularly applicable in actions for deceit in inducing unlawful cohabitation by representations of a lawful marriage. See Annotation: 72 ALR2d 956.

8. Langley v Devlin, 95 Wash 171, 163 P 395, 4 ALR 32; Matta v Katsoulas, 192 Wis 212, 212 NW 261, 50 ALR 291.

9. Loughran v Loughran, 292 US 216, 78 L ed 1219, 54 S Ct 684, reh den 292 US 615, 78 L ed 1474, 54 S Ct 861.

10. Lancaster v Ames, 103 Me 87, 68 A 533; Stone v Freeman, 298 NY 268, 82 NE2d 571, 8 ALR2d 304.

Annotation: 8 ALR2d 314, § 3; 316, § 4.

11. Okeechobee County v Nuveen (CA5 Fla) 145 F2d 684, cert den 324 US 881, 89 L ed 1432, 65 S Ct 1028; Kearney v Webb, 278 Ill 17, 115 NE 844, 3 ALR 1631; Ware v Spinney, 76 Kan 289, 91 P 787.

Annotation: 8 ALR2d 312, § 3; 317, § 5.

VIII. DEPARTMENTAL SEPARATION OF GOVERNMENTAL POWERS

A. In General

§ 210. Principle of separation, generally.

In considering the nature of any government, it must be remembered that the power existing in every body politic is an absolute despotism; in constituting a government, the body politic distributes that power as it pleases and in the quantity it pleases, and imposes what checks it pleases upon its public functionaries. The natural and necessary distribution of that power, with respect to individual security, is into legislative, executive, and judicial departments. It is obvious, however, that every community may make a perfect or imperfect separation and distribution of that power at its will.[2]

17. Halter v Nebraska, 205 US 34, 51 L ed 696, 27 S Ct 419; Columbus Packing Co. v State, 100 Ohio St 285, 126 NE 291, 29 ALR 1429, ovrld on another point 106 Ohio St 469, 140 NE 376, 37 ALR 1525; State v Peet, 80 Vt 449, 68 A 661; State ex rel. Jarvis v Daggett, 87 Wash 253, 151 P 648.

Absent congressional action the test is that of uniformity against locality; more accurately, the question is whether the state interest is outweighed by a national interest. California v Zook, 336 US 725, 93 L ed 1005, 69 S Ct 841, reh den 337 US 921, 93 L ed 1729, 69 S Ct 1152.

The right of the several states to enact legislation during the silence of Congress has been recognized in respect to such subjects as—

— insolvency. See Insolvency (1st ed § 8).

— the regulation of dealers in patented articles. See Patents (1st ed § 8).

— the recital of the consideration of notes given for the price of patent rights. Woods v Carl, 203 US 358, 51 L ed 219, 27 S Ct 99.

— the prohibition for the use of the United States flag for advertising purposes. Halter v Nebraska, 205 US 34, 51 L ed 696, 27 S Ct 419, affg 74 Neb 757, 105 NW 298.

— the establishment of quarantine regulations. See Health (1st ed § 7).

— regulations with regard to the speed of railroad trains. See Railroads.

— regulations with regard to rates of transportation between points within the boundaries of a state. See Public Utilities.

— the erection of bridges, dams, and other structures constituting obstructions to navigation or otherwise pertaining to navigation. See Highways, Streets, and Bridges (1st ed, Bridges § 11); Waters.

— pilotage. See Shipping.

18. Morgan's L. & T. R. & S. S. Co. v Board of Health, 118 US 455, 30 L ed 237, 6 S Ct 1114.

19. Mayo v United States, 319 US 441, 87 L ed 1504, 63 S Ct 1137, 147 ALR 761, reh den 320 US 810, 88 L ed 489, 64 S Ct 27.

1. Compagnie Francaise de Nav. a Vapeur v State Bd. of Health, 186 US 380, 46 L ed 1209, 22 S Ct 811.

And see § 150, supra.

2. Livingston v Moore, 7 Pet (US) 469, 8 L ed 751 (per Johnson, J.).

A characteristic feature,[3] and one of the cardinal[4] and fundamental principles, of the American constitutional system is that the governmental powers are divided among the three departments of government, the legislative, executive, and judicial, and that each of these is separate from the others.[5] The principle of separation of the powers of government operates in a broad manner to confine legislative powers to the legislature, executive powers to the executive department, and those which are judicial in character to the judiciary.[6] We are not a parliamentary government in which the executive branch is also part of the legislature.[7]

It has been said that the object of the Federal Constitution was to establish three great departments of government: the legislative, the executive, and the judicial departments. The first was to pass the laws, the second, to approve and execute them, and the third, to expound and enforce them.[8] And since the

3. Trybulski v Bellows Falls Hydro-Electric Corp. 112 Vt 1, 20 A2d 117.

4. Bloemer v Turner, 281 Ky 832, 137 SW 2d 387.

5. O'Donoghue v United States, 289 US 516, 77 L ed 1356, 53 S Ct 740; Springer v Philippine Islands, 277 US 189, 72 L ed 845, 48 S Ct 480; J. W. Hampton Jr., & Co. v United States, 276 US 394, 72 L ed 624, 48 S Ct 348; Evans v Gore, 253 US 245, 64 L ed 887, 40 S Ct 550, 11 ALR 519; Kilbourn v Thompson, 103 US 168, 26 L ed 377; Fox v McDonald, 101 Ala 51, 13 So 416; Hawkins v Governor, 1 Ark 570; Denver v Lynch, 92 Colo 102, 18 P2d 907, 86 ALR 907; Stockman v Leddy, 55 Colo 24, 129 P 220; Norwalk Street R. Co.'s Appeal, 69 Conn 576, 37 A 1080, 38 A 708; Florida Nat. Bank of Jacksonville v Simpson (Fla) 59 So 2d 751, 33 ALR2d 581; Burnett v Green, 97 Fla 1007, 122 So 570, 69 ALR 244; Re Speer, 53 Idaho 293, 23 P2d 239, 88 ALR 1086; People v Kelly, 347 Ill 221, 179 NE 898, 80 ALR 890; People ex rel. Rusch v White, 334 Ill 465, 166 NE 100, 64 ALR 1006; Greenfield v Russel, 292 Ill 392, 127 NE 102, 9 ALR 1334; Ellingham v Dye, 178 Ind 336, 99 NE 1, error dismd 231 US 250, 58 L ed 206, 34 S Ct 92; Overshiner v State, 156 Ind 187, 59 NE 468; Parker v State, 135 Ind 534, 35 NE 179; State v Barker, 116 Iowa 96, 89 NW 204; Harris v Allegany County, 130 Md 488, 100 A 733; Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059; Anway v Grand Rapids R. Co. 211 Mich 592, 179 NW 350, 12 ALR 26; People v Dickerson, 164 Mich 148, 129 NW 199; Veto Case, 69 Mont 325, 222 P 428, 35 ALR 592; Searle v Yensen, 118 Neb 835, 226 NW 464, 69 ALR 257; Tyson v Washington County, 78 Neb 211, 110 NW 634; Saratoga Springs v Saratoga Gas, E. L. & P. Co. 191 NY 123, 83 NE 693; State ex rel. Atty.-Gen. v Knight, 169 NC 333, 85 SE 418; Re Minneapolis, St. P. & S. Ste. M. R. Co. 30 ND 221, 152 NW 513; State v Blaisdell, 22 ND 86, 132 NW 769; Riley v Carter, 165 Okla 262, 25 P2d 666, 88 ALR 1018; Simpson v Hill, 128 Okla 269, 263 P 635, 56 ALR 706; Baskin v State, 107 Okla 272, 232 P 338, 40 ALR 941; Wilson v Philadelphia School Dist. 328 Pa 225, 195 A 90, 113 ALR 1401; State ex rel. Richards v Whisman, 36 SD 260, 154 NW 707, error dismd 241 US 643, 60 L ed 1218, 36 S Ct 449; Langever v Miller, 124 Tex 80, 76 SW2d 1025, 96 ALR 836; Trimmier v Carlton, 116 Tex 572, 296 SW 1070; Peterson v Grayce Oil Co. (Tex Civ App) 37 SW2d 367, affd 123 Tex 550, 98 SW2d 781; Kimball v Grantsville City, 19 Utah 368, 57 P 1; Sabre v Rutland R. Co. 86 Vt 347, 85 A 693; State v Huber, 129 W Va 198, 40 SE2d 11, 168 ALR 808; State v Thompson, 149 Wis 488, 137 NW 20.

Annotation: 3 ALR 451; 69 ALR 266.

The theory of our government is one of separation of powers. Att. Gen. ex rel. Cook v O'Neill, 280 Mich 649, 274 NW 445.

Our constitution and fabric of government divide governmental powers into three grand divisions and prohibit the assumption by those exercising the powers of one of them of the just powers of another. Butler v Printing Comrs. 68 W Va 493, 70 SE 119.

See State v Bates, 96 Minn 110, 104 NW 709, for a good discussion of the source of the doctrine of the separation of the powers of government.

6. Norwalk Street R. Co.'s Appeal, 69 Conn 576, 37 A 1080, 38 A 708; State v Warmoth, 22 La Ann 1; McCrea v Roberts, 89 Md 238, 43 A 39; Wright v Wright, 2 Md 429; Wenham v State, 65 Neb 394, 91 NW 421; Henry v Cherry, 30 RI 13, 73 A 97; State v Fleming, 7 Humph (Tenn) 152.

Annotation: 69 ALR 266.

Neither the legislative, executive, nor judicial department of the federal government can lawfully exercise any authority beyond the limits marked out by the Constitution. Scott v Sandford, 19 How (US) 393, 15 L ed 691.

7. People v Tremaine, 281 NY 1, 21 NE2d 891.

8. Martin v Hunter, 1 Wheat (US) 304, 4 L ed 97.

The difference between the departments is that the legislature makes, the executive executes, and the judiciary construes, the law; but the maker of the law may commit something to the discretion of the other departments. Wayman v Southard, 10 Wheat (US) 1, 6 L ed 253.

9. Hale v State, 55 Ohio St 210, 45 NE 199; Blalock v Johnston, 180 SC 40, 185 SE 61, 105 ALR 1115.

10. § 213, infra.

The United States Supreme Court has said that so far as their powers are derived from the Constitution the departments may be regarded as independent of each other, but beyond that all are subject to regulations by law touching upon the discharge of duties required to be performed. Evans v Gore, 253 US 245, 64 L ed 887, 40 S Ct 550, 11 ALR 519; Kendall v United States, 12 Pet (US) 524, 9 L ed 1181; People v McCullough, 254 Ill 9, 98 NE 156.

11. Humphrey v United States, 295 US 602, 79 L ed 1611, 55 S Ct 869.

12. Per Marshall, Ch. J., Osborn v Bank of United States, 9 Wheat (US) 738, 6 L ed 204.

13. Snodgrass v State, 67 Tex Crim 615, 150 SW 162.

By reason of the distribution of powers under a constitution, assigning to the legislature and the judiciary each its separate and distinct functions, one department is not permitted to trench upon the functions and powers of the other. State ex rel. Bushman v Vandenberg, 203 Or 326, 276 P2d 432, 280 P2d 344.

14. State ex rel. Du Fresne v Leslie, 100 Mont 449, 50 P2d 959, 101 ALR 1329; State v Fabbri, 98 Wash 207, 167 P 133.

15. Any fundamental or basic power necessary to government cannot be delegated. Wilson v Philadelphia School Dist. 328 Pa 225, 195 A 90, 113 ALR 1401.

16. As to whether the Federal Constitution requires departmental separation of state governmental powers, see § 215, infra.

17. Porter v Investors' Syndicate, 287 US 346, 77 L ed 354, 53 S Ct 132 (Montana Constitution); Abbott v McNutt, 218 Cal 225, 22 P2d 510, 89 ALR 1109; Re Battelle, 207 Cal 227, 277 P 725, 65 ALR 1497; Denver v Lynch, 92 Colo 102, 18 P2d 907, 86 ALR 907; Stockman v Leddy, 55 Colo 24, 129 P 220; Burnett v Greene, 97 Fla 1007, 122 So 570, 69 ALR 244; State v Atlantic Coast Line R. Co. 56 Fla 617, 47 So 969; Re Speer, 53 Idaho 293, 23 P2d 239, 88 ALR 1006; Winter v Barrett, 352 Ill 441, 186 NE 113, 89 ALR 1398; People v Kelly, 347 Ill 221, 179 NE 898, 80 ALR 890; People ex rel. Rusch v White, 334 Ill 465, 166 NE 100, 64 ALR 1006; State v Shumaker, 200 Ind 716, 164 NE 408, 63 ALR 218; State v Barker, 116 Iowa 96, 89 NW 204; Rouse v Johnson, 234 Ky 473, 28 SW2d 745, 70 ALR 1077; State ex rel. Young v Butler, 105 Me 91, 73 A 560; Harris v Allegany County, 130 Md 488, 100 A 733; Re Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059; American State Bank v Jones, 184 Minn 493, 239 NW 144, 78 ALR 770; University of Mississippi v Waugh, 105 Miss 623, 62 So 827, affd 237 US 589, 59 L ed 1131, 35 S Ct 720; State v J. J. Newman Lumber Co. 102 Miss 802, 59 So 923; State ex rel. Hadley v Washburn, 167 Mo 680, 67 SW 592; State v Field, 17 Mo 529; Searle v Yensen, 118 Neb 835, 226 NW 464, 69 ALR 257; Follmer v State, 94 Neb 217, 142 NW 908; Tyson v Washington County, 78 Neb 211, 110 NW 634; State v Roy, 40 NM 397, 60 P2d 646, 110 ALR 1; State ex rel. Dushek v Watland, 51 ND 710, 201 NW 680, 39 ALR 1169; Riley v Carter, 165 Okla 262, 25 P2d 666, 88 ALR 1018; Simpson v Hill, 128 Okla 269, 263 P 635, 56 ALR 706; Hopper v Oklahoma County, 43 Okla 288, 143 P 4; Macartney v Shipherd, 60 Or 133, 117 P 814; State v George, 22 Or 142, 29 P 356; Biggs v McBride, 17 Or 640, 21 P 878; Langever v Miller, 124 Tex 80, 76 SW2d 1025, 96 ALR 836; Union Cent. L. Ins. Co. v Chowning, 86 Tex 654, 26 SW 982; State v Mounts, 36 W Va 179, 14 SE 407; Public Serv. Com. v Grimshaw, 49 Wyo 158, 53 P2d 1, 109 ALR 534. See also State ex rel. Dushek v Watland, 51 ND 710, 201 NW 680, 39 ALR 1169.

constitutional distribution of the powers of government was made on the assumption by the people that the several departments would be equally careful to use the powers granted for the public good alone, the doctrine is generally accepted that none of the several departments is subordinate, but that all are co-ordinate,[9] independent,[10] cocqual,[11] and potentially coextensive.[12] The rule is generally recognized that constitutional restraints are overstepped where one department of government attempts to exercise powers exclusively delegated to another;[13] officers of any branch of the government may not usurp or exercise the powers of either of the others,[14] and, as a general rule, one branch of government cannot permit its powers to be exercised by another branch.[15]

§ 211. — As express or implied constitutional requirement.[16]

Frequently, there appears in a state constitution an express division of the powers of government among the three departments;[17] and all persons charged

with official duties under one of the departments may be forbidden from exercising any of the functions of another except as expressly permitted by the constitution itself.[18] A state constitutional provision that no person belonging to one department shall exercise the powers properly belonging to another is to be strictly applied.[19] The constitution may, however, make it a duty for officers of one department of the government to assist in the functions of another department, and laws passed in furtherance of such acts are not violative of the doctrine of separation of powers.[20]

A constitutional requirement with respect to the separation of the three departments of the government which exists in a state constitution is generally held to refer to the state government and state officers, and not to the government of municipal corporations or their officers.[1]

Annotation: 69 ALR 266; 89 ALR 1114, 1115; 79 L ed 476.

The origin of a constitutional provision decreeing a separation of powers is very well known. It first found expression, at least with clarity and precision, in the writings of Montesquieu, with which the members of the Federal Constitutional Convention of 1787 were familiar, early appeared in the organic laws of some of the states, and was adopted as a basic principle in the Constitution of the United States in 1787, from which it entered into the constitutions of nearly all of the states, including that of Texas, both as a republic and as a state. Langever v Miller, 124 Tex 80, 76 SW2d 1025, 96 ALR 836.

18. Porter v Investors' Syndicate, 287 US 346, 77 L ed 354, 53 S Ct 132 (Montana Constitution); Montgomery v State, 231 Ala 1, 163 So 365, 101 ALR 1394; Hawkins v Governor, 1 Ark 570; Abbott v McNutt, 218 Cal 225, 22 P2d 510, 89 ALR 1109; Re Battelle, 207 Cal 227, 277 P 725, 65 ALR 1497; Denver v Lynch, 92 Colo 102, 18 P2d 907, 86 ALR 907; Stockman v Leddy, 55 Colo 24, 129 P 220; Florida Nat. Bank of Jacksonville v Simpson (Fla) 59 So 2d 751, 33 ALR2d 581; Burnett v Greene, 97 Fla 1007, 122 So 570, 69 ALR 244; Singleton v State, 38 Fla 297, 21 So 21; Re Speer, 53 Idaho 293, 23 P 2d 239, 88 ALR 1086; Winter v Barrett, 352 Ill 441, 186 NE 113, 89 ALR 1398; People v Kelly, 347 Ill 221, 179 NE 898, 80 ALR 890; Fergus v Marks, 321 Ill 510, 152 NE 557, 46 ALR 960; State v Shumaker, 200 Ind 716, 164 NE 408, 63 ALR 218; State v Noble, 118 Ind 350, 21 NE 244; Rouse v Johnson, 234 Ky 473, 28 SW2d 745, 70 ALR 1077; Re Dennett, 32 Me 508; Harris v Allegany County, 130 Md 488, 100 A 733; Re Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059; American State Bank v Jones, 184 Minn 498, 239 NW 144, 78 ALR 770; State ex rel. Hadley v Washburn, 167 Mo 680, 67 SW 592; Searle v Yensen, 118 Neb 835, 226 NW 464, 69 ALR 257; Follmer v State, 94 Neb 217, 142 NW 908; State v Roy, 40 NM 397, 60 P2d 646, 110 ALR 1; Riley v Carter, 165 Okla 262, 25 P2d 666, 88 ALR 1018; Simpson v Hill, 128 Okla 269, 263 P 635, 56 ALR 706; Hopper v Oklahoma County, 47 Okla 788, 143 P 4; Union Cent. L. Ins. Co. v Chowning, 86 Tex 654, 26 SW 982; Kimball v Grantsville City, 19 Utah 368, 57 P 1; Public Serv. Com. v Grimshaw, 49 Wyo 158, 53 P2d 1, 109 ALR 534.

Annotation: 69 ALR 266, 267; 89 ALR 1115; 79 L ed 476.

A state constitutional provision that no person or group of persons charged with the exercise of powers properly belonging to one of the departments of government shall exercise any power properly belonging to either of the others establishes a government of laws instead of a government of men, a government in which laws authorized to be made by the legislative branch are equally binding upon all citizens, including public officers and employees. Springfield v Clouse, 356 Mo 1239, 206 SW2d 539.

The plain meaning of state constitutional provisions declaring that neither of the three departments of government shall exercise powers properly belonging to either of the others, and that no person shall exercise the powers of more than one of them at the same time, is that no judge of any court can act as a member of the legislature or fill an executive office, and that no member of the legislature or any official of the executive department can fill a judicial office. State v Huber, 129 W Va 198, 40 SE2d 11, 169 ALR 808.

19. Transport Workers Union, etc. v Gadola, 322 Mich 332, 34 NW2d 71.

20. A statute requiring the governor to secure the introduction into the legislature of budget bills prepared by the budget commission and cause amendments to be presented, if desirable, during the passage of the bill is not invalid on the theory that it attempts to confer power on the governor and budget commission to dictate the introduction of bills in the legislature, where the constitution makes it the governor's duty to recommend for the consideration of the legislature such measures as he may deem expedient, and also makes it the duty of the officials who constitute the budget commission to prepare a general revenue bill to be presented to the house of representatives by the governor. Taylor v Davis, 212 Ala 282, 102 So 435, 40 ALR 1052.

1. Poynter v Watling (Del) 177 A2d 641; Sarlls v State, 201 Ind 88, 166 NE 270, 67 ALR 718 (statute providing commission and city manager forms of governments for cities); State v Mankato, 117 Minn 458, 136 NW 264; Barnes v Kirksville, 266 Mo 270, 180 SW 545; State v Noble, 82 Neb 267, 117 NW 723; Greenville v Pridmore, 86 SC 442, 68 SE 636; Walker v Spokane, 62 Wash 312, 113 P 775.

Annotation: 67 ALR 740.

On the other hand, in the Federal Constitution,[2] and in a few of the state constitutions,[3] no specific provision is made for a separation of governmental powers. Under these constitutions, however, and even under the constitutions in which such a clause has actually been inserted, irrespective of the existence of such a distributing clause, it is held that the creation of the three departments may operate as an apportionment of the different classes of powers. It has been said that where the provision that the legislative, executive, and judicial powers shall be preserved separate and distinct is not found in a constitution in terms, it may exist there in substance in the organization and distribution of the powers of the department.[4] The basis of this theory is that the distribution of the powers of the state by the constitution to the legislative, executive, and judicial departments operates by implication as an inhibition against the imposition upon any one department of such powers which distinctively belong to one of the other departments.[5] Thus, it has been said that grants of legislative, executive, and judicial powers of the three departments of government are, in their nature, exclusive, and that no department, as such, can rightfully exercise any of the functions necessarily belonging to the other.[6] It has also been said that the mere apportionment of sovereign powers among the three co-ordinate branches of the government, without more, imposes upon each of those branches the affirmative duty of exercising its own peculiar powers for itself, and prohibits the delegation of any of those powers, except in cases expressly permitted.[7]

A distributive clause in a state constitution prevents the exercise of the functions of one department of the government by another department, but has no relation to the exercise or division of the powers of one particular branch of the government by the officers who comprise that branch and does not control the question as to which one of several executive officers should perform an executive function.[8]

§ 212. — Importance of principle.

It has been said that the principle of the separation of the powers of government is fundamental to the very existence of constitutional government as

2. Springer v Philippine Islands, 277 US 189, 72 L ed 845, 48 S Ct 480.

Annotation: 79 L ed 476.

3. Re Sims, 54 Kan 1, 37 P 135 (Kansas Constitution).

Ohio, for another example, has no specific constitutional provision for a separation of powers.

4. Springer v Philippine Islands, 277 US 189, 72 L ed 845, 48 S Ct 480 (Federal Constitu[illegible]

294, 639; Zanesville v Zanesville Tel. & Tel. Co. 64 Ohio St 67, 59 NE 781; Kimball v Grantsville City, 19 Utah 368, 57 P 1.

The doctrine of separation of powers arises not from any single provision of the Federal Constitution but because behind the words of the constitutional provisions are postulates which limit and control. National Mut. Ins. Co. v Tidewater Transfer Co. 337 US 582, 93 L ed 1556, 69 S Ct 1173.

5. Zanesville v Zanesville Tel. & Tel. Co. 64 Ohio St 67, 59 NE 781.

6. State ex rel. Mason v Baker, 69 ND 488, 288 NW 202.

7. Reelfoot Lake Levee Dist. v Dawson, 97 Tenn 151, 36 SW 1041, ovrld on another point Arnold v Knoxville, 115 Tenn 195, 90 SW 469.

8. State ex rel. Kostas v Johnson, 224 Ind 540, 69 NE2d 592, 168 ALR 1118; Follmer v State, 94 Neb 217, 142 NW 908

established in the United States.[9] The principle has also been referred to as one of the chief merits of the American system of written constitutions.[10] It has been declared that the division of governmental powers into executive, legislative, and judicial represents probably the most important principle of government declaring and guaranteeing the liberties of the people,[11] and that it is a matter of fundamental necessity,[12] and is essential to the maintenance of a republican form of government.[13] One of America's most distinguished jurists has stated that no maxim has been more universally received and cherished as a vital principle of freedom.[14]

Although there may be a blending of powers in certain respects,[15] in a broad sense the safety of our institutions depends in no small degree on the strict observance of the independence of the several departments.[16] Each constitutes a check upon the exercise of its power by any other department,[17] and, accordingly, a concentration of power in the hands of one person or class is prevented,[18] and a commingling of essentially different powers in the same hands is precluded.[19] No arbitrary and unlimited power is vested in any department;[20]

9. National Mut. Ins. Co. v Tidewater Transfer Co. 337 US 582, 93 L ed 1556, 69 S Ct 1173; Norwalk Street R. Co.'s Appeal, 69 Conn 576, 37 A 1080, 38 A 708; People ex rel. Leaf v Orvis, 374 Ill 536, 30 NE2d 28, 132 ALR 1382, cert den 312 US 705, 85 L ed 1138, 61 S Ct 827; Tyson v Washington County, 78 Neb 211, 110 NW 634; Enterprise v State, 156 Or 623, 69 P2d 953; Langever v Miller, 124 Tex 80, 76 SW2d 1025, 96 ALR 836.

It is necessary, if government is to function constitutionally, for each of the repositories of constitutional power to keep within its power. Rescue Army v Municipal Court of Los Angeles, 331 US 549, 91 L ed 1666, 67 S Ct 1409.

10. O'Donoghue v United States, 289 US 516, 77 L ed 1356, 53 S Ct 740; Kilbourn v Thompson, 103 US 168, 26 L ed 377; People v Brady, 40 Cal 198; State v Brill, 100 Minn 499, 111 NW 294, 639; Searle v Yensen, 118 Neb 835, 226 NW 464, 69 ALR 257; Enterprise v State, 156 Or 623, 69 P2d 953.

11. Searle v Yensen, 118 Neb 835, 226 NW 464, 69 ALR 257; Enterprise v State, 156 Or 623, 69 P2d 953 (quoting the famous declaration of Montesquieu that "there can be no liberty . . . if the power of judging be not separated from the legislative and executive powers").

12. Tucker v State, 218 Ind 614, 35 NE2d 270.

13. Tucker v State, supra; Dearborn Twp. v Dail, 334 Mich 673, 55 NW2d 201.

14. Dash v Van Kleeck, 7 Johns (NY) 477 (per Kent, Ch. J.).

15. § 214, infra.

16. McCray v United States, 195 [illegible], 49 L ed 78, 24 S Ct 769; Powell v Pennsylvania, 127 US 678, 32 L ed 253, 8 S Ct 992, 1257; Kilbourn v Thompson, 103 US 168, 26 L ed 377; Sinking Fund Cases, 99 US 700, 25 L ed 496; Lincoln Federal Labor Union v Northwestern Iron & Metal Co. 149 Neb 507, 31 NW2d 477; Wenham v State, 65 Neb 394, 91 NW 421; Ex parte Kair, 28 Nev 127, 425, 80 P 463, 82 P 453; State ex rel. Schorr v Kennedy, 132 Ohio St 510, 9 NE2d 278, 110 ALR 1428; State ex rel. Bushman v Vandenberg, 203 Or 326, 276 P2d 432, 280 P2d 344; Enterprise v State, 156 Or 623, 69 P2d 953; U'Ren v Bagley, 118 Or 77, 245 P 1074, 46 ALR 1173; State v Peel Splint Coal Co. 36 W Va 802, 15 SE 1000.

The preservation of the inherent powers of the three branches of government, free from encroachment or infringement by one upon the other, is essential to the safekeeping of the American system of constitutional rule. Simmons v State, 160 Fla 626, 36 So 2d 207.

As to the independence of the separate departments, see § 213, infra.

17. Greenwood Cemetery Land Co. v Routt, 17 Colo 156, 28 P 1125; Re Davies, 168 NY 89, 61 NE 118.

18. State v Denny, 118 Ind 382, 21 NE 252; Enterprise v State, 156 Or 623, 69 P2d 953; De Chastellux v Fairchild, 15 Pa 18.

By the mutual checks and balances by and between the branches of government, democracy undertakes to preserve the liberties of the people from excessive concentrations of authority. United Public Workers v Mitchell, 330 US 75, 91 L ed 754, 67 S Ct 556.

The primary purpose of the doctrine of separation of powers is to prevent the combination in the hands of a single person or group of the basic or fundamental powers of government. Parker v Riley, 18 Cal 2d 83, 113 P2d 873, 134 ALR 1405.

19. O'Donoghue v United States, 289 US 516, 77 L ed 1356, 53 S Ct 740.

It is particularly essential that the respective branches of the government keep within the powers assigned to each by the constitution. Lichter v United States, 334 US 742, 92 L ed 1694, 68 S Ct 1294, reh den 335 US 836, 93 L ed 389, 69 S Ct 11.

Separation of powers is not a mere matter of convenience or of governmental mechanism, but its object is basic and vital, namely, to preclude a commingling of the essentially different powers of government in the same hands. State ex rel. Black v Burch, 226 Ind 445, 80 NE2d 294, 560, 81 NE2d 850.

20. State ex rel. Davis v Stuart, 97 Fla 69, 120 So 335, 64 ALR 1307.

such power is regarded as a condition subversive of the constitution,[1] and the chief characteristic and evil of tyrannical and despotic forms of government.[2]

§ 213. Independence of separate departments.

Each of the several departments of government derives its authority directly or indirectly from the people and is responsible to them.[3] Each has exclusive cognizance of the matters within its jurisdiction[4] and is supreme within its own sphere.[5] In the exercise of the powers of government assigned to them severally, the departments operate harmoniously and independently of each other, and the action of any one of them in the lawful exercise of its own powers is not subject to control by either of the others.[6] Each department of government must exercise its own delegated powers, and unless otherwise limited by the constitution, each exercises such inherent power as will protect it in the performance of its major duty; one department may not be controlled or even embarrassed by another department unless the constitution so ordains.[7] For any one of the three equal and co-ordinate branches of government to police or supervise the operations of the others strikes at the very heart and core of the entire structure.[8]

1. Sinking Fund Cases, 99 US 700, 25 L ed 496; McPherson v State, 174 Ind 60, 90 NE 610; State v Johnson, 61 Kan 803, 60 P 1068.

2. State v Barker, 116 Iowa 96, 89 NW 204; State v Johnson, 61 Kan 803, 60 P 1068; State v Brill, 100 Minn 499, 111 NW 294, 639; Enterprise v State, 156 Or 623, 69 P2d 953.

3. Wright v Wright, 2 Md 429; De Chastellux v Fairchild, 15 Pa 18; Ekern v McGovern, 154 Wis 157, 142 NW 595; State ex rel. Mueller v Thompson, 149 Wis 488, 137 NW 20.

4. Fox v McDonald, 101 Ala 51, 13 So 416; White County v Gwin, 136 Ind 562, 36 NE 237; State v Denny, 118 Ind 382, 21 NE 252; State v Noble, 118 Ind 350, 21 NE 244; State v Doherty, 25 La Ann 119; McCully v State, 102 Tenn 509, 53 SW 134.

5. Montgomery v State, 231 Ala 1, 163 So 365, 101 ALR 1394; Hawkins v Governor, 1 Ark 570; Denver v Lynch, 92 Colo 102, 18 P2d 907, 86 ALR 907; People ex rel. Billings v Bissell, 19 Ill 229; Wright v Wright, 2 Md 429; Re Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059; State v Blaisdell, 22 ND 86, 132 NW 769; McCully v State, 102 Tenn 509, 53 SW 134; Langever v Miller, 124 Tex 80, 76 SW2d 1025, 96 ALR 836; Kimball v Grantsville City, 19 Utah 368, 57 P 1; State ex rel. Mueller v Thompson, 149 Wis 488, 137 NW 20.

6. Humphrey v United States, 295 US 602, 79 L ed 1611, 55 S Ct 869; O'Donoghue v United States, 289 US 516, 77 L ed 1356, 53 S Ct 740; Parsons v Tuolomne County Water Co. 5 Cal 43; State v Atlantic Coast Line R. Co. 56 Fla 617, 47 So 969; People v Bissell, 19 Ill 229; State v Shumaker, 200 Ind 716, 164 NE 408, 63 ALR 218; Blalock v Johnston, 180 SC 40, 185 SE 51, 105 ALR 1115; Langever v Miller, 124 Tex 80, 76 SW2d 1025, 96 ALR 836; Christie v Lueth, 265 Wis 326, 61 NW2d 338.

Each department should be kept completely independent of the others, independent not in the sense that they shall not co-operate in the common end of carrying into effect the purpose of the constitution, but in the sense that the acts of each shall never be controlled by, or subjected to, directly or indirectly, the coercive influence of either of the other departments. State ex rel. Black v Burch, 226 Ind 445, 80 NE2d 294, 560, 81 NE2d 850.

Annotation: 153 ALR 522.

7. State v Shumaker, 200 Ind 716, 164 NE 408, 63 ALR 218.

When a written constitution provides for the separation of powers of government between three major branches, it is presumed to intend that within the scope of their constitutionally conferred fields of activities the three separate departments of government are to be independent, subject, of course, to any limitations upon this presumption found in the clear and express provisions of the constitution itself. Du Pont v Du Pont (Sup) 32 Del Ch 413, 85 A2d 724.

8. Renck v Superior Court of Maricopa County, 66 Ariz 320, 187 P2d 636.

C. Judicial Powers

1. In General

§ 219. Generally.[1]

The power to maintain a judicial department is an incident to the sovereignty of each state.[2] Under the doctrine of the separation of the powers of government,[3] judicial power, as distinguished from executive and legislative power, is vested in the courts as a separate magistracy.[4]

The judiciary is an independent department of the state and of the federal government, deriving none of its judicial power from either of the other departments. This is true although the legislature may create courts under the provisions of the constitution. When a court is created, the judicial power is conferred by the constitution, and not by the act creating the court.[5] It was said at an early period in American law that the judicial power in every well-organized government ought to be coextensive with the legislative power so far, at least, as private rights are to be enforced by judicial proceedings.[6] The rule is now well settled that under the various state governments, the constitution confers on the judicial department all the authority necessary to exercise powers as a co-ordinate department of the government.[7] Moreover, the independence of the judiciary is the means provided for maintaining the supremacy of the constitution.[8]

In a general way the courts possess the entire body of judicial power. The other departments cannot, as a general rule, properly assume to exercise any part of this power,[9] nor can the constitutional courts be hampered or limited in the discharge of their functions by either of the other two branches.[10]

1. Discussed at this point is the judicial power in its constitutional relationship to the other powers of government. A broad discussion of judicial power, generally, will be found in the article, Courts.

2. Hoxie v New York, N. H. & H. R. Co. 82 Conn 352, 73 A 754.

3. § 210, supra.

4. Brydonjack v State Bar, 208 Cal 439, 281 P 1018, 66 ALR 1507; Norwalk Street R. Co.'s Appeal, 69 Conn 576, 37 A 1080, 38 A 708; Brown v O'Connell, 36 Conn 432; Burnett v Green, 97 Fla 1007, 122 So 570, 69 ALR 244; Ex parte Earman, 85 Fla 297, 95 So 755, 31 ALR 1226; State v Shumaker, 200 Ind 623, 157 NE 769, 162 NE 441, 163 NE 272, 58 ALR 954; State v Denny, 118 Ind 382, 21 NE 252; Flournoy v Jeffersonville, 17 Ind 69; Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059; American State Bank v Jones, 184 Minn 498, 239 NW 144, 78 ALR 770.

5. Brown v O'Connell, 36 Conn 432; Norwalk Street R. Co.'s Appeal, 69 Conn 576, 37 A 1000, 38 A 708; Parker v State, 135 Ind 534, 35 NE 179; Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059.

6. Kendall v United States, 12 Pet (US) 524, 9 L ed 1181.

7. Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1509.

8. Riley v Carter, 165 Okla 262, 25 P2d 666, 88 ALR 1018.

9. State v Noble, 118 Ind 350, 21 NE 244; Attorney General ex rel. Cook v O'Neill, 280 Mich 649, 274 NW 445; Washington-Detroit Theatre Co. v Moore, 249 Mich 673, 229 NW 618, 68 ALR 105.

The whole of judicial power reposing in the sovereignty is granted to courts except as restricted in the constitution. Washington-Detroit Theatre Co. v Moore, supra.

10. Vidal v Backs, 218 Cal 99, 21 P2d 952, 86 ALR 1131; Shaw v Moore, 104 Vt 529, 162 A 373, 86 ALR 1139.

And see § 217, supra, and §§ 234 et seq., infra.

I certify that the foregoing is my amended return to Order to Show Cause issued out of the District Court on January 8, 1969.

The Act of February 12, 1873, 17 Stat 426 fixed the Gold Dollar at 25.8 grains, Troy weight 9/10 fine for the Gold Dollar.

The Act of February 28, 1878 fixed the Silver Dollar at 412 1/2 grains Troy weight of Silver. These are the last two Constitutional Act of Congress, pursuant to the Constitution in which they coined money, regulated the value thereof and fixed the Standard of weights and measures. The Congress cannot abdicate or delegate these legislative powers. Usurpation by the Executive or his Agents is void. Thus the Silver clad-copper coins are a debasing of the Coins when once the Standard has been fixed. They are also not a legal tender, and are unconstitutional and void. These debased Coins and void Federal Reserve Notes constitute a shallow and impudent artifice, the least covert of all modes of knavery, a miserable scheme of robbery, all of which were the final characteristics of Arbitrary and profligate governments preceeding their downfall. No longer does any sentiment of honor influence the governing power of this Nation.

Based upon the Law and Facts presented to me, the Appeal is not allowed in this Court.

BY THE COURT

February 4, 1969

Martin V. Mahoney

MARTIN V. MAHONEY
Justice of the Peace
Credit River Twp.
Scott County, Minn.

Lightning Over the Treasury Building

CHAPTER I

The Goldsmiths

Once upon a time, gold—being the most useless of all metals—was held in low esteem. Things which possessed intrinsic value were labored for—fought for—accumulated—and prized. These things became the standards of value and the mediums of exchange in the respective localities producing them.

One of the most urgent requirements of man is a wife, and it used to be that one of the most prized possessions of a father was a strong, hard working daughter; and she was considered his property. In those days he didn't give a dowry with her to get rid of her—but if a young blade desired her he had to recompense the Dad before he could lead her away to his cave. Good milch cows were as scarce as good girls—so a wooer hit upon the happy idea, one day, of offering a cow to the "Old Man" for his daughter. The deal was made and cows became, probably, the first money in history.

Since that ancient date most everything that you can think of has been used for money. Carpets, cloth, ornaments, beads, shells, feathers, teeth, hides, tobacco, gophers' tails, woodpeckers' heads, salt, fish hooks, nails, beans, spears,

bronze, silver and gold—and later, receipts for gold which did not exist—have all been used for money.

The latter article was the invention of the goldsmith and has yielded greater profits than all other inventions combined. It all came about like this:

Women have always had a fondness for beautiful ornaments. The plainer women—the ones who needed decorating with trinkets—were the ones who received the fewest ornaments. This was because men were the ones who supplied them, and—as contradictory as it may seem—the more beautiful the lady was, the more ornaments she usually received. Rings for her fingers—rings for her toes—rings for her ears—and rings for her nose—bracelets, anklets, tiaras, throatlets, pendants and foibles of yellow gold were hung on her like decorations on a Christmas tree.

Gold was also used to beautify the palaces of the kings, and of the near kings, shrines and temples. It was held in such high esteem that the people actually began to worship it—making gods and goddesses of it. It became the most desired of all substances. Because of the high esteem in which it was held it superseded all of its competitors in the civilized world as a medium of exchange. The value of other goods was measured by the amount of gold for which those goods could be exchanged.

The yellow metal, for convenience sake, and because the gold itself—and not the ornaments which could be made from it—was in demand, was shaped into rings, bars, discs and cubes, usually bearing an imprint of the kingly or princely owner.

Every community, or city, had its king or ruler. These rulers were all eager to increase their hoard of gold. Raiding expeditions were promoted and the weaker tribes, or kingdoms, were looted of the gold which they had accumulated. At times they would become so prosaic and unromantic as to carry on legitimate trade with other communi-

ties and obtain the gold in that way—but that was usually too slow and unexciting.

When the king arrived home with the precious stuff, his worries were not over. There were thieves in those days. There were also goldsmiths. The goldsmiths were the manufacturers of the ornaments which the ladies wore, and they always had a considerable amount of the coveted metal on hand. To safeguard their treasures they built strong-rooms on their premises in which to store the gold entrusted to their care.

It was not surprising, then, that the custom grew for the leader, upon his return from his thieving expedition, to leave the hoard of gold which he had obtained, with the goldsmith for safe-keeping. The merchants, too, who had traded profitably with other nations, communities or tribes, as well as other merchants and raiders passing through the city where the goldsmith lived, found it convenient—and usually safe—to leave their gold in the strong-room of the goldsmith.

When the gold was weighed and safely deposited in the strong-room, the goldsmith would give the owner a warehouse receipt for his deposit. These receipts were of various sizes, or for various amounts; some large, others smaller and others still more small. The owner of the gold, when wishing to transact business, would not as a rule take the actual gold out of the strong-room but would merely hand over a receipt for gold which he had in storage.

The goldsmith soon noticed that it was quite unusual for anyone to call for his gold. The receipts, in various amounts, passed from hand to hand instead of the gold itself being transferred. He thought to himself: "Here I am in possession of all this gold and I am still a hard working artisan. It doesn't make sense. Why there are scores of my neighbors who would be glad to pay me interest for the use of this gold which is lying here and never called for.

It is true, the gold is not mine—but it is in my possession, which is all that matters."

The birth of this new idea was promptly followed by action. At first he was very cautious, only loaning a little at a time—and that, on tremendous security. But gradually he became bolder and larger amounts of the gold were loaned.

One day the amount of loan requested was so large that the borrower didn't want to carry the gold away. The goldsmith solved the problem, pronto, by merely suggesting that the borrower be given a receipt for the amount of gold borrowed—or several receipts for various amounts totalling the amount of gold figuring in the transaction. To this the borrower agreed, and off he walked with the receipts, leaving the gold in the strong-room of the goldsmith.

After his client left, the goldsmith smiled broadly. He could have a cake and eat it too. He could lend gold and still have it. The possibilities were well nigh limitless. Others, and still more neighbors, friends, strangers and enemies expressed their desire for additional funds to carry on their businesses—and so long as they could produce sufficient collateral they could borrow as much as they needed—the goldsmith issuing receipts for ten times the amount of gold in his strong-room, *and he not even the owner of that.*

Everything was hunky-dory so long as the real owners of the gold didn't call for it—or so long as the confidence of the people was maintained—or a whispering campaign was not begun; in which case, upon the discovery of the facts, the goldsmith was usually taken out and shot.

In this manner, through the example of the goldsmiths, bank credit entered upon the scene. The practice of issuing receipts—entries in bank ledgers and figures in bank pass books—balancing the borrower's debt against the bank's obligation to pay, and multiplying the obligations to pay by thirty or forty times the amount of money which they (the

banks) hold, is a hangover of the goldsmith's racket and is the cause of most of the distress in America and the civilized world today.

As a result of the enormous profits being made by the bankers, the United Nations scheme has been formed to protect them in their franchise and to enable them to exploit the world.

The Bank of Amsterdam, established in 1609 in the City of Amsterdam, was, it seems, the first institution which followed the practice of the goldsmiths under the title of banking. It accepted deposits and gave separate receipts for each deposit of its many depositors, each deposit comprising a new account. The procedure greatly multiplied the number of receipts outstanding. The receipts constituted the medium of exchange in the country.

At first these bankers did not think of or did not intend to follow the practice of the goldsmiths in issuing more receipts than they had in gold, but their avarice soon gained control and that practice was introduced and pursued. The receipts were not covered by gold but by mortgages and property which they believed could be converted into gold on short notice, if necessary.

All went well for a time, but in 1795 the truth leaked out. It was found that the outstanding receipts called for several times the amount of gold which was held by the bank. This discovery caused a panic and a run on the bank resulting in its destruction—because the demand for its gold far exceeded its supply.

The collapse of the Bank of Amsterdam should have been an object lesson to all posterity, but alas, avaricious men again took advantage of the forgetfulness and gullibility of the people and the fraud was revived and perpetuated.

CHAPTER II

The Bank of England

For centuries, in England, the Christians were taught, and believed, that it was contrary to Christian ethics to loan money at usury, or interest. During those centuries the Church and the State saw eye to eye, for they were practically one and the same. It was, therefore, not only un-Christian, but also illegal to loan money at interest.

The laws of King Alfred, in the Tenth Century, provided that the effects and lands of those who loaned money upon interest should be forfeited to the Crown and the lender should not be buried in consecrated ground. Under Edward the Confessor, in the next Century, it was provided that the usurer should forfeit all his property, be declared an outlaw and banished from England.

During the reign of Henry II, in the Twelfth Century, the estates of usurers were forfeited at their death and their children disinherited. In the Thirteenth Century, King John confiscated and gathered in the wealth of all known usurers. In the Fourteenth Century, the crime of loaning money at interest was made a capital offense, and during the reign of James I, it was held that the taking of usury was no better than taking a man's life.

In view of these facts it is quite understandable how the Jews became, for the most part, the money lenders and the goldsmiths of England. They for some reason had no compunction of conscience on the matter. They lived outside the pale of the teachings of the New Testament and ignored the unmistakable commands of the Old regarding usury. It is true that they had to carry on their business secretly, but carry it on they did.

On the Constitutionality of the Bank of the United States, *1791*

Jefferson to Washington:

I consider the foundation of the Constitution as laid on this ground: That "all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people . . ." To take a single step beyond the boundaries thus specially drawn around the powers of Congress is to take possession of a boundless field of power, no longer susceptible of any definition.

The incorporation of a bank, and the powers assumed by this bill, have not, in my opinion, been delegated to the United States by the Constitution.

I. They are not among the powers specially enumerated: for these are: 1. A power to lay taxes for the purpose of paying the debts of the United States; but no debt is paid by this bill, nor any tax laid. Were it a bill to raise money, its origination in the Senate would condemn it by the Constitution.

2. "To borrow money." But this bill neither borrows money nor insures the borrowing it. The proprietors of the bank will be just as free as any other money-holders to lend or not to lend their money to the public. The operation proposed in the bill, first, to lend them two millions, and then to borrow them back again, cannot change the nature of the latter act, which will still be a payment, and not a loan, call it by what name you please.

3. To "regulate commerce with foreign nations, and among the states, and with the Indian tribes." To erect a bank, and to regulate commerce, are very different acts. He who erects a bank creates a subject of commerce in its bills; so does he who makes a bushel of wheat or digs a dollar out of the mines; yet neither of these persons regulates commerce thereby. To make a thing which may be bought and sold is not to prescribe regulations for buying and selling. Besides, if this was an exercise of the power of regulating commerce, it would be void, as extending as much to the internal commerce of every State, as to its external. For the power given to Congress by the Constitution does not extend to the internal regulation of the commerce of a State (that is to say of the commerce between citizen and citizen), which remain exclusively with its own legislature; but to its external commerce only, that is to say, its commerce with another State, or with foreign nations, or with the Indian tribes. Accordingly the bill does not propose the measure as a regulation of trade, but as "productive of considerable advantages to trade." Still less are these powers covered by any other of the special enumerations.

II. Nor are they within either of the general phrases, which are the two following:

1. To lay taxes to provide for the general welfare of the United States, that is to say, "to lay taxes for the purpose of providing for the general welfare." For the laying of taxes is the power, and the general welfare the purpose for which the power is to be exercised. They are not to lay taxes *ad libitum* for any purpose they please but only to pay the debts or provide for the welfare of the Union. In like manner, they are not to do anything they please to provide for the general welfare but only to lay taxes for that purpose. To consider the latter phrase, not as describing the purpose of the first, but as giving a distinct and independent power to do any act they please, which might be for the good of the Union, would render all the preceding and subsequent enumerations of power completely useless.

It would reduce the whole instrument to a single phrase, that of instituting a Congress with power to do whatever would be for the good of the United States; and, as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they please.

It is an established rule of construction where a phrase will bear either of two meanings to give it that which will allow some meaning to the other parts of the instrument and not that which would render all the others useless. Certainly no such universal power was meant to be given them. It was intended to lace them up straitly within the enumerated powers, and those without which, as means, these powers could not be carried into effect. It is known that the very power now proposed as a means was rejected as an end by the Convention which formed the Constitution. A proposition was made to them to authorize Congress to open canals, and an amendatory one to empower them to incorporate. But the whole was rejected, and one of the reasons for rejection urged in debate was that then they would have a power to erect a bank, which would render the great cities, where there were prejudices and jealousies on the subject, adverse to the reception of the Constitution.

2. The second general phrase is "to make all laws necessary and proper for carrying into execution the enumerated powers." But they can all be carried into execution without a bank. A bank therefore is not necessary and consequently not authorized by this phrase.

It has been urged that a bank will give great facility or convenience in the collection of taxes. Suppose this were true: yet the Constitution allows only the names which are "necessary," not those which are merely "convenient" for effecting the enumerated powers. If such a latitude of construction be allowed to this phrase as to give any nonenumerated power, it will go to every one, for there is not one which ingenuity may not torture into a convenience in some instance or other, to some one of so long a list of enumerated powers. It would swallow up all the delegated powers and reduce the whole to one power, as before observed. Therefore it was that the Constitution restrained them to the *necessary* means, that is to say, to those means without which the grant of power would be nugatory. . . .

Perhaps, indeed, bank bills may be a more convenient vehicle than treasury orders. But a little difference in the degree of convenience cannot constitute the necessity which the Constitution makes the ground for assuming any nonenumerated power. . . .

It may be said that a bank whose bills would have a currency all over the States would be more convenient than one whose currency is limited to a single State. So it would be still more convenient that there should be a bank whose bills should have a currency all over the world. But it does not follow from this superior conveniency that there exists anywhere a power to establish such a bank or that the world may not get on very well without it.

Can it be thought that the Constitution intended that for a shade or two of convenience, more or less, Congress should be authorized to break down the most ancient and fundamental laws of the several States; such as those against mortmain, the laws of alienage, the rules of descent, the acts of distribution, the laws of escheat and forfeiture, the laws of monopoly? Nothing but a necessity invincible by any other means can justify such a prostitution of laws, which constitute the pillars of our whole system of jurisprudence. Will Congress be too strait-laced to carry the Constitution into honest effect, unless they may pass over the foundation laws of the State government for the slightest convenience of theirs?

The negative of the President is the shield provided by the Constitution to protect against the invasions of the legislature: 1. The right of the executive. 2. Of the judiciary. 3. Of the States and States legislatures. The present is the case of a right remaining exclusively with the States, and consequently one of those intended by the Constitution to be placed under its protection. . . .

Veto of the Bank Renewal Bill, *Andrew Jackson, 1832*

The bill "to modify and continue" the act entitled "An act to incorporate the subscribers to the Bank of the United States" was presented to me on the 4th July instant. Having considered it with that solemn regard to the principles of the Constitution which the day was calculated to inspire, and come to the conclusion that it ought not to become a law, I herewith return it to the Senate, in which it originated, with my objections.

A bank of the United States is in many respects convenient for the Government and useful to the people. Entertaining this opinion, and deeply impressed with the belief that some of the powers and privileges possessed by the existing bank are unauthorized by the Constitution, subversive of the rights of the States, and dangerous to the liberties of the people, I felt it my duty at an early period of my Administration to call the attention of Congress to the practicability of organizing an institution combining all its advantages and obviating these objections. I sincerely regret that in the act before me I can perceive none of those modifications of the bank charter which are necessary, in my opinion, to make it compatible with justice, with sound policy, or with the Constitution of our country.

The present corporate body, denominated the president, directors, and company of the Bank of the United States, will have existed at the time this act is intended to take effect twenty years. It enjoys an exclusive privilege of banking under the authority of the General Government, a monopoly of its favor and support, and, as a necessary consequence, almost a monopoly of the foreign and domestic exchange. The powers, privileges, and favors bestowed upon it in the original charter, by increasing the value of the stock far above its par value, operated as a gratuity of many millions to the stockholders.

An apology may be found for the failure to guard against this result in the consideration that the effect of the original act of incorporation could not be certainly foreseen at the time of its passage. The act before me proposes another gratuity to the holders of the same stock, and in many cases to the same men, of at least seven millions more. This donation finds no apology in any uncertainty as to the effect of the act. On all hands it is conceded that its passage will increase at least 20 or 30 per cent more the market price of the stock, subject to the payment of the annuity of $200,000 per year secured by the act, thus adding in a moment one-fourth to its par value. It is not our own citizens only who are to receive the bounty of our Government. More than eight millions of the stock of this bank are held by foreigners. By this act the American Republic proposes virtually to make them a present of some millions of dollars. For these gratuities to foreigners, and to some of our own opulent citizens the act secures no equivalent whatever. They are the certain gains of the present stockholders under the operation of this act, after making full allowance for the payment of the bonus.

Every monopoly and all exclusive privileges are granted at the expense of the public, which ought to receive a fair equivalent. The many millions which this act proposes to bestow on the stockholders of the existing bank must come directly or indirectly out of the earnings of the American people. It is due to them, therefore, if their Government sell monopolies and exclusive privileges, that they should at least exact for them as much as they are worth in open market. The value of the monopoly in this case may be correctly ascertained. The twenty-eight millions of stock would probably be at an advance of 50 per cent, and command in market at least $42,000,000, subject to the payment of the present bonus. The present value of the monopoly, therefore, is $17,000,000, and this the act proposes to sell for three millions, payable in fifteen annual

It is not conceivable how the present stockholders can have any claim to the special favor of the Government. The present corporation has enjoyed its monopoly during the period stipulated in the original contract. If we must have such a corporation, why should not the Government sell out the whole stock and thus secure to the people the full market value of the privileges granted? Why should not Congress create and sell twenty-eight millions of stock, incorporating the purchases with all the powers and privileges secured in this act and putting the premium upon the sales into the Treasury?

But this act does not permit competition in the purchase of this monopoly. It seems to be predicated on the erroneous idea that the present stockholders have a prescriptive right not only to the favor but to the bounty of Government. It appears that more than a fourth part of the stock is held by foreigners and the residue is held by a few hundred of our own citizens, chiefly of the richest class. For their benefit does this act exclude the whole American people from competition in the purchase of this monopoly and dispose of it for many millions less than it is worth. This seems the less excusable because some of our citizens not now stockholders petitioned that the door of competition might be opened, and offered to take a charter on terms much more favorable to the Government and country.

But this proposition, although made by men whose aggregate wealth is believed to be equal to all the private stock in the existing bank, has been set aside, and the bounty of our Government is proposed to be again bestowed on the few who have been fortunate enough to secure the stock and at this moment wield the power of the existing institution. I can not perceive the justice or policy of this course. If our Government must sell monopolies, it would seem to be its duty to take nothing less than their full value, and if gratuities must be made once in fifteen or twenty years let them not be bestowed on the subjects of a foreign government nor upon a designated and favored class of men in our own country. It is but justice and good policy as far as the nature of the case will admit, to confine our favors to our own fellow-citizens, and let each in his turn enjoy an opportunity to profit by our bounty. In the bearings of the act before me upon these points I find ample reasons why it should not become a law.

It has been urged as an argument in favor of rechartering the present bank that the calling in its loans will produce great embarrassment and distress. The time allowed to close its concerns is ample, and if it has well managed its pressure will be light, and heavy only in case its management has been bad. If, therefore, it shall produce distress, the fault will be its own, and it would furnish a reason against renewing a power which has been so obviously abused. But will there ever be a time when this reason will be less powerful? To acknowledge its force is to admit that the bank ought to be perpetual, and as a consequence the present stockholders and those inheriting their rights as successors be established a privileged order, clothed both with great political power and enjoying immense pecuniary advantages from their connection with the Government.

The modifications of the existing charter proposed by this act are not such, in my view, as make it consistent with the rights of the States or the liberties of the people. The qualification of the right of the bank to hold real estate, the limitation of its power to establish branches, and the power reserved to Congress to forbid the circulation of small notes are restrictions comparatively of little value or importance. All the objectionable principles of the existing corporation, and most of its odious features, are retained without alleviation. . . .

In another of its bearings this provision is fraught with danger. Of the twenty-five directors of this bank five are chosen by the Government and twenty by the citizen stockholders. From all voice in these elections the foreign stockholders are excluded by the charter. In proportion, therefore, as the stock is transferred to foreign holders the extent of

suffrage in the choice of directors is curtailed. Already is almost a third of the stock in foreign hands and not represented in elections. It is constantly passing out of the country, and this act will accelerate its departure. The entire control of the institution would necessarily fall into the hands of a few citizen stockholders, and the ease with which the object would be accomplished would be a temptation to designing men to secure that control in their own hands by monopolizing the remaining stock. There is danger that a president and directors would then be able to elect themselves from year to year, and without responsibility or control manage the whole concerns of the bank during the existence of its charter. It is easy to conceive that great evils to our country and its institutions might flow from such a concentration of power in the hands of a few men irresponsible to the people.

Is there no danger to our liberty and independence in a bank that in its nature has so little to bind it to our country? The president of the bank has told us that most of the State banks exist by its forbearance. Should its influence become concentered, as it may under the operation of such an act as this, in the hands of a self-elected directory whose interests are identified with those of the foreign stockholders, will there not be cause to tremble for the purity of our elections in peace and for the independence of our country in war? Their power would be great whenever they might choose to exert it; but if this monopoly were regularly renewed every fifteen or twenty years on terms proposed by themselves, they might seldom in peace put forth their strength to influence elections or control the affairs of the nation. But if any private citizen or public functionary should interpose to curtail its powers or prevent a renewal of its privileges, it can not be doubted that he would be made to feel its influence.

Should the stock of the bank principally pass into the hands of the subjects of a foreign country, and we should unfortunately become involved in a war with that country, what would be our condition? Of the course which would be pursued by a bank almost wholly owned by the subjects of a foreign power, and managed by those whose interests, if not affections, would run in the same direction there can be no doubt. All its operations within would be in aid of the hostile fleets and armies without. Controlling our currency, receiving our public moneys, and holding thousands of our citizens in dependence, it would be more formidable and dangerous than the naval and military power of the enemy.

If we must have a bank with private stockholders, every consideration of sound policy and every impulse of American feeling admonishes that it should be *purely American*. Its stockholders should be composed exclusively of our own citizens, who at least ought to be friendly to our Government and willing to support it in times of difficulty and danger. So abundant is domestic capital that competition in subscribing for the stock of local banks has recently led almost to riots. To a bank exclusively of American stockholders, possessing the powers and privileges granted by this act, subscriptions for $200,000,000 could readily be obtained. Instead of sending abroad the stock of the bank in which the Government must deposit its funds and on which it must rely to sustain its credit in times of emergency, it would rather seem to be expedient to prohibit its sale to aliens under penalty of absolute forfeiture.

It is maintained by the advocates of the bank that its constitutionality in all its features ought to be considered as settled by precedent and by the decision of the Supreme Court. To this conclusion I can not assent. Mere precedent is a dangerous source of authority, and should not be regarded as deciding questions of constitutional power except where the acquiescence of the people and the States can be considered as well settled. So far from this being the case on this subject, an argument against the bank might be based on precedent. One Congress, in 1791, decided in favor of a bank; another, in 1811,

decided against it. One Congress in 1815, decided against a bank; another in 1816, decided in its favor. Prior to the present Congress, therefore, the precedents drawn from that source were equal. If we resort to the States, the expressions of legislative, judicial, and executive opinions against the bank have been probably to those in its favor as 4 to 1. There is nothing in precedent, therefore, which, if its authority were admitted, ought to weigh in favor of the act before me.

If the opinion of the Supreme Court covered the whole ground of this act, it ought not to control the coordinate authorities of this Government. The Congress, the Executive, and the Court must each for itself be guided by its own opinion of the Constitution. Each public officer who takes an oath to support the Constitution swears that he will support it as he understands it, and not as it is understood by others. It is as much the duty of the House of Representatives, of the Senate, and of the President to decide upon the constitutionality of any bill or resolution which may be presented to them for passage or approval as it is of the supreme judges when it may be brought before them for judicial decision. The opinion of the judges has no more authority over Congress than one opinion of Congress has over the judges, and on that point the President is independent of both. The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve. . . .

The bank is professedly established as an agent of the executive branch of the Government, and its constitutionality is maintained on that ground. Neither upon the propriety of present action nor upon the provisions of this act was the Executive consulted. It has had no opportunity to say that it neither needs nor wants an agent clothed with such powers and favored by such exemptions. There is nothing in its legitimate functions which makes it necessary or proper. Whatever interest or influence, whether public or private, has given birth to this act, it can not be found either in the wishes or necessities of the executive department, by which present action is deemed premature, and the powers conferred upon its agent not only unnecessary, but dangerous to the Government and country.

It is to be regretted that the rich and powerful too often bend the acts of government to their selfish purposes. Distinctions in society will always exist under every just government. Equality of talents, of education, or of wealth can not be produced by human institutions. In the full enjoyment of the gifts of Heaven and the fruits of superior industry, economy, and virtue, every man is equally entitled to protection by law; but when the laws undertake to add to these natural and just advantages artificial distinctions, to grant titles, gratuities, and exclusive privileges, to make the rich richer and the potent more powerful, the humble members of society—the farmers, mechanics, and laborers—who have neither the time nor the means of securing like favors to themselves, have a right to complain of the injustice of their Government. There are no necessary evils in government. Its evils exist only in its abuses. If it would confine itself to equal protection, and, as Heaven does its rains, shower its favors alike on the high and the low, the rich and the poor, it would be an unqualified blessing. In the act before me there seems to be a wide and unnecessary departure from these just principles.

Nor is our Government to be maintained or our Union preserved by invasions of the rights and powers of the several States. In thus attempting to make our General Government strong we make it weak. Its true strength consists in leaving individuals and States as much as possible to themselves—in making itself felt, not in its power, but in its beneficence; not in its control, but in its protection; not in binding the States more closely to the center, but leaving each more unobstructed in its proper orbit.

Experience should teach us wisdom. Most of the difficulties our Government now encounters and most of the dangers which impend over our Union have sprung from an abandonment of the legitimate objects of Government by our national legislation, and the adoption of such principles as are embodied in this act. Many of our rich men have not been content with equal protection and equal benefits, but have besought us to make them richer by act of Congress. By attempting to gratify their desires we have in the results of our legislation arrayed section against section, interest against interest, and man against man, in a fearful commotion which threatens to shake the foundations of our Union. It is time to pause in our career to review our principles, and if possible revive that devoted patriotism and spirit of compromise which distinguished the sages of the Revolution and the fathers of our Union. If we can not at once, in justice to interests vested under improvident legislation, make our Government what it ought to be, we can at least take a stand against all new grants of monopolies and exclusive privileges, against any prostitution of our Government to the advancement of the few at the expense of the many, and in favor of compromise and gradual reform in our code of laws and system of political economy.

ANDREW JACKSON

Note:From the Journals and debates of the Constitutional Convention and the ratification debates in the State Legislatures, it was almost universally agreed that the express purpose of their meetings was to put an end to paper money of any and all descriptions as a legal tender and to insure that the obligation of Contract would no longer be impaired or invaded by any Government.

A standard unit of value no longer exists. Paper money is not redeemable in any thing. Contracts between individuals lack integrity. German paper "Fiat" Money after WW 1 depreciated so fast that the employees would not accept their wages once a week. They demanded and spent their wages twice a day and re-negotiated their employment contract after each 1/2 day. If permitted to continue the same thing

and herds of the west are protected from the devastations of those destructive and numerous animals; the "crow certificates," the rewards of those who save the fields of the husbandman from the spoils of their worst enemies, are all receivable for taxes, and all are equally obnoxious to the exceptions taken to the certificates issued under the law of Missouri.

The consideration for the note which is the subject of this suit was a good and valuable consideration, and the note is binding on the parties to it by the express terms of the sixteenth section of the law. The note furnished the parties with the means of paying their taxes, and was a benefit to them. All the certificates have been redeemed by the State.

Congress is not authorized to issue bills of credit. The States may do all that is not prohibited, while Congress can do nothing which is not granted by the Constitution. Congress had no express authority to issue treasury notes, but they were issued. These notes were precisely like the Missouri certificates.

The treasury notes were not bills of credit; for they were not made, by the act under which they were issued, a legal tender. They were freely circulated throughout the United States without objections, and they were most useful instruments in the financial operations of the government during the last war.

This court has not jurisdiction of the case. It is not within the requirements of the twenty-fifth section of the Judiciary Act. The validity of the State law was not drawn in question before the courts of Missouri, and no decision was made in those courts upon the validity of the objection now set up under the Constitution of the United States.

The pleadings do not show that the law was drawn in question; they only deny the promise charged in the declaration. Upon the matters thus presented, and on no others, did the courts of Missouri decide.

Mr. Sheffey, in reply. The whole argument on the part of the State of Missouri in founded [*424 on the assumption that *the certificates are not bills of credit, because they are not made a legal tender.

The provision of the Constitution was introduced to prevent a mischief; one of the most fatal effects on the property of the citizens of the United States; and thus considered, it is to be construed liberally. A strict construction, and particularly one which would render it inoperative, or feeble in its influence, would not be justifiable.

The evils are the same, and the notes will circulate as freely and as extensively whether they are made a tender or not. Whatever paper promise is circulated on the credit of the State is a bill of credit, and is within the sense of the Constitution.

This provision in the Constitution was introduced to prevent the States from resorting to State necessity as an apology for the issue of paper. The States are not allowed to "coin money," and the object clearly was to prevent anything being made by the States which would serve as a circulating medium.

The word "emit" is a peculiar expression. The States may borrow money and give notes, but that is not coining money, nor is it emitting bills of credit; and so "wolf and crow scalp certificates" are only evidence that the counties in the States which authorize them owe so much money for meritorious and beneficial services.

It is denied that the power of the United States to issue bills of credit is the same which has been claimed by the State of Missouri under this law. It does not follow that because the United States may issue such bills the states may do so. The States are specially prohibited such issues by the Constitution.

The proposition which was made in the convention to give to Congress the power to issue bills of credit may have been rejected because that power had been already given in the power to coin money, and regulate its value. Congress has this power, as an incident, like the power to issue debentures; which is exercised as an incident to the power to regulate commerce.

Mr. Chief Justice MARSHALL deliver- [*425
ed the opinion of the court, *Justices* THOMPSON, JOHNSON, and MCLEAN dissenting:

This is a writ of error to a judgment rendered in the Court of Last Resort in the State of Missouri, affirming a judgment obtained by the State in one of its inferior courts against Hiram Craig and others on a promissory note.

The judgment is in these words: "And afterwards at a court," &c., "the parties came into court by their attorneys, and, neither party desiring a jury, the cause is submitted to the court; therefore, all and singular the matters and things being seen and heard by the court, it is found by them that the said defendants did assume upon themselves, in manner and form, as the plaintiff by her counsel alleged. And the court also find that the consideration for which the writing declared upon and the *assumpsit* was made was for the loan of loan-office certificates, loaned by the State at her loan-office at Chariton; which certificates were issued and the loan made in the manner pointed out by an Act of the Legislature of the said State of Missouri, approved the 27th day of June, 1821, entitled 'An Act for the establishment of loan-offices,' and the acts amendatory and supplementary thereto: and the court do further find that the plaintiff has sustained damages by reason of the nonperformance of the assumptions and undertakings of them, the said defendants, to the sum of two hundred and thirty-seven dollars and seventy-nine cents, and do assess her damages to that sum. Therefore, it is considered," &c.

The first inquiry is into the jurisdiction of the court.

The twenty-fifth section of the Judicial Act declares "that a final judgment or decree in any suit in the highest court of law or equity of a State, in which a decision in the suit could be had, where is drawn in question" "the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of such their validity," "may be re-examined, and reversed or affirmed in the Supreme Court of the United States."

To give jurisdiction to this court, it must appear in the *record, 1. That the valid- [*426
ity of a statute of the State of Missouri was drawn in question on the ground of its being

repugnant to the Constitution of the United States. 2. That the decision was in favor of its validity.

1. To determine whether the validity of a statute of the State was drawn in question, it will be proper to inspect the pleadings in the cause, as well as the judgment of the court.

The declaration is on a promissory note, dated on the 1st day of August, 1822, promising to pay to the State of Missouri on the 1st day of November, 1822, at the loan-office in Charlton, the sum of one hundred and ninety-nine dollars ninety-nine cents, and the two per cent. per annum, the interest accruing on the certificates borrowed from the 1st of October, 1821. This note is obviously given for certificates loaned under the Act "for the establishment of loan-offices." That act directs that loans on personal securities shall be made of sums less than two hundred dollars. This note is for one hundred and ninety-nine dollars ninety-nine cents. The act directs that the certificates issued by the State shall carry two per cent. interest from the date, which interest shall be calculated in the amount of the loan. The note promises to repay the sum, with the two per cent. interest accruing on the certificates borrowed, from the 1st day of October, 1821. It cannot be doubted that the declaration is on a note given in pursuance of the act which has been mentioned.

Neither can it be doubted that the plea of *non assumpsit* allowed the defendants to draw into question at the trial the validity of the consideration on which the note was given. Everything which disaffirms the contract, everything which shows it to be void, may be given in evidence on the general issue in an action of *assumpsit*. The defendants, therefore, were at liberty to question the validity of the consideration which was the foundation of the contract, and the constitutionality of the law in which it originated.

Have they done so?

Had the cause been tried before a jury, the regular course would have been to move the court to instruct the jury that the act of Assembly in pursuance of which the note was given was repugnant to the Constitution of the 427*] United States, *and to except to the charge of the judges if in favor of its validity: or a special verdict might have been found by the jury stating the act of Assembly, the execution of the note in payment of certificates loaned in pursuance of that act, and referring its validity to the court. The one course or the other would have shown that the validity of the act of Assembly was drawn into question on the ground of its repugnancy to the Constitution, and that the decision of the court was in favor of its validity. But the one course or the other would have required both a court and jury. Neither could be pursued where the office of the jury was performed by the court. In such a case, the obvious substitute for an instruction to the jury, or a special verdict, is a statement by the court of the points in controversy, on which its judgment is founded. This may not be the usual mode of proceeding, but it is an obvious mode; and if the court of the State has adopted it, this court cannot give up substance for form.

The arguments of counsel cannot be spread on the record. The points urged in argument cannot appear. But the motives stated by the court on the record for its judgment, and which form a part of the judgment itself, must be considered as exhibiting the points to which those arguments were directed, and the judgment as showing the decision of the court upon those points. There was no jury to find the facts and refer the law to the court; but if the court, which was substituted for the jury, has found the facts on which its judgment was rendered, its finding must be equivalent to the finding of a jury. Has the court, then, substituting itself for a jury, placed facts upon the record which, connected with the pleadings, show that the act in pursuance of which this note was executed was drawn into question on the ground of its repugnancy to the Constitution?

After finding that the defendants did assume upon themselves, &c., the court proceeds to find "that the consideration for which the writing declared upon and the *assumpsit* was made was the loan of loan-office certificates loaned by the State at her loan-office at Charlton; which certificates were issued and the loan made in the manner pointed out *by an [*428 Act of the Legislature of the said State of Missouri, approved the 27th of June, 1821, entitled," &c.

Why did not the court stop immediately after the usual finding that the defendants assumed upon themselves? Why proceed to find that the note was given for loan-office certificates issued under the act contended to be unconstitutional, and loaned in pursuance of that act, if the matter thus found was irrelevant to the question they were to decide?

Suppose the statement made by the court to be contained in the verdict of a jury which concludes with referring to the court the validity of the note thus taken in pursuance of the act; would not such a verdict bring the constitutionality of the act as well as its construction directly before the court? We think it would: such a verdict would find that the consideration of the note was loan-office certificates issued and loaned in the manner prescribed by the act. What could be referred to the court by such a verdict but the obligation of the law? It finds that the certificates for which the note was given were issued in pursuance of the act, and that the contract was made in conformity with it. Admit the obligation of the act, and the verdict is for the plaintiff; deny its obligation, and the verdict is for the defendant. On what ground can its obligation be contested, but its repugnancy to the Constitution of the United States? No other is suggested. At any rate, it is open to that objection. If it be in truth repugnant to the Constitution of the United States, that repugnancy might have been urged in the State, and may consequently be urged in this court; since it is presented by the facts in the record, which were found by the court that tried the cause.

It is impossible to doubt that, in point of fact, the constitutionality of the act under which the certificates were issued that formed the consideration of this note, constituted the only real question made by the parties, and the only real question decided by the court. But the record is to be inspected with judicial eyes; and, as it does not state in express terms that this point was made, it has been contended that this court

cannot assume the fact that it was made or determined in the tribunal of the State.

420*] *The record shows distinctly that this point existed, and that no other did exist; the special statement of facts made by the court as exhibiting the foundation of its judgment contains this point and no other. The record shows clearly that the cause did depend, and must depend, on this point alone. If, in such a case, the mere omission of the court of Missouri to say, in terms, that the act of the Legislature was constitutional, withdraws that point from the cause, or must close the judicial eyes of the appellate tribunal upon it, nothing can be more obvious than that the provisions of the Constitution and of an act of Congress may be always evaded; and may be often, as we think they would be in this case, unintentionally defeated.

But this question has frequently occurred, and has, we think, been frequently decided in this court. *Smith* v. *The State of Maryland* (6 Cranch, 286), *Martin* v. *Hunter's Lessee* (1 Wheat., 355), *Miller* v. *Nicholls* (4 Wheat., 311), *Williams* v. *Norris* (12 Wheat., 117), *Wilson et al.* v. *The Black Bird Creek Marsh Company* (2 Peters, 245), and *Harris* v. *Dennie*, in this term, are all, we think, expressly in point. There has been perfect uniformity in the construction given by this court to the twenty-fifth section of the Judicial Act. That construction is, that it is not necessary to state, in terms, on the record, that the Constitution or a treaty or law of the United States has been drawn in question, or the validity of a State law, on the ground of its repugnancy to the Constitution. It is sufficient if the record shows that the Constitution, or a treaty or law of the United States must have been construed, or that the constitutionality of a State law must have been questioned, and the decision has been in favor of the party claiming under such law.

We think, then, that the facts stated on the record presented the question of repugnancy between the Constitution of the United States and the act of Missouri to the court for its decision. If it was presented, we are to inquire,

2. Was the decision of the court in favor of its validity?

The judgment in favor of the plaintiff is a decision in favor of the validity of the contract, 430*] and, consequently, of *the validity of the law by the authority of which the contract was made.

The case is, we think, within the twenty-fifth section of the Judicial Act, and, consequently, within the jurisdiction of this court.

This brings us to the great question in the cause: Is the act of the Legislature of Missouri repugnant to the Constitution of the United States?

The counsel for the plaintiffs in error maintain that it is repugnant to the Constitution, because its object is the emission of bills of credit contrary to the express prohibition contained in the tenth section of the first article.

The Act under the authority of which the certificates loaned to the plaintiffs in error were issued was passed on the 26th of June, 1821, and is entitled "An Act for the establishment of loan-offices." The provisions that are material to the present inquiry are comprehended in the third, thirteenth, fifteenth, sixteenth, twenty-third, and twenty-fourth sections of the act, which are in these words:

Section the third enacts "that the auditor of public accounts and treasurer, under the direction of the governor, shall, and they are hereby required to issue certificates, signed by the said auditor and treasurer, to the amount of two hundred thousand dollars, of denominations not exceeding ten dollars, nor less than fifty cents (to bear such devices as they may deem the most safe), in the following form, to wit: "This certificate shall be receivable at the treasury, or any of the loan-offices of the State of Missouri, in the discharge of taxes or debts due to the State, for the sum of $———, with interest for the same, at the rate of two per centum per annum from this date, the——— day of ——— 182 ."

The thirteenth section declares "that the certificates of the said loan-office shall be receivable at the treasury of the State, and by all tax-gatherers and other public officers, in payment of taxes or other moneys now due to the State or to any county or town therein, and the said certificates shall also be received by all officers, civil and military, in the State, in the discharge of salaries and fees of office."

The fifteenth section provides "that the commissioners *of the said loan-offices [*431 shall have power to make loans of the said certificates to citizens of this State, residing within their respective districts only, and in each district a proportion shall be loaned to the citizens of each county therein, according to the number thereof," &c.

Section sixteenth. "That the said commissioners of each of the said offices are further authorized to make loans on personal securities by them deemed good and sufficient for sums less than two hundred dollars; which securities shall be jointly and severally bound for the payment of the amount so loaned, with interest thereon," &c.

Section twenty-third. "That the General Assembly shall, as soon as may be, cause the salt springs and lands attached thereto, given by Congress to this State, to be leased out, and it shall always be the fundamental condition in such leases that the lessee or lessees shall receive the certificates hereby required to be issued in payment for salt, at a price not exceeding that which may be prescribed by law; and all the proceeds of the said salt springs, the interest accruing to the State, and all estates purchased by officers of the said several offices under the provisions of this act, and all the debts now due or hereafter to be due to this State, are hereby pledged and constituted a fund for the redemption of the certificates hereby required to be issued, and the faith of the State is hereby also pledged for the same purpose."

Section twenty-fourth. "That it shall be the duty of the said auditor and treasurer to withdraw annually from circulation one-tenth part of the certificates which are hereby required to be issued," &c.

The clause in the Consitution which this act is supposed to violate is in these words: "No State shall" "emit bills of credit."

What is a bill of credit? What did the Constitution mean to forbid?

In its enlarged, and perhaps its literal sense, the term "bill of credit" may comprehend any instrument by which a State engages to pay money at a future day; thus including a certificate given for money borrowed. But the lan-
432*] guage *of the Constitution itself, and the mischief to be prevented, which we know from the history of our country, equally limit the interpretation of the terms. The word "emit" is never employed in describing those contracts by which a State binds itself to pay money at a future day for services actually received, or for money borrowed for present use; nor are instruments executed for such purposes, in common language, denominated "bills of credit." To "emit bills of credit," conveys to the mind the idea of issuing paper intended to circulate through the community for its ordinary purposes, as money, which paper is redeemable at a future day. This is the sense in which the terms have been always understood.

At a very early period of our colonial history the attempt to supply the want of the precious metals by a paper medium was made to a considerable extent, and the bills emited for this purpose have been frequently denominated bills of credit. During the war of our revolution we were driven to this expedient, and necessity compelled us to use it to a most fearful extent. The term has acquired an appropriate meaning; and "bills of credit" signify a paper medium, intended to circulate between individuals and between government and individuals, for the ordinary purposes of society. Such a medium has been always liable to considerable fluctuation. Its value is continually changing; and these changes, often great and sudden, expose individuals to immense loss, are the sources of ruinous speculations, and destroy all confidence between man and man. To cut up this mischief by the roots, a mischief which was felt through the United States, and which deeply affected the interest and prosperity of all, the people declared in their Constitution that no State should emit bills of credit. If the prohibition means anything, if the words are not empty sounds, it must comprehend the emission of any paper medium by a State government for the purpose of common circulation.

What is the character of the certificates issued by authority of the act under consideration? What office are they to perform? Certificates signed by the auditor and treasurer of the State are to be issued by those officers to
433*] the *amount of two hundred thousand dollars, of denominations not exceeding ten dollars, nor less than fifty cents. The paper purports on its face to be receivable at the treasury, or at any loan-office of the State of Missouri, in discharge of taxes or debts due to the State.

The law makes them receivable in discharge of all taxes or debts due to the State, or any county or town therein; and of all salaries and fees of office to all officers, civil and military, within the State, and for salt sold by the lessees of the public salt-works. It also pledges the faith and funds of the State for their redemption.

It seems impossible to doubt the intention of the Legislature in passing this act, or to mistake the character of these certificates, or the office they were to perform. The denominations of the bills—from ten dollars to fifty cents—fitted them for the purpose of ordinary circulation and their reception in payment of taxes, and debts to the government and to corporations, and of salaries and fees, would give them currency. They were to be put into circulation; that is, emitted, by the government. In addition to all these evidences of an intention to make these certificates the ordinary circulating medium of the country, the law speaks of them in this character, and directs the auditor and treasurer to withdraw annually one-tenth of them from circulation. Had they been termed "bills of credit," instead of "certificates," nothing would have been wanting to bring them within the prohibitory words of the Constitution.

And can this make any real difference? Is the proposition to be maintained that the Constitution meant to prohibit names and not things? That a very important act, big with great and ruinous mischief, which is expressly forbidden by words most appropriate for its description, may be performed by the substitution of a name? That the Constitution, in one of its most important provisions, may be openly evaded by giving a new name to an old thing? We cannot think so. We think the certificates emitted under the authority of this act are as entirely bills of credit as if they had been so denominated in the act itself.

But it is contended that though these certificates should be *deemed bills of credit, [*434 according to the common acceptation of the term, they are not so in the sense of the Constitution, because they are not made a legal tender.

The Constitution itself furnishes no countenance to this distinction. The prohibition is general. It extends to all bills of credit, not to bills of a particular description. That tribunal must be bold indeed, which, without the aid of other explanatory words, could venture on this construction. It is the less admissible in this case, because the same clause of the Constitution contains a substantive prohibition to the enactment of tender laws. The Constitution, therefore, considers the emission of bills of credit and the enactment of tender laws as distinct operations, independent of each other, which may be separately performed. Both are forbidden. To sustain the one because it is not also the other; to say that bills of credit may be emitted if they be not made a tender in payment of debts, is, in effect, to expunge that distinct independent prohibition, and to read the clause as if it had been entirely omitted. We are not at liberty to do this.

The history of paper money has been referred to for the purpose of showing that its great mischief consists in being made a tender, and that, therefore, the general words of the Constitution may be restrained to a particular intent.

Was it even true that the evils of paper money resulted solely from the quality of its being made a tender, this court would not feel itself authorized to disregard the plain meaning of words, in search of a conjectural intent to which we are not conducted by the language of any part of the instrument. But we do not think that the history of our country proves

either, that being made a tender in payment of debts is an essential quality of bills of credit, or the only mischief resulting from them. It may, indeed, be the most pernicious; but that will not authorize a court to convert a general into a particular prohibition.

We learn from Hutchinson's History of Massachusetts (Vol. I., p. 402), that bills of credit were emitted for the first time in that colony in 1690. An army returning unexpectedly from an expedition against Canada (which had proved as disastrous as the plan was magnifi-
435*] cent), found the government *totally unprepared to meet their claims. Bills of credit were resorted to for relief from this embarrassment. They do not appear to have been made a tender, but they were not on that account the less bills of credit, nor were they absolutely harmless. The emission, however, not being considerable, and the bills being soon redeemed, the experiment would have been productive of not much mischief had it not been followed by repeated emissions to a much larger amount. The subsequent history of Massachusetts abounds with proofs of the evils with which paper money is fraught, whether it be or be not a legal tender.

Paper money was also issued in other colonies, both in the north and south; and whether made a tender or not, was productive of evils in proportion to the quantity emitted. In the war which commenced in America in 1755, Virginia issued paper money at several successive sessions under the appellation of treasury notes. This was made a tender. Emissions were afterwards made in 1769, in 1771, and in 1773. These were not made a tender, but they circulated together; were equally bills of credit, and were productive of the same effects. In 1775 a considerable emission was made for the purposes of the war. The bills were declared to be current, but were not made a tender. In 1776, an additional emission was made, and the bills were declared to be a tender. The bills of 1775 and 1776 circulated together, were equally bills of credit, and were productive of the same consequences.

Congress emitted bills of credit to a large amount, and did not, perhaps could not, make them a legal tender. This power resided in the States. In May, 1777, the Legislature of Virginia passed an Act for the first time making the bills of credit issued under the authority of Congress a tender so far as to extinguish interest. It was not until March, 1781, that Virginia passed an Act making all the bills of credit which had been emitted by Congress, and all which had been emitted by the State, a legal tender in payment of debts. Yet they were, in every sense of the word, bills of credit previous to that time, and were productive of all the consequences of paper money. We cannot, then, assent to the proposition
436*] *that the history of our country furnishes any just argument in favor of that restricted construction of the Constitution for which the counsel for the defendant in error contends.

The certificates for which this note was given, being in truth "bills of credit" in the sense of the Constitution, we are brought to the inquiry:

Is the note valid of which they form the consideration?

It has been long settled that a promise made in consideration of an act which is forbidden by law is void. It will not be questioned that an act forbidden by the Constitution of the United States, which is the supreme law, is against law. Now, the Constitution forbids a State to "emit bills of credit." The loan of these certificates is the very act which is forbidden. It is not the making of them while they lie in the loan-offices, but the issuing of them, the putting them into circulation, which is the act of emission—the act that is forbidden by the Constitution. The consideration of this note is the emission of bills of credit by the State. The very act which constitutes the consideration is the act of emitting bills of credit in the mode prescribed by the law of Missouri, which act is prohibited by the Constitution of the United States.

Cases which we cannot distinguish from this in principle have been decided in State courts of great respectability, and in this court. In the case of *The Springfield Bank* v. *Merrick et al.* (14 Mass. Rep., 322), a note was made payable in certain bills, the loaning or negotiating of which was prohibited by statute, inflicting a penalty for its violation. The note was held to be void. Had this note been made in consideration of these bills, instead of being made payable in them, it would not have been less repugnant to the statute; and would consequently have been equally void.

In *Hunt* v. *Knickerbocker* (5 Johns. Rep., 327), it was decided that an agreement for the sale of tickets in a lottery not authorized by the Legislature of the State, although instituted under the authority of the government of another State, is contrary to the spirit and policy of the law, and void. The consideration on which the agreement was founded being illegal, the agreement was void. The books, both of *Massachusetts and New York, [*437 abound with cases to the same effect. They turn upon the question whether the particular case is within the principle, not on the principle itself. It has never been doubted that a note given on a consideration which is prohibited by law, is void. Had the issuing or circulation of certificates of this or of any other description been prohibited by a statute of Missouri, could a suit have been sustained in the courts of that State on a note given in consideration of the prohibited certificates? If it could not, are the prohibitions of the Constitution to be held less sacred than those of a State law?

It had been determined, independently of the acts of Congress on that subject, that sailing under the license of an enemy is illegal. *Patton* v. *Nicholson* (3 Wheat., 204) was a suit brought in one of the courts of this district on a note given by Nicholson to Patton, both citizens of the United States, for a British license. The United States were then at war with Great Britian, but the license was procured without any intercourse with the enemy. The judgment of the Circuit Court was in favor of the defendant, and the plaintiff sued out a writ of error. The counsel for the defendant in error was stopped, the court declaring that the use of a license from the enemy being unlawful, one citizen had no right to purchase from or sell to another such

a license, to be used on board an American vessel. The consideration for which the note was given being unlawful, it followed of course that the note was void.

A majority of the court feels constrained to say that the consideration on which the note in this case was given is against the highest law of the land, and that the note itself is utterly void. In rendering judgment for the plaintiff, the court for the State of Missouri decided in favor of the validity of a law which is repugnant to the Constitution of the United States.

In the argument we have been reminded by one side of the dignity of a sovereign state; of the humiliation of her submitting herself to this tribunal; of the dangers which may result from inflicting a wound on that dignity: by the other, of the still superior dignity of the 438*] people of the United States, *who have spoken their will in terms which we cannot misunderstand.

To these admonitions we can only answer, that if the exercise of that jurisdiction which has been imposed upon us by the Constitution and laws of the United States shall be calculated to bring on those dangers which have been indicated, or if it shall be indispensable to the preservation of the Union, and consequently, of the independence and liberty of these States, these are considerations which address themselves to those departments which may with perfect propriety be influenced by them. This department can listen only to the mandates of law, and can tread only that path which is marked out by duty.

The judgment of the Supreme Court of the State of Missouri for the First Judicial District is reversed, and the cause remanded, with directions to enter judgment for the defendants.

Mr. Justice JOHNSON.

This is a case of a new impression and intrinsic difficulty, and brings up questions of the most vital importance to the interests of this Union.

The declaration is in the ordinary form, and the part of the record of the State court which raises the questions before us, is expressed in these words: "At a court, &c., came the parties, &c., and neither party requiring a jury, the cause is submitted to the court; therefore, all and singular, the matters and things, and evidences, being seen and heard by the court, it is found by them that the said defendants did assume upon themselves in the manner and form as the plaintiffs by their counsel allege; and the court also find that the consideration for which the writing declared upon and the *assumpsit* was made, was for the loan of loan-office certificates, loaned by the State at her loan-office at Chariton; which certificates were issued and the loan made in the manner pointed out by an Act of the Legislature of Missouri, approved, &c. And the court do further find that the plaintiff hath sustained damages by reason of the nonperformance of the assumptions and undertakings aforesaid, of them the said de-439*] fendants, *to the sum, &c.; and therefore it is considered that the plaintiff recover,"

In order to understand the case, it may be proper to premise that the territory now occupied by the State of Missouri having been subject to its Spanish government, was at the time of its cession governed by the civil law as modified by the Spanish government; that it so continued, subject to certain modifications introduced by act of Congress, until it became a State; when the people incorporated into their institutions as much of the civil law as they thought proper: and hence, their courts of justice now partake of a mixed character, perhaps combining all the advantages of the civil and common law forms. By one of the provisions of this law the trial by jury is forced upon no one; is yet open to all, and when not demanded, the court acts the double part of jury and judge.

It is obvious, therefore, that the matter certified from the record of the State court before recited is in nature of a special verdict, and the judgment of the court is upon that verdict, and in this light it shall be examined.

The purport of the finding is that the vote declared upon was given "for a loan of loan-office certificates loaned by the State under certain State acts, the caption of which is given."

Some doubts were thrown out in the argument whether we could take notice of the State laws thus found without being set out at length; but in this there can be no question; whatever laws that court would take notice of, we must of necessity receive and consider, as if fully set out.

By the acts of the State designated by the court in their finding, the officers of the treasury department of the State were authorized to create certificates of small denominations—from ten dollars down to fifty cents—bearing interest at two per centum per annum, and to loan these certificates to individuals; taking in lieu thereof promissory notes, payable not exceeding one year from the date, with not more than six per cent. interest; and redeemable by installments not exceeding ten per cent. every six months, giving mortgages of landed property for security.

These certificates were in this form: [*440 "This certificate shall be receivable at the treasury, or any of the loan-offices of the State of Missouri, in the discharge of taxes or debts due the State, for the sum of $———, with interest for the same, at the rate of two per centum per annum from this date, the ——— day of ———, 182 ;" which form is set out in and prescribed by the act designated in the finding of the court.

This writ of error is sued out under the twenty-fifth section of the Judiciary Act, upon the supposition that the State act is in violation of that provision in the Constitution which prohibits the States from emitting bills of credit; and that the note declared on is void, as having been taken for an illegal consideration, or without consideration.

As a preliminary question, it has been argued that the case is not within the provisions of the twenty-fifth section; because it does not appear from anything on the record that this ground of defense was specially set up in the courts of the State. But this we consider no

ADDITIONAL MEMORANDUM

At the trial on December 7,1968 John R. Elsom's Book, "LIGHTNING OVER THE TREASURY" was recieved in evidence. See included herein pages 11 thru 15 for the origin of this Bank racket. Also included is Jefferson's objection to the First Bank of the United States and his reasons and also Andrew Jackson's Veto of the Second Bank of the United States.

Whether it is Constitutional for the Gov. of the U.S. to incorporate a Bank, this Court need not pass upon, for it is immaterial to the issues here involved. Such a Corporation certainly cannot have any more rights than a natural person. The emission of Bills of Credit upon their Books, without consideration and the Issuance of Federal Reserve Notes without consideration to circulate as a legal tender for the payment of debts is not permitted, expressly or impliedly by the Constitution of the United States. Paper, whether money or not, is always illegal unless it is fully representative of some material commodity.

The issuance of a paper money without backing by the Banks is the same as if a grain warehouseman were to issue Warehouse Receipts for grain that he did not have. There must be a full representative consideration behind the paper or it is void as premised in fraud. No rights can be acquired by fraud. The law does not sanction an intentional wrong to the Citizen either in War or in Peace.

February 6,1969

Martin V. Mahoney

Martin V. Mahoney
Justice of the Peace
Credit River Township
Scott County,Minnesota

AFFIDAVIT OF MAILING

STATE OF MINNESOTA

COUNTY OF SCOTT

William Wildanger, being first sworn, deposes and states that on behalf of Jerome Daly on February 26,1969 he served the annexed Findings of Fact Conclusions of Law and Judgment ~~Notice of Appeal~~ and Notice of Appeal dated of Feb. 6,1969 Feb. 25,1969 on all other parties hereto in this action by mailing to them or their respective attorneys a copy thereof, inclosed in an envelope, postage prepaid, by depositing the same in the post office at Savage, Minnesota, directed to them or their attorneys at their last known address as follows:

Theordore R. Mellby
Mellby and McGuire
Lawyers
Montgomery,Minnesota

William Wildanger

Subscribed and sworn to
before me this 26th
day of February
1969

Jerome Daly

Jerome Daly, Notary Public
Dakota County, Minn.
My Commission expires January 15, 1973

STATE OF MINNESOTA — FIRST JUDICIAL DISTRICT

COUNTY OF DAKOTA — IN DISTRICT COURT

First National Bank of Montgomery, Plaintiff,

vs. NOTICE OF APPEAL File No. 19144

Jerome Daly Defendant.

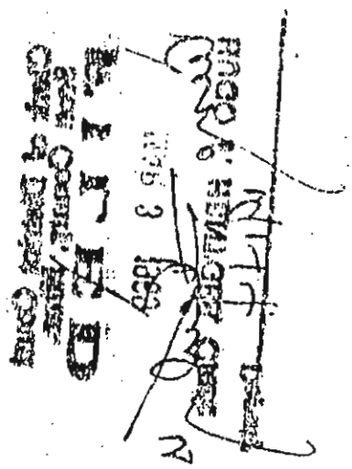
TO: Plaintiff above named and to its Attorney Theodore R. Mellby

Sir:

You will please take Notice that the Defendant, Jerome Daly hereby Appeals to the Supreme Court of the State of Minnesota from the Order of the above District Court dated January 30,1969 which Order was filed and entered in the office of the Clerk of the District Court on February 3,1969, Ordering Martin V. Mahoney, Justice of the Peace, Credit River Township, Scott County, Minnesota to make return on Appeal.

Dated February 25,1969.

Jerome Daly
Attorney for Himsely
28 East Minnesota Street
Savage,Minnesota



McGUIRE and MELLBY
ATTORNEYS-AT-LAW
Montgomery, Minnesota 56069

MICHAEL E. McGUIRE
THEODORE R. MELLBY

TELEPHONE 364-7327

September 3, 1969

Hon. Arlo E. Haering
Judge of District Court
Waconia, Minnesota

In re: First National Bank of Montgomery
-vs- Jerome Daly

Dear Judge Haering:

You previously suggested that I obtain a supplemental return to the Writ of Attachments served by the Deputy Sheriff of Scott County on Justice Mahoney and Jerome Daly in the above identified matter. I have forwarded said supplemental return to the Clerk of District Court in Shakopee for filing. I am enclosing for your information a photo-static copy of said supplemental return.

The last time I talked to you over the telephone, you indicated that you would issue an Order upon learning of the disposition by the Minnesota Supreme Court of the Contempt Hearing it held involving Justice Mahoney and Jerome Daly. I was informed yesterday by the Sheriff of Scott County that Justice Mahoney died on Sunday, August 24, 1969.

As the matter presently stands, the return of the Ramsey County Sheriff to the Writ of Attachment indicates that Wm. E. Drexler does not have the Justice Court file in his possession. The return of the Scott County Sheriff to said Writ of Attachment indicates that the Justice Court file is in the possession of Jerome Daly. Based on this information, I believe the District Court is in a position to order Jerome Daly to make the return on said file within the next few days. In the event the defendant does not comply with said order, plaintiff will be in a position to obtain certified copies of its foreclosure record and move for summary judgment.

I would appreciate whatever immediate consideration you can give this matter inasmuch as my client has been deprived of possession of said property since July of 1968.

If you have any qeustions concerning this matter, please contact my office.

Very truly ~~yours~~,

Theodore R. Mellby

THM:wvf
Enclosure

McGUIRE and MELLBY
ATTORNEYS-AT-LAW
Montgomery, Minnesota 56069

MICHAEL E. McGUIRE
THEODORE R. MELLBY

TELEPHONE 364-7327

September 3, 1969

Mr. Hugo P. Hentges
Clerk ofDistrict Court
Shakopee, Minnesota 55379

In re: First National Bank of Montgomery
-vs- Jerome Daly

Dear Mr. Hentges:

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McGUIRE and MELLBY

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TELEPHONE 364-7327

August 29, 1969

Mr. Hugo P. Hentges
Clerk of District Court
Shakopee, Minnesota

In re: First National Bank of Montgomery -vs- Daly

Dear Mr. Hentges:

Enclosed herein please find Counter-Affidavit together with affidavit of service by mail ~~in connection~~ with the above entitled matter. Please file these papers.

Very truly yours,

Theodore R. Mellby

Theodore R. Mellby

TRM:wvf
Enclosure

mailed to Judge Keeney 9-2-69

FORM A

HUGO P. HENTGES
CLERK OF DISTRICT COURT
Scott County

Shakopee, Minn. ~~Sept~~ 8-4 1969

TO Hon. Arlo E. Haering
Judge of District Court
Glencoe, Minnesota

Dear Judge Haering:

Re: 19144 Montgomery Bank -vs-
Jerome Daly

Notice of Motion and Motion to be heard Sept. 5, 1969 enclosed herewith.

Will you please put these papers in the file which you have. Thank you.

Sincerely

~~Deputy~~ Clerk

McGUIRE and MELLBY
ATTORNEYS-AT-LAW
Montgomery, Minnesota 56069

MICHAEL E. McGUIRE
THEODORE R. MELLBY

TELEPHONE 364-7327

July 31, 1969

Mr. Hugo P. Hentges
Clerk of District Court
Shakopee, Minnesota 55379

In re: First National Bank of Montgomery
-vs- Jerome Daly

Dear Hugo:

Enclosed herein please find Writ of Attachment and the Ramsey County Sheriff's return thereof. Please file.

The Sheriff of Scott County should have made a similar return and I would appreciate it very much if you would review the file and be sure that such a return has been made.

Very truly yours,

Theodore R. Mellby

Theodore R. Mellby

TRM:wvf
Enclosure

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Shakopee, Minnesota 55379

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Shakopee, Minnesota

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TRM:wvf
Enclosure

mailed to Judge Hearing 9-2-69

FORM A

HUGO P. HENTGES
CLERK OF DISTRICT COURT
Scott County

Shakopee, Minn. 8-4-69 1969

TO Hon. Arlo E. Haering
Judge of District Court
Glencoe, Minnesota

Dear Judge Haering:

Re: 19144 Montgomery Bank -vs-
Jerome Daly

Notice of Motion and Motion to be heard Sept. 5, 1969 enclosed herewith.

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Sincerely

Clerk ~~Deputy Clerk~~

McGUIRE and MELLBY
ATTORNEYS-AT-LAW
Montgomery, Minnesota 56069

MICHAEL E. McGUIRE
THEODORE R. MELLBY

TELEPHONE 364-7327

July 31, 1969

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Clerk of District Court
Shakopee, Minnesota 55379

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-vs- Jerome Daly

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Enclosure

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ATTORNEYS-AT-LAW
Montgomery, Minnesota 56069

MICHAEL E. McGUIRE
THEODORE R. MELLBY

TELEPHONE 364-7327

July 1, 1969

Honorable Arlo E. Haering
Judge of District Court
Glencoe, Minnesota

In re: First National Bank of Montgomery -vs- Jerome Daly

Dear Judge Haering:

Upon returning to the office I researched the issues raised by opposing counsel on June 27, 1969

The authority cited by opposing counsel did not support his position that the District Court had no jurisdiction. M.S.A. Sections 532.43 and 532.44 were neither material nor relevant to the courts jurisdiction. M.S.A. 532.37 states, "This chapter shall not apply to actions of forcible entry and detainer."

Opposing counsel objected on the grounds that the court had no jurisdiction over the person of Justice Mahoney. Justice Mahoney and Jerome Daly made a general appearance when plaintiff moved for the order compelling the return and they did not object to the jurisdiction of the court at that time. As a result of said silence an objection based on no jurisdiction over the person was waived R.C.P. 12.08 (1).

Opposing counsel also objected to the proceedings on the basis that the court had no jurisdictionof the subject matter. The subject matter involved the failure of a justice to make his return on appeal to the District Court. M.S.A. 566.14, in addition to being the statute opposing counsel should have cited, indicates the District Court has jurisdictiin of both the subject matter and the justice when he refused to make a return on appeal. The reason for the refusal and the improper conduct of an inferior tribunal were at issue.

M.S.A. 566.14 states, "The court may compel the justice, by attachment, to make or amend any return which is withheld or improperly or insufficiently made. Plaintiff did not proceed by attachment, but it is essential to note that the statute does not make attachment the sole and exclusive manner in which to compel a justice to make or amend any return. Interpretation of this or any other appeal statute maust be governed by the courts comment in City of St. Paul v. Sutherland, 132 N.W. 2d 280,281 (1964) that"These statutes

are remedial in nature and should be liberally construed to avoid forfeiting the appeal rights they purport to confer.

Statutory authority for the order of the District Court compelling Justice Mahoney to make his return on appeal can also be found the Minnesota Statutes, Chap. 588. The provisions of M.S.A. 588.01 Subdivision 3 (1), (3), (10), and 588.02 provide the court with jurisdiction over a justice who misbehaves in office or violates his duty. Justice Mahoney's conduct amounts to nothing less than neglect or violation of his duty to make return on appeal.

Very truly yours,

Theodore R. Mellby

TRM:avt

Judge
First Judicial District

Harold E. Flynn
Shakopee, Minnesota

Telephone
445-2822

June 30, 1969

Honorable Arlo E. Haering
Judge of the District Court
First Judicial District
Waconia, Minnesota 55387

Dear Judge Haering:

Enclosed you will find a letter from John C. Jackson, Specialist in Fiscal and Financial Economics, Economics Division, of the Library of Congress, Washington, D. C., 20540, and in view of the fact that you have an order to show cause under consideration in regard to this matter and you have the files, I am sending the letter along to you.

May I suggest that perhaps you could have your court reporter make photostatic copies of the pleadings and any other material in the files and send them along direct to John C. Jackson in Washington, D. C.

With kind personal regards, I remain

Yours very sincerely,

Harold E. Flynn

HEF/ovw

June 30, 1969

Mr. John C. Jackson
Specialist in Fiscal and
Financial Economics
Economics Division
Library of Congress
Washington, D. C. 20540

Dear Mr. Jackson:

I am in receipt of your letter advising with reference to a case involving Jerome Daly, an Attorney at Law at Savage, Minnesota, and for your information, there is an order to show cause under consideration by Judge Arlo E. Haering of Waconia, Minnesota, in regard to this matter.

I am therefore sending your letter along to Judge Haering and undoubtedly you will hear direct from him.

Yours very truly,

Harold E. Flynn

HEF/ovw

THE LIBRARY OF CONGRESS
WASHINGTON, D. C. 20540

LEGISLATIVE REFERENCE SERVICE

June 23, 1969

District Judge
First Judicial District
120 West Fourth Street
Shakopee, Scott County, Minnesota

Dear Sir:

Our attention has been directed to a case involving Jerome Daly, reported to be an attorney in Savage, and an unnamed bank, the December 1968 decision on which, by Justice of the Peace Martin V. Mahoney of Credit River Township, is alleged to have been appealed to the District Court of Minnesota. The case arose out of default and foreclosure on a mortgage.

The account which has been given us of the case and of the appeal seems unclear and incomplete.

Could you indicate the present status of this case?

Such information as you can supply will be transmitted to a Member of Congress for his use.

With thanks for your assistance.

Sincerely yours,

John C. Jackson
Specialist in Fiscal and
Financial Economics
Economics Division

THE LIBRARY OF CONGRESS

WASHINGTON, D. C. 20540

LEGISLATIVE REFERENCE SERVICE

June 23, 1969

District Judge
First Judicial District
120 West Fourth Street
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Dear Sir:

Our attention has been directed to a case involving Jerome Daly, reported to be an attorney in Savage, and an unnamed bank, the December 1968 decision on which, by Justice of the Peace Martin V. Mahoney of Credit River Township, is alleged to have been appealed to the District Court of Minnesota. The case arose out of default and foreclosure on a mortgage.

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With thanks for your assistance.

Sincerely yours,

John C. Jackson

John C. Jackson
Specialist in Fiscal and
Financial Economics
Economics Division

19144 - Bank vs. Daly
19054 - Daly vs. Montgomery Bank

FORM A

HUGO P. HENTGES
CLERK OF DISTRICT COURT
Scott County

Shakopee, Minn. March 28 196 9

TO Clerk of Supreme Court

State Capitol

St. Paul, Minnesota

Dear Madam: Re #19144 First National Bank of Montgomery -vs- Jerome Daly

Enclosed herewith Notice of appeal and $10.00 deposit fee in the above entitled matter.

No bond on file.

Yours very truly,

Hugo P. Hentges

Clerk—D[redacted]

McGUIRE and MELLBY

ATTORNEYS-AT-LAW

Montgomery, Minnesota 56069

MICHAEL E. McGUIRE
THEODORE R. MELLBY

TELEPHONE 364-7327

February 10, 1969

Arlo E. Haering
Judge of District Court
Glencoe, Minnesota

In re: First National Bank of Montgomery -vs-
Jerome Daly

Dear Judge Haering:

In my opening remarks on January 24 I believe I mentioned the motion to place the matter on the special term calendar. When the court took the order to show cause under advisement the other motion was not timely.

The affadavit in support of the motion to place the unlawful detainer action on the special term calendar contains a Minnesota citation substantiating my position that a forcible entry or unlawful detainer action may be placed on the special term calendar.

If, after reading my affadavit, you believe my motion is proper please note the motion for hearing.

Very truly ~~yours~~,

Theodore R. Mellby

TRM:avt
cc: Lloyd Lipke
Hugo Hentges

27 M. 236.

January 20, 1969

Justice Martin V. Mahoney
Rural Route
Prior Lake, Minnesota

Dear Mr. Mahoney:

Re: First National Bank of
Montgomery, Minnesota
vs.
Jerome Daly

The above entitled action was to be heard at Shakopee on January 17, 1969, however, an Affidavit of Prejudice has been filed against Judge Harold Flynn, so now the Matter is to be heard by Judge Arlo E. Haering at Glencoe, Minnesota on January 24, 1969 at 10:00 A.M.

Yours very truly,

Lloyd E. Lipke
Clerk of District Court
Glencoe, Minnesota

LEL:ew
cc: Ted Melby

January 20, 1969

Mr. Jerome Daly
Attorney at Law
Shakopee, Minnesota

Dear Mr. Daly:

Re: First National Bank of
Montgomery Minnesota
vs.
Jerome Daly

The above entitled action was to be heard at Shakopee on January 17, 1969, however, an Affidavit of Prejudice has been filed against Judge Harold Flynn, so now the Matter is to be heard by Judge Arlo E. Haering at Glencoe, Minnesota on January 24, 1969 at 10:00 A.M.

Yours very truly,

Lloyd E. Lipke
Clerk of District Court
Glencoe, Minnesota

LEL:ew
cc: Ted Melby

McGUIRE and MELLBY
ATTORNEYS-AT-LAW
Montgomery, Minnesota 56069

MICHAEL E. McGUIRE
THEODORE R. MELLBY

TELEPHONE 364-7327

January 17, 1969

Mr. Lloyd Lipke
Clerk of District Court
Courthouse
Glencoe, Minnesota

In re: First National Bank of Montgomery
-vs- Jerome E. Daly

Dear Mr. Lipke:

Enclosed herein please find Order to Show Cause, Application for an Order, Affidavit, and Affidavit of Personal Service. In addition, I am enclosing an Affidavit of Personal Service which should be attached to the Notice of Appeal which is in the District Court file.

Also enclosed please find photo-static copies of letters which I mailed to Jerome Daly and Justice Martin V. Mahoney. In view of the fact that Judge Flynn's Order transferring the file does not set this matter on for hearing before Judge ~~Flynn~~ Hanft at 10 o'clock A.M., Friday, January 24, 1969, at Glencoe, I would suggest that written notice be mailed to both Jerome Daly and Martin V. Mahoney.

The written notice to Justice Martin V. Mahoney should indicate that the hearing originally scheduled for 10 o'clock A.M., Friday, January 17, 1969, at the Special Term of Court to be held in the Courthouse in the City of Shakopee, County of Scott, State of Minnesota, has been continued till 10 o'clock A.M., Friday, January 24, 1969, at the Special Term of District Court to be held at the Courthouse in the City of Glencoe, County of McLeod, State of Minnesota, or as soon thereafter as counsel can be heard.

The written notice to Jerome Daly should similarly indicate that the hearing on the Motion originally scheduled for 10 o'clock A.M., January 17, 1969, before the District Court in the City of Shakopee, County of Scott, State of Minnesota, has been continued to 10 o'clock A.M., January 24, 1969, at

the District Courthouse in the City of Glencoe, County of McLeod, State of Minnesota, or as soon thereafter as counsel can be heard.

If you have any questions concerning this matter, please feel free to contact my office.

Very truly yours,

Theodore R. Melby

TRM:wvf
Enclosures

Judge
First Judicial District

Harold E. Flynn
Shakopee, Minnesota

Telephone
445-2822

January 16, 1969

Mr. Lloyd Lipke
Clerk of District Court
McLeod County Courthouse
Glencoe, Minnesota

Dear Mr. Lipke:

In re: First National Bank of Montgomery, Minnesota -vs-
Jerome Daly

An affidavit of prejudice has been filed against me in the above entitled matter, and under the circumstances I will not be permitted to hear the case at Shakopee on January 17, 1969, at my special term of court. I am having the clerk here at Shakopee transfer the file to your court, and apparently this matter now has to be heard by Judge Haering at Glencoe at 10 a.m. on the 24th day of January, 1969.

Perhaps you would like to take this matter up with Judge Haering, but I believe that he is aware of the case.

Kindly notify the lawyers involved accordingly.

Yours very truly,

Harold E. Flynn

HEF/ovw

McGUIRE and MELLBY

ATTORNEYS-AT-LAW

Montgomery, Minnesota 56069

MICHAEL E. McGUIRE
THEODORE R. MELLBY

TELEPHONE 364-7327

Deeember 30, 1971

Mr Hugo P. Hentges
Clerk of District Court
Scott County
Shakopee, Minnesota

In re: 1st National Bank - Daly

Dear Hugo:

Enclosed herein please find Motion, Notice of Motion, and Affidavit in Support of Motion and Affidavit of Service by Mail. Please note this matter for hearing at the Special Term calendar on Friday, January 17, 1969.

Very truly yours,

Theodore R. Mellby

TRM:wvf
Enclosure

FORM A

HUGO P. HENTGES
CLERK OF DISTRICT COURT
Scott County

Shakopee, Minn. January 16 196 9

TO Hon. Arlo E. Haering
Judge of District Court
Glencoe, Minnesota 55336

Dear Judge Haering:

Re: #19144 First National Bank of Montgomery, -vs- Jerome Daly

Enclosed herewith all papers on file in the above matter.

Order transferring file to you is on file. Copy of Order has been mailed to the attorneys of record.

Yours very truly,

s/ Hugo P. Hentges
Clerk—[illegible]

January 17, 1969

COPY

Mr. Martin V. Mahoney
R.R.
Prior Lake, Minnesota 55372

In re: First National Bank of Montgomery
-vs- Jerome Daly

Dear Justice Mahoney:

Enclosed herein and served upon you by mail, please find a photo-static copy of an Order of the District Court transferring the above identified file to the District Court of McLeod County.

You are hereby notified that the hearing on the Order of the District Court requiring you to Show Cause why the above identified file should not be transferred to the District Court is scheduled for hearing at 10 o'clock A.M., Friday, January 24, 1969, before the Court identified in the Order transferring file.

Very truly yours,

Theodore R. Mellby

TRM:wvf

December 11, 1968

COPY

Mr. Hugo P. Hentges
Clerk of District Court
Shakopee, Minnesota 55379

In re: First National Bank of Montgomery, Minnesota
-vs- Jerome Daly (Appeal from Justice Court)

Dear Hugo:

Enclosed herein and served upon you by mail, please find Notice of Appeal in the above identified matter. Our check in the amount of $12.00 is enclosed to cover the filing fee and $2.00 which must be remitted to Justice Martin V. Mahoney, Township of Credit River, Scott County, Minnesota.

Very truly yours,

Theodore R. Mellby

TRM:wvf
Enclosures

McGUIRE & MILLER
ATTORNEYS AT LAW
MONTGOMERY, MINN.

4232

December 11 1933

PAY TO THE ORDER OF Hugo P. Hentges - Clerk of District Court $ 12.00

Twelve and 00/hundredths DOLLARS

1st National BANK — Montgomery, Minnesota

Hedru L Miller

⑆0913-1880⑆ 24-90 226⑈ ⑈0000012⑆00

PAID
PAY ANY BANK, P.E.I.

Justice of the Peace.

5-32.40 requires return on appeal.

5-32.43. Provides for attachment to compel allowance of appeal.

5-32.44. Allows Dist. Ct. by attachment to compel return.

Rahilly v. Lane 1870, 15 Minn. 447 Gil. 360

Duty of appellant to take necessary steps to compel its transmission and filing (51 C J S Sec 166 page 357) by rule and attachment. Hughes v Wheat 32 Ark. 292.

Mandamus may be used to compell performance however, where a specific remedy is provided by statute for refusal of justice to perform his duty mandamus cannot be used.

See Mandamus 55 C J S. Sec. 69 page 114-115.

Upham v. McCarson, Civ. App. 57 SW 2d 235
Grabowski v. Smith 230 NW 947, 250 Mich 565
~~State v. Walter 162 NE 444, 200 Ind. 235~~

McKitterick v. Carmichael 99 P. 2d 1040, 186 Okl. 672
Summers v Powers, 75 P. 2d 411, 181 Okl. 549
~~38 C J p. 619 note 90~~
Houston & T. R. Co. v. Aycock, Tex. Civ. App. 201 SW 664.
35 C J. p 799 note 66.
See Chi. R. I. & P. R. Co. v Franka, 55 Mo. 325
~~State v. McAuliffe 48 Mo. 112.~~

153 NW 2d 825. Peterson case. 278 M. 225 - 432

McGUIRE and MELLBY
ATTORNEYS-AT-LAW
Montgomery, Minnesota 56069

MICHAEL E. McGUIRE
THEODORE R. MELLBY

TELEPHONE 364-7327

December 18, 1968

Mr. Hugo P. Hentges
Clerk of District Court
Shakopee, Minnesota

Dear Hugo:

Enclosed herein please find appeal papers in the above identified matter. Our check in the amount of $2.00 is also enclosed.

As you know, Jerome Daly has filed an affidavit against Judge Flynn in the companion case of Daly -vs- 1st National Bank of Montgomery. I would appreciate it if the appeal in the above identified case of the motion in the companion case could be heard before Judge Fitzgerald in Le Center on Friday, January 3, 1969.

Very truly yours,

Theodore R. Mellby

TRM:wvf
Enclosures

State of Minnesota,
County of SCOTT

IN JUSTICE COURT
Martin V. Mahoney Justice.

First National Bank of Montgomery, Minn Plaintiff
vs.
Jerome Daly Defendant

To the Above Named Justice of the Peace:

Notice is Hereby Given That on the 17th day of December 1968 the Plaintiff above named filed in my office a notice of appeal from a judgment entered in the action above entitled, together with proof of service thereof on the Defendant above named in said action and the affidavit and bond required by law on such appeal, and paid to me your fee of $2.00 for making return on such appeal; and that within twenty (20) days from said date of filing of said notice and before the first day of the next General Term of the District Court of said county to be held on the 12th day of May 1969 you are required to file in my office your return consisting of a transcript of all entries made in your docket, together with all process and other papers relating to said action and filed in your court; and that upon filing of such return your fee of $2.00 for making and filing the same will be paid by me.

Dated December 18, 1968

s/ Hugo P. Hentges
Clerk of District Court, Scott County, Minnesota.

Note: This notice is to be served by registered mail.

STATE OF MINNESOTA, COUNTY OF SCOTT

Certified to be a true and correct copy
of the original on file and of record
in my office
GREGORY M. ESS
Court Administrator

5-9-2006 By Audrey K. Brown
Deputy

THE DALY EAGLE

$2.00 PER COPY

FEBRUARY 7,1969

IN THIS ISSUE: "A LANDMARK DECISION"

A MINNESOTA TRIAL COURT'S DECISION HOLDING THE FEDERAL RESERVE ACT UNCONSTITUTIONAL AND VOID; HOLDING THE NATIONAL BANKING ACT UNCONSTITUTIONAL AND VOID; DECLARING A MORTGAGE ACQUIRED BY THE FIRST NATIONAL BANK OF MONTGOMERY, MINNESOTA IN THE REGULAR COURSE OF ITS BUSINESS, ALONG WITH THE FORECLOSURE AND THE SHERIFF'S SALE TO BE VOID.

THIS DECISION, WHICH IS LEGALLY SOUND, HAS THE EFFECT OF DECLARING ALL PRIVATE MORTGAGES ON REAL AND PERSONAL PROPERTY, AND ALL U.S. AND STATE BONDS HELD BY THE FEDERAL RESERVE, NATIONAL AND STATE BANKS TO BE NULL AND VOID. THIS AMOUNTS TO AN EMANCIPATION OF THIS NATION FROM PERSONAL, NATIONAL AND STATE DEBT PURPORTEDLY OWED TO THIS BANKING SYSTEM. EVERY AMERICAN OWES IT TO HIMSELF, HIS COUNTRY, AND TO THE PEOPLE OF THE WORLD FOR THAT MATTER TO STUDY THIS DECISION VERY CAREFULLY AND TO UNDERSTAND IT, FOR UPON IT HANGS THE QUESTION OF FREEDOM OR SLAVERY.

A PATRIOTIC PUBLICATION, EDITED AND ISSUED BY JEROME DALY, 28 EAST MINNESOTA STREET, SAVAGE, MINNESOTA.

Patrick Henry's advice on the cold war . . .

They tell us, Sir, that we are weak — unable to cope with so formidable an adversary. But when shall we be stronger? Will it be the next week, or the next year? Will it be when we are totally disarmed? . . .

Shall we gather strength by irresolution and inaction? Shall we acquire the means of effectual resistance by lying supinely on our backs, and hugging the delusive phantom of hope, until our enemies shall have bound us hand and foot? . . .

Sir, we shall not fight our battles alone. There is a just God who presides over the destinies of Nations. . . . The battle, Sir, is not to the strong alone; it is to the vigilant, the active, the brave. . . . There is no retreat but in submission and slavery! Our chains are forged! . . .

Gentlemen may cry, Peace, Peace! — but there is no peace. The war is actually begun! . . . Why stand we here idle? What is it that Gentlemen wish? What would they have? Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take; but as for me, give me liberty or give me death!

HOUSE OF BURGESSES, VIRGINIA
MARCH, 1775

The prohibitions in the Constitution of the United States upon the States of the Union are as follows:

No State shall enter into any Treaty. No State shall enter into any alliance. No State shall enter into any Confederation. No State shall grant Letters of Marque or Reprisal. No State shall coin money. No State shall emit Bills of Credit. No State shall make any Thing but Gold and Silver Coin a Tender in Payment of Debts. No State shall pass any Bill of Attainder. No State shall pass any ex post facto Law. No State shall pass any Law impairing the obligation of Contracts. No State shall grant any Title of Nobility.

No State shall without the consent of Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection laws: and the net Produce of all duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States and all such laws shall be subject to the revision and control of Congress.

No State shall, without the Consent of Congress; (1) Lay any duty of Tonnage; (2) Keep Troops or ships of War in time of peace; (3) Enter into any agreement or compact with another State; (4) Enter into any agreement or Compact with a foreign Power; (5) No State shall without the Consent of Congress engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

No State shall make or enforce any law which shall abridge the Privileges of citizens of the United States.

No State shall make or enforce any law which shall abridge the Immunities of citizens of the United States.

No State shall deprive any person of life, liberty, or property, without due process of law.

No State shall deny to any person within its jurisdiction the equal protection of the laws.

These are prohibitions upon the activity of the States. A State cannot directly take any step in any degree to directly invade or violate any of these provisions. A State cannot lend its aid in any degree to any person or corporation to effectuate a violation of these absolute prohibitions indirectly or obliquely lest a mockery be made of the Constitution of the United States.

A more serious and obvious question arises. Can the Legislative branch or the Executive Branch or the Judicial Branch of the Government of the United States authorize a State to invade the absolute prohibitions against the States expressly set out in the Constitution, or are the three departments of the U.S. Government incompetent to authorize such an invasion. The answer is obvious. The absolute prohibitions in the Constitution of the United States are impregnable. The Constitution is ordained and established in the name of the people. It is a law for the Governments of the States and the United States. The people said what they meant and they mean what they said.

Assume that Congress by attempted enactment would pass a law authorizing a State to deprive a person of Life, Liberty or property without due process of law. It would obviously be unconstitutional. The same is true of any other provision set out. Any attempt by Congress or the Executive or the Judiciary to authorize any State to invade any of the prohibitions is void. See Edwards v. Kearzey U.S. Supreme Court. 6 Otto 795.

No amount of perverted thinking or skullduggery can justify the fatal magnitude of the consequences which are to follow to total destruction of the Constitution of the United States by the Clergy, the Money Changers and those subversives in public office engaged in active treason against the Constitution.

The honest administration of Justice is gone. The whimsical anarchy which is pressing upon us with ever increasing effect is characterized with all the relics of ancient barbarism. Our Republic is gone.

Jerome Daly October 13, 1968

Jerome Daly
28 East Minnesota Street
Savage, Minn. 55378

February 7, 1969

INTRODUCTION

On May 8, 1964 the writer executed a Note and Mortgage to the First National Bank of Montgomery, Minnesota, which is a member of the Federal Reserve Bank of Minneapolis. Both Banks are private owned and are a part of the Federal Reserve Banking System.

In the Spring of 1967 the writer was in arrears $476.00 in the payments on this Note and Mortgage. The Note was secured by a Mortgage on real property in Spring Lake Township in Scott County,Minnesota. The Bank foreclosed by advertisement and bought the property in at a Sheriff's Sale held on June 26, 1967. The writer made no further payments after June 26, 1967 and did not redeem within the 12 month period of time allotted by law after the Sheriff's Sale.

The Bank brought an action to recover the possession to the property in the Justice of the Peace Court at Savage, Minnesota. The first 2 Justices were disqualified by Affidavit of Prejudice. The first by the writer and the Second by the Bank. A third one refused to handle the case. It was then sent, pursuant to law, to Martin V. Mahoney, Justice of the Peace, Credit River Township, Scott County, Minnesota, who presided at a Jury trial on December 7, 1968. The Jury found the Note and Mortgage to be void for failure of a lawful consideration and refused to give any validity to the Sheriff's Sale. Verdict was for the writer with costs in the amount of $75.00.

The president of the Bank admitted that the Bank created the money and credit upon its own books by which it acquired or gave as consideration for the Note; that this was standard banking practice, that the credit first came into existence when they created it; that he knew of no United States Statutes which gave them the right to do this. This is the universal practice of these Banks. The Justice who heard the case handed down the opinion attached and included herein. Its reasoning is sound. It will withstand the test of time. This is the first time the question has been passed upon in the United States. I predict that this decision will go into the History Books as one of the great Documents of American History. It is a huge cornerstone wrenched from the temple of Imperialism and planted as one of the solid foundation stones of Liberty.

JEROME DALY
SAVAGE, MINNESOTA

OVER

STATE OF MINNESOTA
COUNTY OF SCOTT

IN JUSTICE COURT
TOWNSHIP OF CREDIT RIVER
MARTIN V. MAHONEY, JUSTICE

First National Bank of Montgomery,
Plaintiff,
vs.
JUDGMENT AND DECREE
Jerome Daly,
Defendant.

The above entitled action came on before the Court and a Jury of 12 on December 7, 1968 at 10:00 a.m. Plaintiff appeared by its President Lawrence V. Morgan and was represented by its Counsel Theodore R. Mellby. Defendant appeared on his own behalf.

A Jury of Talesmen were called, impaneled and sworn to try the issues in this Case. Lawrence V. Morgan was the only witness called for Plaintiff and Defendant testified as the only witness in his own behalf.

Plaintiff brought this as a Common Law action for the recovery of the possession of Lot 19, Fairview Beach, Scott County, Minn. Plaintiff claimed title to the Real Property in question by foreclosure of a Note and Mortgage Deed dated May 8, 1964 which Plaintiff claimed was in default at the time foreclosure proceedings were started.

Defendant appeared and answered that the Plaintiff created the money and credit upon its own books by bookkeeping entry as the consideration for the Note and Mortgage of May 8, 1964 and alleged failure of consideration for the Mortgage Deed and alleged that the Sheriff's sale passed no title to plaintiff.

The issues tried to the Jury were whether there was a lawful consideration and whether Defendant had waived his rights to complain about the consideration having paid on the Note for almost 3 years.

Mr. Morgan admitted that all of the money or credit which was used as a consideration was created upon their books, that this was standard banking practice exercised by their bank in combination with the Federal Reserve Bank of Minneapolis, another private Bank, further that he knew of no United States Statute or Law that gave the Plaintiff the authority to do this. Plaintiff further claimed that Defendant by using the ledger book created credit and by paying on the Note and Mortgage waived any right to complain about the Consideration and that Defendant was estopped from doing so.

At 12:15 on December 7, 1968 the Jury returned a unanimous verdict for the Defendant.

Now therefore, by virtue of the authority vested in me pursuant to the Declaration of Independence, the Northwest Ordinance of 1787, the Constitution of the United States and the Constitution and laws of the State of Minnesota not inconsistent therewith;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That Plaintiff is not entitled to recover the possession of Lot 19, Fairview Beach, Scott County, Minnesota according to the Plat thereof on file in the Register of Deeds office.

2. That because of failure of a lawful consideration the Note and Mortgage dated May 8, 1964 are null and void.

3. That the Sheriff's sale of the above described premises held on June 26, 1967 is null and void, of no effect.

4. That Plaintiff has no right, title or interest in said premises or lien thereon, as is above described.

5. That any provision in the Minnesota Constitution and any Minnesota Statute limiting the Jurisdiction of this Court is repugnant to the Constitution of the United States and to the Bill of Rights of the Minnesota Constitution and is null and void and that this Court has Jurisdiction to render complete Justice in this Cause.

6. That Defendant is awarded costs in the sum of $75.00 and execution is hereby issued therefore.

7. A 10 day stay is granted.

8. The following memorandum and any supplemental memorandum made and filed by this Court in support of this Judgment is hereby made a part hereof by reference.

Dated December 9, 1968

BY THE COURT
MARTIN V. MAHONEY
Justice of the Peace
Credit River Township
Scott County, Minnesota

MEMORANDUM

The issues in this case were simple. There was no material dispute on the facts for the Jury to resolve.

Plaintiff admitted that it, in combination with the Federal Reserve Bank of Minneapolis, which are for all practical purposes, because of their interlocking activity and practices, and both being Banking Institutions Incorporated under the Laws of the United States, are in the Law to be treated as one and the same Bank, did create the entire $14,000.00 in money or credit upon its own books by bookkeeping entry. That this was the Consideration used to support the Note dated May 8, 1964 and the Mortgage of the same date. The money and credit first came into existence when they created it. Mr. Morgan admitted that no United States Law or Statute existed which gave him the right to do this. A lawful consideration must exist and be tendered to support the Note. See Anheuser-Busch Brewing Co. v. Emma Mason, 44 Minn. 318, 46 N.W. 558. The Jury found there was no lawful consideration and I agree. Only God can create something of value out of nothing.

Even if Defendant could be charged with waiver or estoppel as a matter of Law this is no defense to the Plaintiff. The Law leaves wrongdoers where it finds them. See sections 50, 51 and 52 of Am Jur 2d "Actions" on page 584 — "no action will lie to recover on a claim based upon, or in any manner depending upon, a fraudulent, illegal, or immoral transaction or contract to which Plaintiff was a party.

Plaintiff's act of creating credit is not authorized by the Constitution and Laws of the United States, is unconstitutional and void, and is not a lawful consideration in the eyes of the Law to support any thing or upon which any lawful rights can be built.

Nothing in the Constitution of the United States limits the Jurisdiction of this Court, which is one of original Jurisdiction with right of trial by Jury guaranteed. This is a Common Law Action. Minnesota cannot limit or impair the power of this Court to render Complete Justice between the parties. Any provisions in the Constitution and laws of Minnesota which attempt to do so is repugnant to the Constitution of the United States and void. No question as to the Jurisdiction of this Court was raised by either party at the trial. Both parties were given complete liberty to submit any and all facts and law to the Jury, at least in so far as they saw fit.

No complaint was made by Plaintiff that Plaintiff did not receive a fair trial. From the admissions made by Mr. Morgan the path of duty was made direct and clear for the Jury. Their Verdict could not reasonably have been otherwise. Justice was rendered completely and without denial, promptly and without delay, freely and without purchase, conformable to the laws in this Court on December 7, 1968.

December 9, 1968

BY THE COURT
MARTIN V. MAHONEY
Justice of the Peace
Credit River Township
Scott County, Minnesota

Note: It has never been doubted that a Note given on a Consideration which is prohibited by law is void. It has been determined, independent of Acts of Congress, that sailing under the license of an enemy is illegal. The emission of Bills of Credit upon the books of these private Corporations for the purposes of private gain is not warranted by the Constitution of the United States and is unlawful. See Craig v. Mo. 4 Peters Reports 912. This Court can tread only that path which is marked out by duty. M.V.M.

FORWARD: The above Judgment was entered by the Court on December 9,1968. The issue there was simple- Nothing in the law gave the Banks the right to create money upon their books. The Bank filed a Notice of Appeal within 10 days. The Appeals statutes must be strictly followed, otherwise, the District Court does not acquire Jurisdiction upon Appeal. To effect the Appeal the Bank had to deposit $2.00 with the Clerk within 10 days for payment to the Justice of the Peace when he made his return to the District Court. The Bank deposited ~~two~~ $1.00 Federal Reserve Notes. The Justice refused the Notes and refused to allow the Appeal upon the grounds that the Notes were unlawful and void for any purpose. The Decision is addressed to the legality of these Notes and the Federal Reserve System. The Cases of Edwards v. Kearnzey and Craig vs. Missouri set out in the decision should be studied very carefully as they bear upon the inviolability of Contracts. This is the Crux of the whole issue. Jerome Daly

STATE OF MINNESOTA
COUNTY OF SCOTT

IN JUSTICE COURT
TOWNSHIP OF CREDIT RIVER
JUSTICE:
MARTIN V. MAHONEY

First National Bank of Montgomery,
Plaintiff,

-vs-

Jerome Daly,
Defendant.

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND JUDGMENT

- - - - -

The above-entitled action came on before the Court on January 22, 1969 at 7:00 P.M., pursuant to Motion and Notice of Motion and Order to Show Cause, as follows:

To: Plaintiff above named and to its Attorney Theodore R. Melby

Sirs:

You will please take notice that the Defendant, Jerome Daly, will move the above named Court at the Credit River Township Village Hall, Scott County, Minnesota before Justice Martin V. Mahoney at 7:00 P.M. on Wednesday, January 22, 1969 to make Findings of Fact, Conclusions of Law and Order and Judgment refusing to allow Appeal on the grounds that the two One Dollar Federal Reserve Notes are unlawful and void and are not a deposit of Two Dollars in lawful money of the United States to perfect the Appeal, and to make the Court's refusal to allow appeal absolute.

/s/ Jerome Daly
Jerome Daly
Attorney for himself
28 East Minnesota Street
Savage, Minnesota

ORDER

On application of Defendant Jerome Daly, it appearing that an exigency exists because this Court is Ordered to show cause at Glencoe, Minnesota on January 24, 1969 why this Court should not allow the Appeal herein, therefore,

IT IS HEREBY ORDERED that Plaintiff appear before this Court on January 22, 1969 at 7:00 P.M. at the Credit River Town Hall, Scott County, Minnesota, and Show Cause why this Court should not, at a hearing to be held at the time when both sides will be given the opportunity to present evidence, grant the Motion and relief requested by Defendant, Jerome Daly, and why this Court's Notice of Refusal to Allow Appeal herein should not be made absolute.

Service of the above Order shall be made upon Defendant, its Attorney or Agents.

BY THE COURT

/s/ Martin V. Mahoney
MARTIN V. MAHONEY
JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP

January 20, 1969

An action for the recovery of the possession of Real Property was brought before this Court for trial on December 7, 1968 at 10:00 A.M., by Jury. The decision of this Court was as follows:

JUDGMENT AND DECREE

The above entitled action came on before the Court and a Jury of 12 on

to 20 years of experience with the Bank of America in Los Angeles, the Marquette National Bank of Minneapolis and the Plaintiff in this case. He seemed to be familiar with the operations of the Federal Reserve System. He freely admitted that his Bank created all of the money or credit upon its books with which it acquired the Note and Mortgage of May 8, 1964. The credit first came into existence when the Bank created it upon its books. Further he freely admitted that no United States Law gave the bank the authority to do this. There was obviously no lawful consideration for the Note. The Bank parted with absolutely nothing except a little ink. In this case the evidence was on January 22, 1969 that the Federal Reserve Banks obtain the Notes for the cost of the printing only. This seems to be confirmed by Title 12 USC Section 420. The cost is about 9/10ths of a cent per Note, regardless of the amount of the Note. The Federal Reserve Banks create all of the Money and Credit upon their books by bookkeeping entry by which they acquire United States and State Securities. The collateral required to obtain the Notes is, by section 412, USC, Title 12, a deposit of a like amount of Bonds; Bonds which the Banks acquired by creating money and credit by bookkeeping entry.

No rights can be acquired by fraud. The Federal Reserve Notes are acquired through the use of unconstitutional statutes and fraud.

The Common Law requires a lawful consideration for any Contract or Note. These Notes are void for failure of a lawful consideration at Common Law, entirely apart from any Constitutional Considerations. Upon this ground the Notes are ineffectual for any purpose. This seems to be the principle objection to paper fiat money and the cause of its depreciation and failure down through the ages. If allowed to continue, Federal Reserve Notes will meet the same fate. From the evidence introduced on January 22, 1969, this Court finds that as of March 18, 1968, all Gold and Silver backing is removed from Federal Reserve Notes.

The law leaves wrongdoers where it finds them. See 1 Amer. Jur. 2nd on Actions, Sections 50, 51 and 52, which are included herein on pages 73 To 75

This Court further observes that the jurisdiction of this Court is conferred by Article 6, Sec. 1 of the Minnesota Constitution; "Sec. 1, The Judicial power of the state is hereby vested in a Supreme Court, a District Court, a Probate Court, and such other Courts, minor judicial officers and commissioners with jurisdiction inferior to the District Court as the legislature may establish." Pursuant thereto an Act of the legislature created this Court.

Nothing in the Constitution or laws of the United States limits the jurisdiction of this Court. The Constitution of Minnesota does not limit the jurisdiction of this Court. It therefore

has complete Jurisdiction to render justice in this cause in accordance with and agreeable to the Supreme Law of the Land. See 16 Am Jur 2d on Constitutional Law Sections 210 thru 222. Pages 77 to 83, hereto. "When a Court is created by Act of the Legislature the Judicial Power is conferred by the Constitution and not by the Act creating the Court. If its Jurisdiction is to be limited it must be limited by the Constitution." See Minn. Const. "Bill of Rights. In any event the Bank has not raised any question as to the jurisdiction of this Court.

Slavery and all its incidents, including Peonage, thralldom and debt created by fraud is universally prohibited in the United States. This case represents but another refined form of Slavery by the Bankers. Their position is not supported by the Constitution of the United States. The People have spoken their will in terms which cannot be misunderstood. It is indispensable to the preservation of the Union and independence and liberties of the people that this Court adhere only to the mandates of the Constitution and administer it as written. I therefore hold the Notes in question void and not effectual for any purpose.

January 30,1969.

BY THE COURT

Martin V. Mahoney

MARTIN V. MAHONEY
JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP
SCOTT COUNTY,MINNESOTA

hold only a fraction of their deposits as reserves and the fact that payments made with the proceeds of bank loans are eventually redeposited with banks make it possible for additional reserve funds, as they are deposited and invested through the banking system as a whole, to generate deposits on a multiple scale.

An Apparent Banking Paradox?

The foregoing discussion of the working of the banking system explains an apparent paradox that is the source of much confusion to banking students. On the one hand, the practical experience of each individual banker is that his ability to make the loans or acquire the investments making up his portfolio of earning assets derives from his receipt of depositors' money. On the other hand, we have seen that the bulk of the deposits now existing have originated through expansion of bank loans or investments by a multiple of the reserve funds available to commercial banks as a group. Expressed another way, increases in their reserve funds are to be thought of as the ultimate source of increases in bank lending and investing power and thus of deposits.

The statements are not contradictory. In one case, the day-to-day aspect of a process is described. In a bank's operating experience, the demand deposits originating in loans and investments move actively from one bank to another in response to money payments in business and personal transactions. The deposits seldom stay with the bank of origin.

The series of transactions is as follows: When a bank makes a loan, it credits the amount to the borrower's deposit account; the depositor writes checks against his

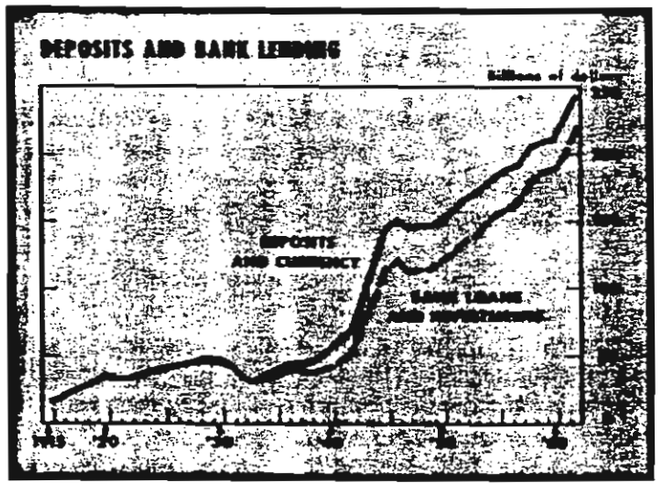
account in favor of various of his creditors who deposit them at their banks. Thus the lending bank is likely to retain or receive back as deposits only a small portion of the money that it lent, while a large portion of the money that is lent by other banks is likely to be brought to it by its customers.

From the point of view of the individual bank, therefore, the statement that the ability of a single bank to lend or invest rests largely on the volume of funds brought to it by depositors is correct. Taking the banking system as a whole, however, demand deposits originate in bank loans and investments in accordance with an authorized multiple of bank reserves. The two inferences about the banking process are not in conflict; the first one is drawn from the perspective of one bank among many, while the second has the perspective of banks as a group.

The commercial banks as a whole can create money only if additional reserves are made available to them. The Federal Reserve System is the only instrumentality endowed by law with discretionary power to create (or extinguish) the money that serves as bank reserves or as the public's pocket cash. Thus, the ultimate capability for expanding or reducing the economy's supply of money rests with the Federal Reserve.

New Federal Reserve money, when it is not wanted by the public for hand-to-hand circulation, becomes the reserves of member banks. After it leaves the hands of the first bank acquiring it, as explained above, the new reserve money continues to expand into deposit money as it passes from bank to bank until deposits stand in some established multiple of the additional reserve funds that Federal Reserve action has supplied.

How the process of expansion in deposits and bank loans and investments has worked out over the years is depicted by the accompanying chart. The curve "deposits and currency" relates to the public's holdings of demand deposits, time deposits, and currency. Time deposits are included because commercial banks in this country generally engage in both a time deposit and a demand deposit business and do not segregate their loans and investments behind the two types of deposits.



Additional Aspects of Bank Credit Expansion

At this stage of our discussion, three other important aspects of the functioning of the banking system must be noted. The first is that bank credit and monetary expansion on the basis of newly acquired reserves takes place only

through a series of banking transactions. Each transaction takes time on the part of individual bank managers and, therefore, the deposit-multiplying effect of new bank reserves is spread over a period. The banking process thus affords some measure of built-in protection against unduly rapid expansion of bank credit should a large additional supply of reserve funds suddenly become available to commercial banks.

The second point is that for expansion of bank credit to take place at all there must be a demand for it by creditworthy borrowers — those whose financial standing is such as to entail a likelihood that the loan will be repaid at maturity — and/or an available supply of low-risk investment securities such as would be appropriate for banks to purchase. Normally these conditions prevail, but there are times when demand for bank credit is slack, eligible loans or securities are in short supply, and the interest rate on bank investments has fallen with the result that banks have increased their preference for cash. Such conditions tend to slow down bank credit expansion. In general, market conditions for bankable paper and attitudes of bankers with respect to the market exert an important influence on whether, with a given addition to the volume of bank reserves, expansion of bank credit will be faster or slower.

Thirdly, it must be kept in mind that reserve banking power to create or extinguish high-powered money is exercised through a market mechanism. The Federal Reserve may assume the initiative in creating or extinguishing bank reserves, or the member banks may take the initiative through borrowing or repayment of borrowing at the Federal Reserve.

Sometimes the forces of initiative work against one another. At times this counteraction may work to avoid an abrupt impact on the flow of credit and money of pressures working to expand or contract the volume of bank reserves. At other times, banks' desires to borrow may tend to bring about either larger or smaller changes in bank reserves than are desirable from the viewpoint of public policy, especially in periods when banks' willingness to borrow is changing rapidly in response to market forces. The relation between reserve banking initiative and member bank initiative in changing the volume of Federal Reserve credit was discussed in Chapter III.

These additional aspects of bank credit expansion are significant because they indicate that in practice we cannot expect bank credit and money to expand or contract by any simple multiple of changes in bank reserves. Expansion or contraction takes place under given market conditions, and these have an influence on the public's preferences or desires for money and on the banks' preferences for loans and investments. Market conditions are modified in the course of credit expansion or contraction, but the reactions of the public and of the banks will influence the extent and nature of the changes in money and credit that are attained.

Management of Reserve Balances

In managing its reserve balances, an individual commercial bank constantly watches offsetting inflows and outflows of deposits that result from activities of depositors and borrowers. It estimates their net impact on its deposits and its reserve position. Its day-to-day management

CHAPTER X

RELATION OF RESERVE BANKING TO CURRENCY. *The Federal Reserve System is responsible for providing an elastic supply of currency. In this function it pays out currency in response to the public's demand and absorbs redundant currency.*

AN important purpose of the Federal Reserve Act was to provide an elastic supply of currency — one that would expand and contract in accordance with the needs of the public. Until 1914 the currency consisted principally of notes issued by the Treasury that were secured by gold or silver and of national bank notes secured by specified kinds of U.S. Government obligations, along with gold and silver coin. These forms of currency were so limited in amount that additional paper money could not easily be supplied when the nation's business needed it. As a result, currency would become hard to get and at times command a premium. Currency shortages, together with other related developments, caused several financial crises or panics, such as the crisis of 1907.

One of the tasks of the Federal Reserve System is to

prevent such crises by providing a kind of currency that responds in volume to the needs of the country. The Federal Reserve note is such a currency.

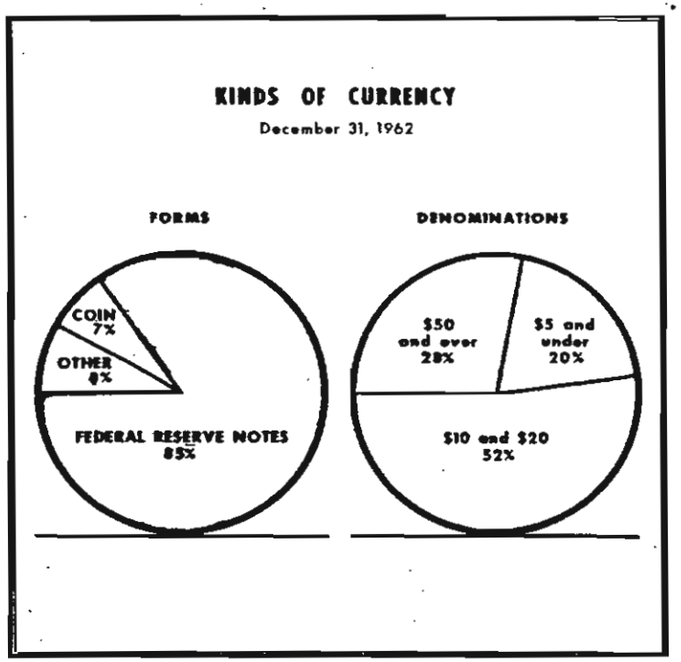
The currency mechanism provided under the Federal Reserve Act has worked satisfactorily: currency moves into and out of circulation automatically in response to an increase or decrease in the public demand. The Treasury, the Federal Reserve Banks, and the thousands of local banks throughout the country form a system that distributes currency promptly wherever it is needed and retires surplus currency when the public demand subsides.

How Federal Reserve Notes Are Paid Out

Federal Reserve notes are paid out by a Federal Reserve Bank to a member bank on request, and the amount so paid out is charged to the member bank's reserve account. Any Federal Reserve Bank, in turn, can obtain the needed notes from its Federal Reserve Agent, a representative of the Board of Governors of the Federal Reserve System, who is located at the Federal Reserve Bank and has custody of its unissued notes.

The Reserve Bank obtaining notes must pledge with the Federal Reserve Agent an amount of collateral at least equal to the amount of notes issued. This collateral may consist of gold certificates, U.S. Government securities, and eligible short-term paper discounted or purchased by the Reserve Bank. The amount of notes that may be issued is subject to an outside limit in that a Reserve Bank must have gold certificate reserves of not less than 25 per cent of its Federal Reserve notes in circulation (and also of its deposit liabilities). Gold certificates pledged as collateral with the Federal Reserve Agent and gold certifi-

cates deposited by the Reserve Bank with the Treasury of the United States as a redemption fund for Federal Reserve notes both are counted as a reserve against notes.



As our monetary system works, currency in circulation increases when the public satisfies its larger needs by withdrawing cash from banks. When these needs decline and member banks receive excess currency from their depositors, the banks redeposit it with the Federal Reserve Banks, where they receive credit in their reserve accounts. The Reserve Banks can then return excess notes

to the Federal Reserve Agents and redeem the assets they had pledged as collateral for the notes.

As of mid-1963 the total amount of currency in circulation outside the Treasury and the Federal Reserve was $35.5 billion, of which $30.3 billion — or six-sevenths — was Federal Reserve notes. All of the other kinds of currency in circulation are Treasury currency. Such currency includes United States notes (a remnant of Civil War financing), various issues of paper money in process of retirement, silver certificates, silver coin, nickels, and cents.

Until 1963, Federal Reserve notes were not authorized for issue in denominations of less than $5. Hence, all of the $1 and $2 bills, as well as some bills of larger denominations, were in other forms of paper money, chiefly silver certificates and United States notes. A law passed in 1963 permits the Federal Reserve to issue notes in denominations as low as $1, and silver certificates will eventually be retired.

All kinds of currency in circulation in the United States are legal tender, and the public makes no distinction among them. It may be said that the Federal Reserve has endowed all forms of currency with elasticity since they are all receivable at the Federal Reserve Banks whenever the public has more currency than it needs and since they may all be paid out by the Reserve Banks when demand for currency increases. In the subsequent discussion reference will be made to the total of currency in circulation rather than to any particular kind.

Demand for Currency

It has already been stated that the amount of currency in circulation changes in response to changes in the pub-

D. Effect of Totally or Partially Unconstitutional Statutes

1. Total Unconstitutionality

§ 177. Generally.

The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law,[6] but is wholly void,[7] and ineffective for any purpose;[10] since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it,[11] an unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed.[12] Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted.[13]

Since an unconstitutional law is void, the general principles follow that it imposes no duties,[14] confers no rights,[15] creates no office,[16] bestows no power or

Del Sordo, 16 NJ 530, 109 A2d 631; Fearon v Treanor, 272 NY 268, 5 NE2d 815, 109 ALR 1229; State v Weddington, 188 NC 13, 125 SE 257, 37 ALR 573; State v Williams, 146 NC 618, 61 SE 61; Daniels v Homer, 139 NC 219, 51 SE 992; State ex rel. Sathre v Board of University & School Lands, 65 ND 687, 262 NW 60; State v First State Bank, 52 ND 231, 202 NW 391; Wilson v Fargo, 48 ND 447, 186 NW 263; U'ren v Bagley, 118 Or 77, 245 P 1074, 46 ALR 1173; Templeton v Linn County, 22 Or 313, 29 P 795; State v Kofines, 33 RI 211, 80 A 432; Beaufort County v Jasper County, 220 SC 469, 68 SE2d 421; Parker v Bates, 216 SC 52, 56 SE2d 723; Gaud v Walker, 214 SC 451, 53 SE2d 316; Rio Grande Lumber Co. v Darke, 50 Utah 114, 167 P 241; Shea v Olson, 185 Wash 143, 53 P2d 615, 111 ALR 998, affd on reh 186 Wash 700, 59 P2d 1183, 111 ALR 1011; Uhden v Greenough, 181 Wash 412, 43 P2d 983, 98 ALR 1181; State v Pitney, 79 Wash 608, 140 P 918; State Road Com. v County Ct. 112 W Va 98, 163 SE 815; Booten v Pinson, 77 W Va 412, 89 SE 985; Van Dyke v Tax Com. 217 Wis 528, 259 NW 700, 98 ALR 1332.

A reasonable doubt in favor of the validity of a statute is enough to sustain it. McLaughlin v Warfield, 180 Md 75, 23 A2d 12.

6. Nashville v Cooper, 6 Wall (US) 247, 18 L ed 851; Cap. F. Bourland Ice Co. v Franklin Utilities Co. 180 Ark 770, 22 SW 2d 993, 68 ALR 1018; Davis v Florida Power Co. 64 Fla 246, 60 So 759; Des Moines v Manhattan Oil Co. 193 Iowa 1096, 184 NW 823, 188 NW 921, 23 ALR 1322; Naudzius v Lahr, 253 Mich 216, 234 NW 581, 74 ALR 1189; Hopper v Britt, 203 NY 144, 96 NE 371; Lynn v Nichols, 122 Misc 170, 202 NYS 401, affd 210 App Div 812, 205 NYS 935; Jones v Crittenden, 4 NC (1 Car L Repos 385); Minsinger v Rau, 236 Pa 327, 84 A 902; State ex rel. Richards v Moorer, 152 SC 455, 150 SE 269, cert den 281 US 691, 74 L ed 1120, 50 S Ct 238; Wingfield v South Carolina Tax Com. 147 SC 116, 144 SE 846; State ex rel. Reuss v Giessel, 260 Wis 524, 51 NW2d 547.

Unless a statute is in positive conflict with some designated or identified provision of the constitution, it should not be held unconstitutional. State ex rel. Johnson v Goodgame, 91 Fla 871, 108 So 836, 47 ALR 118.

A school code which is the product of the deliberate thought of a commission of prominent citizens who worked upon it for several years, and has been passed by two legislatures after prolonged consideration before final approval by the governor, will not be set aside as unconstitutional unless the violations of the fundamental law are so glaring that there is no escape. Minsinger v Rau, 236 Pa 327, 84 A 902.

7. § 146, supra.

8. Chicago, I. & L. R. Co. v Hackett, 228 US 559, 57 L ed 966, 33 S Ct 581; United States v Realty Co. 163 US 427, 41 L ed 215, 16 S Ct 1120; Huntington v Worthen, 120 US 97, 30 L ed 588, 7 S Ct 469; Norton v Shelby County, 118 US 425, 30 L ed 178, 6 S Ct 1121; Ex parte Royall, 117 US 241, 29 L ed 868, 6 S Ct 734; Hirsh v Block, 50 App DC 56, 267 F 614, 11 ALR 1238, cert den 254 US 640, 65 L ed 452, 41 S Ct 13; Texas Co. v State, 31 Ariz 485, 254 P 1060, 53 ALR 258; Quong Ham Wah Co. v Industrial Acci. Com. 184 Cal 26, 192 P 1021, 12 ALR 1190, error dismd 255 US 445, 65 L ed 723, 41 S Ct 373; State ex rel. Nuveen v Greer, 88 Fla 249, 102 So 739, 37 ALR 1298; Commissioners of Roads & Revenues v Davis, 213 Ga 792, 102 SE2d 180; Grayson-Robinson Stores, Inc. v Oneida, Ltd. 209 Ga 613, 75 SE2d 161, cert den 346 US 823, 98 L ed 348, 74 S Ct 39; State v Garden City, 74 Idaho 513, 265 P2d 328; Security Sav. Bank v Connell, 198 Iowa 564, 200 NW 8, 36 ALR 486; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Opinion of Justices, 269 Mass 611, 168 NE 536, 66 ALR 1477; State ex rel. Miller v O'Malley, 342 Mo 641, 117 SW2d 319; Garden of Eden Drainage Dist. v Bartlett Trust Co. 330 Mo 554, 50 SW2d 627, 84 ALR 1078; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; Daly v Beery, 45 ND 287, 178 NW 104; Threadgill v Cross, 26 Okla 403, 109 P 558; Atkinson v Southern Exp. Co. 94 SC 444, 78 SE 516; Ex parte Hollman, 79 SC 6, 60 SE 19; Henry County v Standard Oil Co. 167 Tenn 485, 71 SW2d 683, 93 ALR 1483; Peay v Nolan, 157 Tenn 222, 7 SW2d 815, 60 ALR 408; State v Candland, 36 Utah 406, 104 P 285; Miller v State Entomologist (Miller v Schoene) 146 Va 175, 135 SE 813, 67 ALR 197, affd 276 US 272, 72 L ed 568, 48 S Ct 246; Bonnett v Vallier, 136 Wis 193, 116 NW 885.

A discriminatory law is, equally with the other laws offensive to the constitution, no law at all. Quong Ham Wah Co. v Industrial Acci. Com. 184 Cal 26, 192 P 1021, 12 ALR 1190, error dismd 255 US 445, 65 L ed 723, 41 S Ct 373.

As to the effect of unconstitutionality of statutes creating and defining crimes, see Criminal Law (1st ed § 307).

9. Ex parte Royall, 117 US 241, 29 L ed 868, 6 S Ct 734; Ex parte Siebold, 100 US 371, 25 L ed 717; Cohen v Virginia, 6 Wheat (US) 264, 5 L ed 257; State ex rel. Nuveen v Greer, 88 Fla 249, 102 So 739, 37 ALR 1298; Commissioners of Roads & Revenues v Davis, 213 Ga 792, 102 SE2d 180; Grayson-Robinson Stores, Inc. v Oneida, Ltd. 209 Ga 613, 75 SE2d 161, cert den 346 US 823, 98 L ed 348, 74 S Ct 39; Hillman v Pocatello, 74 Idaho 69, 256 P2d 1072; Henderson v Lieber, 175 Ky 15, 192 SW 830, 9 ALR 620; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Opinion of Justices, 269 Mass 611, 168 NE 536, 66 ALR 1477; Michigan State Bank v Hastings, 1 Dougl (Mich) 225; Garden of Eden Drainage Dist. v Bartlett Trust Co. 330 Mo 554, 50 SW2d 627, 84 ALR 1078; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; State v Tufly, 20 Nev 427, 22 P 1054; State v Williams, 146 NC 618, 61 SE 61; Daly v Beery, 45 ND 287, 178 NW 104; Atkinson v Southern Exp. Co. 94 SC 444, 78 SE 516; Ex parte Hollman, 79 SC 9, 60 SE 19; Henry County v Standard Oil Co. 167 Tenn 485, 71 SW2d 683, 93 ALR 1483; Peay v Nolan, 157 Tenn 222, 7 SW2d 815, 60 ALR 408; Miller v Davis, 136 Tex 299, 150 SW2d 973, 136 ALR 177; Almond v Day, 197 Va 419, 89 SE2d 851; Miller v State Entomologist (Miller v Schoene) 146 Va 175, 135 SE 813, 67 ALR 197, affd 276 US 272, 72 L ed 568, 48 S Ct 246; Servonitz v State, 133 Wis 231, 113 NW 277.

Unconstitutionality is illegality of the highest order. Board of Zoning Appeals v Decatur Company of Jehovah's Witnesses, 233 Ind 83, 117 NE2d 115.

10. State v One Oldsmobile Two-Door Sedan, 227 Minn 280, 35 NW2d 525. Compare Swift v Calnan, 102 Iowa 206, 71 NW 233, holding that while no right may be based upon an unconstitutional statute, part of its provisions may be considered in construing other provisions confessedly good, in arriving at the correct interpretation of the latter.

11. State ex rel. Miller v O'Malley, 342 Mo 641, 117 SW2d 319.

12. Chicago, I. & L. R. Co. v Hackett, 228 US 559, 57 L ed 966, 33 S Ct 581; Norton v Shelby County, 118 US 425, 30 L ed 178, 6 S Ct 1121; Louisiana v Pilsbury, 105 US 278, 26 L ed 1090; Gunn v Barry, 15 Wall (US) 610, 21 L ed 212; Hirsh v Block, 50 App DC 56, 267 F 614, 11 ALR 1238, cert den 254 US 640, 65 L ed 452, 41 S Ct 13; Morgan v Cook, 211 Ark 755, 202 SW2d 355; Texas Co. v State, 31 Ariz 485, 254 P 1060, 53 ALR 258; Connecticut Baptist Convention v McCarthy, 128 Conn 701, 25 A2d 656; Commissioners of Roads & Revenues v Davis, 213 Ga 792, 102 SE2d 180; Grayson-Robinson Stores, Inc. v Oneida, Ltd. 209 Ga 613, 75 SE2d 161, cert den 346 US 823, 98 L ed 348, 74 S Ct 39; Security Sav. Bank v Connell, 198 Iowa 564, 200 NW 8, 36 ALR 486; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Cooke v Iverson, 108 Minn 388, 122 NW 251; Clark v Grand Lodge, B. R. T. 328 Mo 1084, 43 SW2d 404, 88 ALR 150; St. Louis v Polar Wave Ice & Fuel Co. 317 Mo 907, 296 SW 993, 54 ALR 1082; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; Daly v Beery, 45 ND 287, 178 NW 104; State ex rel. Tharel v Board of Comrs. 188 Okla 184, 107 P2d 542; Atkinson v Southern Exp. Co. 94 SC 444, 78 SE 516; Henry County v Standard Oil Co. 167 Tenn 485, 71 SW2d 683, 93 ALR 1483; State v Candland, 36 Utah 406, 104 P 285; Bonnett v Vallier, 136 Wis 193, 116 NW 885.

13. Commissioners of Roads & Revenues v Davis, 213 Ga 792, 102 SE2d 180; Grayson-Robinson Stores, Inc. v Oneida, Ltd. 209 Ga 613, 75 SE2d 161, cert den 346 US 823, 98 L ed 348, 74 S Ct 39; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Clark v Grand Lodge, B. R. T. 328 Mo 1084, 43 SW2d 404, 88 ALR 150.

14. Norton v Shelby County, 118 US 425, 30 L ed 178, 6 S Ct 1121; Security Sav. Bank v Connell, 198 Iowa 564, 200 NW 8, 36 ALR 486; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; Daly v Beery, 45 ND 287, 178 NW 104; Henry County v

authority on anyone,[17] affords no protection,[18] and justifies no acts performed under it.[19] A contract which rests on an unconstitutional statute creates no obligation to be impaired by subsequent legislation.[20]

No one is bound to obey an unconstitutional law[1] and no courts are bound to enforce it.[2]

A void act cannot be legally inconsistent with a valid one.[3] And an unconstitutional law cannot operate to supersede any existing valid law.[4] Indeed, insofar as a statute runs counter to the fundamental law of the land, it is superseded thereby.[5] Since an unconstitutional statute cannot repeal or in any way affect an existing one,[6] if a repealing statute is unconstitutional, the statute which it attempts to repeal remains in full force and effect.[7] And where a clause repealing a prior law is inserted in an act, which act is unconstitutional and void, the provision for the repeal of the prior law will usually fall with it and will not be permitted to operate as repealing such prior law.[8]

The general principles stated above apply to the constitutions as well as to the laws of the several states insofar as they are repugnant to the Constitution and laws of the United States.[9] Moreover, a construction of a statute which brings it in conflict with a constitution will nullify it as effectually as if it had, in express terms, been enacted in conflict therewith.[10]

Standard Oil Co. 167 Tenn 485, 71 SW2d 683, 93 ALR 1483; State v Candland, 36 Utah 406, 104 P 285.

15. Chicago, I. & L. R. Co. v Hackett, 228 US 559, 57 L ed 966, 33 S Ct 581; Norton v Shelby County, 118 US 425, 30 L ed 178, 6 S Ct 1121; Hirsch v Block, 50 App DC 56, 267 F 614, 11 ALR 1238, cert den 254 US 640, 65 L ed 452, 41 S Ct 13; Smith v Costello, 77 Idaho 205, 290 P2d 742, 56 ALR2d 1020; Security Sav. Bank v Connell, 198 Iowa 564, 200 NW 8, 36 ALR 486; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Garden of Eden Drainage Dist. v Bartlett Trust Co. 330 Mo 554, 50 SW2d 627, 84 ALR 1078; St. Louis v Polar Wave Ice & Fuel Co. 317 Mo 907, 296 SW 993, 54 ALR 1082; Watkins v Dodson, 159 Neb 745, 68 NW2d 508; Henry County v Standard Oil Co. 167 Tenn 485, 71 SW2d 683, 93 ALR 1483.

Under Nebraska law an unconstitutional statute is an utter nullity, is void from the date of its enactment, and is incapable of creating any rights. Propst v Board of Education Lands & Funds (DC Neb) 103 F Supp 457, app dismd 343 US 901, 96 L ed 1321, 72 S Ct 636, reh den 343 US 937, 96 L ed 1344, 72 S Ct 769.

As to the effect of, and rights under, a judgment based upon an unconstitutional law, see JUDGMENTS (Rev ed § 19); as to the res judicata effect of such a judgment, see JUDGMENTS (Rev ed § 356).

16. Norton v Shelby County, 118 US 425, 30 L ed 178, 6 S Ct 1121; Security Sav. Bank v Connell, 198 Iowa 564, 200 NW 8, 36 ALR 486; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244.

17. Felix v Wallace County, 62 Kan 832, 62 P 667; Henderson v Lieber, 175 Ky 15, 192 SW 830, 9 ALR 620; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; Daly v Beery, 45 ND 287, 178 NW 104.

18. Huntington v Worthen, 120 US 97, 30 L ed 588, 7 S Ct 469; Norton v Shelby County, 118 US 425, 30 L ed 178, 6 S Ct 1121; Smith v Costello, 77 Idaho 205, 290 P2d 742, 56 ALR2d 1020; Highway Comrs. v Bloomington, 253 Ill 164, 97 NE 280; Security Sav. Bank v Connell, 198 Iowa 564, 200 NW 8, 36 ALR 486; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; St. Louis v Polar Wave Ice & Fuel Co. 317 Mo 907, 296 SW 993, 54 ALR 1082; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; State v Williams, 146 NC 618, 61 SE 61; Daly v Beery, 45 ND 287, 178 NW 104; Atkinson v Southern Exp. Co. 94 SC 444, 78 SE 516; State v Candland, 36 Utah 406, 104 P 285; Bonnett v Vallier, 136 Wis 193, 116 NW 885.

As to the limitations to which this rule is subject, see § 178, infra.

19. Osborn v Bank of United States, 9 Wheat (US) 738, 6 L ed 204; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Board of Managers v Wilmington, 237 NC 179, 74 SE2d 749; State ex rel. Tharel v Board of Comrs. 188 Okla 184, 107 P2d 542; Sharber v Florence, 131 Tex 341, 115 SW2d 604.

20. A contract executed solely for the purpose of complying with the provisions of an unconstitutional statute is not valid, and the person who under its terms is obligated to comply with the provisions of the unconstitutional act is entitled to relief. Cleveland v Clements Bros. Constr. Co. 67 Ohio St 197, 65 NE 865; Jones v Columbian Carbon Co. 132 W Va 219, 51 SE2d 790.

Generally, as to the application to invalid contracts of the obligation of contracts guaranty, see § 439, infra.

1. Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; State ex rel. Clinton Falls Nursery Co. v Steele County, 181 Minn 427, 232 NW 737, 71 ALR 1190; St. Louis v Polar Wave Ice & Fuel Co. 317 Mo 907, 296 SW 993, 54 ALR 1082; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; Amyot v Caron, 88 NH 394, 190 A 134; State v. Williams, 146 NC 618, 61 SE 61; Daly v Beery, 45 ND 287, 178 NW 104.

2. Chicago, I. & L. R. Co. v Hackett, 228 US 559, 57 L ed 966, 33 S Ct 581; United States v Realty Co. 163 US 427, 41 L ed 215, 16 S Ct 1120; Payne v Griffin (DC Ga) 51 F Supp 588; Hammond v Clark, 136 Ga 313, 71 SE 479; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; State v Williams, 146 NC 618, 61 SE 61; Daly v Beery, 45 ND 287, 178 NW 104.

Only the valid legislative intent becomes the law to be enforced by the courts. State ex rel. Clarkson v Phillips, 70 Fla 340, 70 So 367; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244.

3. Re Spencer, 228 US 652, 57 L ed 1010, 33 S Ct 709; Board of Managers v Wilmington, 237 NC 179, 74 SE2d 749.

4. Chicago, I. & L. R. Co. v Hackett, 228 US 559, 57 L ed 966, 33 S Ct 581; Berry v Summers, 76 Idaho 446, 283 P2d 1093; Board of Managers v Wilmington, 237 NC 179, 74 SE2d 749; State v Savage, 96 Or 53, 184 P 567, 189 P 427.

5. Thiede v Scandia Valley, 217 Minn 218, 14 NW2d 400.

6. State v One Oldsmobile Two-Door Sedan, 227 Minn 280, 35 NW2d 525.

7. State v One Oldsmobile Two-Door Sedan, supra.

8. See § 185, infra.

9. Gunn v Barry, 15 Wall (US) 610, 21 L ed 212; Cohen v Virginia, 6 Wheat (US) 264, 5 L ed 257.

10. Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Gilkeson v Missouri P. R. Co. 222 Mo 173, 121 SW 138; Peay v Nolan, 157 Tenn 222, 7 SW2d 815, 60 ALR 408.

11. Chicot County Drainage Dist. v Baxter State Bank, 308 US 371, 84 L ed 329, 60 S Ct 217, reh den 309 US 695, 84 L ed 1035, 60 S Ct 581.

12. Chicot County Drainage Dist. v Baxter State Bank, supra.

13. § 177, supra.

14. Sumner v Beeler, 50 Ind 341.

This warning has been so phrased as to present the actual concept underlying the utter nullity of an invalid law by a holding to the effect that all persons are held to notice that all statutes are subject to all express and implied applicable provisions of the constitution, and also that should a conflict between a statute and any express or implied provision of the constitution be duly adjudged, the constitution by its own superior force and authority would render the statute invalid from its enactment, and further that the courts have no power to control the effect of the constitution in nullifying a statute that is adjudged to be in conflict with any of the express or implied provisions of the constitution. State ex rel. Nuveen v Greer, 80 Fla 249, 102 So 739, 37 ALR 1298.

§ 178. Protection of rights.

The actual existence of a statute prior to a determination that it is unconstitutional is an operative fact and may have consequences which cannot justly be ignored; when a statute which has been in effect for some time is declared unconstitutional, questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, and of public policy in the light of the nature both of the statute and of its previous application, demand examination.[11] It has been said that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.[12]

The general rule is that an unconstitutional act of the legislature protects no one.[13] It is said that all persons are presumed to know the law, meaning that ignorance of the law excuses no one; if any person acts under an unconstitutional statute, he does so at his peril and must take the consequences.[14]

Rights acquired under a statute while it is duly adjudged to be constitutional are valid legal rights that are protected by the constitution, not by judicial decision. But rights acquired under a statute that has not been adjudged valid

ly and lawfully current in commercial transactions as the equivalent of legal tender coin and paper money.[16]

§ 8. "Currency;" "Specie;" "Current Funds;" "Dollar."—The term "currency" has been held to include bank bills,[17] and has been limited, in some jurisdictions, to bank bills or other paper money which passes at par as a circulating medium in the business community as and for the constitutional coin of the country.[18] It has also been held, however, that it includes both coin and paper money and is practically synonymous with "money," and that the only practical distinction between paper money and coined money, as currency, is that coined money must generally be received, paper money may generally be specially refused in payment of debt, but a payment in either is equally made in money.[19]

The word "specie" means gold or silver coins of the coinage of the United States.[20]

The term "current funds" means current money, par funds, or money circulating without any discount,[1] and is intended to cover whatever is receivable and current by law as money, whether in the form of notes or coin.[2]

The term "dollar" means money, since it is the unit of money in this country,[3] and in the absence of qualifying words, it cannot mean promissory notes or bonds or other evidences of debt.[4] The term also refers to specific coins of the value of one dollar.[5]

§ 9. Bank Notes.—The courts are not agreed whether bank notes are to be classed as money, but the weight of authority and the better reason supports the rule that bank notes constitute a part of the common currency of the country[6] and ordinarily pass as money.[7] They are a good tender as money unless specially objected to.[8] They are not, like bills of exchange, considered as mere securities or documents for debts,[9] and generally, they are classed

16 See supra, § 2.

17 Howe v. Hartness, 11 Ohio St 449, 78 Am Dec 312.

18 Woodruff v. Mississippi, 162 US 291, 40 L ed 973, 16 S Ct 820; Galena Ins. Co. v. Kupfer, 28 Ill 332, 81 Am Dec 284.

19 Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.

Generally as to bank notes as money, see infra, § 9.

20 Belford v. Woodward, 158 Ill 122, 41 NE 1097, 29 LRA 593.

1 Galena Ins. Co. v. Kupfer, 28 Ill 332, 81 Am Dec 284; Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.

2 Woodruff v. Mississippi, 162 US 291, 40 L ed 973, 16 S Ct 820.

At one time, shortly after the first issue in this country of notes declared to have the quality of legal tender, it was a common practice of drawers of bills of exchange or checks, or makers of promissory notes, to indicate whether the same were to be paid in gold or silver or in such notes; and the term "current funds" was used to designate any of these, all being current and declared by positive enactment to be legal tender. Ibid.

3 See supra, § 5.

4 27 Ohio Jur pp. 125, 126, § 2.

5 United States v. Van Auken, 95 US 366, 24 L ed 452.

6 Bank of United States v. Bank of Georgia, 10 Wheat(US) 333, 6 L ed 334; Howe v. Hartness, 11 Ohio St 449, 78 Am Dec 312; Vick v. Howard, 136 Va 101, 116 SE 465, 31 ALR 240; Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.

Anno: 4 Ann Cas 630.

See PAYMENT [Also 21 RCL p. 39, § 36].

7 Bank of United States v. Bank of Georgia, 10 Wheat(US) 333, 6 L ed 334; Howe v. Hartness, 11 Ohio St 449, 78 Am Dec 312; Crutchfield v. Robins, 5 Humph (Tenn) 15, 42 Am Dec 417; Ross v. Burlington Bank, 1 Alk(Vt) 43, 15 Am Dec 664; Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.

Anno: 4 Ann Cas 630.

Bank notes lawfully issued and actually current at par in lieu of coin are treated as money because they flow as such through the channels of trade and commerce without question. Woodruff v. Mississippi, 162 US 291, 40 L ed 973, 16 S Ct 820; Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773. Anno: 4 Ann Cas 630.

Bank notes are regarded as money to the extent that they will pass by a bequest of cash. Anno: 52 Am Dec 468.

See also 7 Am Jur 283, BANKS, §§ 400 et seq.

8 See infra, § 18.

See PAYMENT [Also 21 RCL p. 40, § 36].

9 Bank of United States v. Bank of Georgia, 10 Wheat(US) 333, 6 L ed 334; Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.

as money even in criminal proceedings, where, as a rule, the greatest strictness of construction prevails.[10] However, notwithstanding the generally prevailing rule that bank notes are money, there is considerable authority, especially among the earlier cases, which maintains the rule that bank notes are not to be classed as money.[11]

Even under the majority rule, all bank notes are not necessarily money.[12] They circulate as such only by the general consent and usage of the community.[13] This consent and usage is based upon the convertability of such notes into coin, at the pleasure of the holder, upon their presentation to the bank for redemption.[14] This fact is the vital principle which sustains their character as money. As long as they are in fact what they purport to be, payable on demand, common consent gives them the ordinary attributes of money.[15] But, upon the failure of the bank by which they were issued, when its doors are closed, and its inability to redeem its bills is openly avowed, they instantly lose the character of money, their circulation as currency ceases with the usage and consent upon which it rested, and the notes become the mere dishonored and depreciated evidences of debt.[16]

The power of states to make bank notes legal tender is discussed in a subsequent section.[17]

§ 10. Certificates of Deposit, Negotiable Instruments, etc.—Certificates of deposits or other vouchers for money deposited in solvent banks, payable on demand, are a most convenient medium of exchange, and are extensively used in commercial and financial transactions to represent the money thus deposited, and as the equivalent thereof, and are considered in most transactions as money.[18] Similarly, a certified check, while not a legal medium of payment, is a substitute for money which is commonly and generally used in business and commercial transactions and likewise in legal proceedings and may be considered as so much money. Thus, it has been held that under a statute authorizing a money deposit in lieu of an undertaking, the deposit of a certified check is a sufficient compliance with the statute,[19] and it has also been held that where the question involved is whether negotiable paper was purchased with money, an uncertified check received and presently paid in cash is equivalent to money.[20]

Generally as to bills of exchange, see 7 Am Jur 790, BILLS AND NOTES, § 6.

10 State v. Finnegean, 127 Iowa 286, 103 NW 155, 4 Ann Cas 628; State v. Kube, 20 Wis 217, 91 Am Dec 390.

Anno: 4 Ann Cas 630.

See 13 Am Jur 574, EMBEZZLEMENT, § 6; 32 Am Jur 987, LARCENY, § 77.

11 Hamilton v. State, 60 Ind 193, 28 Am Rep 653.

Anno: 4 Ann Cas 630.

12 Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.

13 Westfall v. Braley, 10 Ohio St 188, 75 Am Dec 509.

14 Howe v. Hartness, 11 Ohio St 449, 78 Am Dec 312; Westfall v. Braley, 10 Ohio St 188, 75 Am Dec 509.

Money includes only such bank notes as are current de jure et de facto at the locus in quo; that is, bank notes which are issued for circulation by authority of law, and are in actual and general circulation at par with coin, as a substitute for coin, interchangeable with coin; bank notes which actually represent dollars and cents, and are paid and received for dollars and cents at their legal standard value. Whatever is at a discount—that is, whatever represents less than the standard value of coined dollars and cents at par—does not properly represent dollars and cents, and is not money. Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.

15, 16 Westfall v. Braley, 10 Ohio St 188, 75 Am Dec 509.

17 See infra, § 12.

18 Allibone v. Ames, 9 SD 74, 68 NW 165, 33 LRA 585; State v. McFetridge, 84 Wis 473, 54 NW 1, 998, 20 LRA 223.

Anno: Ann Cas 1912C 356.

Generally as to the definition and nature of certificates of deposit, see 7 Am Jur 351, BANKS, §§ 491 et seq.

19 Smith v. Field, 19 Idaho 558, 114 P 668, Ann Cas 1912C 354.

20 Poorman v. Woodward, 21 How(US) 266, 16 L ed 151.

III. COINAGE, ISSUANCE, AND REGULATION

§ 11. Generally.—It is obvious that a uniform monetary system is an essential requisite of modern commerce, and that governmental control and regulation is necessary in order to secure such uniformity. The powers of various governmental authorities in this connection,[1] and particular matters and subjects of regulation,[2] are considered in the following sections. The establishment of a standard unit of value is discussed in a prior section.[3]

The issuance of bank notes is discussed under another title.[4]

§ 12. By Federal Government.—In order that money throughout the United States may be uniform, the Federal Government is given, by the Constitution of the United States, the exclusive power to coin money and regulate its value and the value of foreign coin. Congress has the power to make all laws which shall be necessary and proper to carry into effect these powers.[5] Hence, Congress may establish a uniform national currency, declare of what it shall consist, endow that currency with the character and qualities of money having a defined legal value, by requiring its acceptance at its face value as legal tender in the discharge of all debts, and regulate the value of such money, unless by so doing property is taken without due process of law.[6] Moreover, Congress, under its power to provide a currency for the entire country, may deny the quality of legal tender to foreign coins, and may provide by law against the imposition on the community of counterfeit and base coin, and may restrain by suitable enactments circulation as money of any notes not issued under its own authority.[7]

§ 13. By States.—By the Constitution of the United States, the several states are prohibited from coining money,[8] emitting bills of credit,[9] or making anything but gold and silver coin a tender in payment of debts.[10] Thus, states have no power to make bank notes legal tender,[11] except in payment of debts and dues owing the state.[12]

As a general rule, the extent of a state's power as to currency is limited to the right to establish banks, to regulate or prohibit the circulation, within the state, of foreign notes, and to determine in what the public dues shall be paid,[13] and inasmuch as a state is prohibited from coining money, the money which it may coin cannot be circulated as such. A creditor will be under no obligation to receive it in discharge of his debt; and if any statutory provision of the state is framed, with a view of forcing the circulation of such coin, by suspending the interest or postponing the debt of a creditor where it is refused, such statute is void, because it acts on the thing prohibited and comes directly in conflict with the Constitution.[14] Similarly, applying the prohibition against making anything but gold or silver coin a legal tender in the payment of debts, a state statute providing that a creditor must, on penalty of delay, indorse his consent on an execution, to receive property in payment of his debt, is invalid.[15]

§ 14. By Municipalities.—It seems well established that a municipal corporation in a state in which it is against public policy, as well as express law, for any person or corporate body to issue small bills to circulate as currency has no implied power to issue such bills. Moreover, such power is not conferred by a clause in the city charter, authorizing the borrowing of money.[16]

§ 15. Value of Coin.—The power to regulate the value of coin may be exercised by Congress from time to time as the value of the metal changes, for the power to regulate the value of money coined, and of foreign coinage, is not exhausted by a single initial regulation.[17] Thus, it has been held that Congress may issue coins of the same denominations as those already current by law, but of less intrinsic value than those, by reason of containing a less weight of the precious metals, and thereby enable debtors to discharge their debts by the payment of coins of the lesser real value.[18]

[1] See infra, §§ 12 et seq.

[2] See infra, §§ 12 et seq.

[3] See supra, § 5.

[4] See 7 Am Jur 284, BANKS, § 402.

[5] Perry v. United States, 294 US 330, 79 L ed 912, 55 S Ct 432, 95 ALR 1335; Norman v. Baltimore & O. R. Co. 294 US 240, 79 L ed 885, 55 S Ct 407, 95 ALR 1352, affirming 265 NY 37, 191 NE 726, 92 ALR 1523; Ling Su Fan v. United States, 218 US 302, 54 L ed 1049, 31 S Ct 21, 30 LRA(NS) 1176; Legal Tender Case, 110 US 421, 28 L ed 204, 4 S Ct 122; United States v. Ballard, 14 Wall.(US) 457, 20 L ed 845; Legal Tender Cases, 12 Wall.(US) 457, 20 L ed 287; Veazie Bank v. Fenno, 8 Wall.(US) 533, 19 L ed 482; United States v. Marigold, 9 How.(US) 560, 13 L ed 257; Federal Land Bank v. Wilmarth, 218 Iowa 339, 252 NW 507, 94 ALR 1338.

Authority to impose requirements of uniformity and parity is an essential feature of the control over the currency vested in Congress. Norman v. Baltimore & O. R. Co. 294 US 240, 79 L ed 885, 55 S Ct 407, 95 ALR 1352, affirming 265 NY 37, 191 NE 726, 92 ALR 1523.

As to the power of the Federal Government to regulate the value of coin, generally, see infra, § 15.

As to powers of the Federal Government with respect to matters of revenue, finance, and currency, generally, see UNITED STATES [Also 26 RCL p. 1426, § 17].

[6] Legal Tender Case, 110 US 421, 28 L ed 204, 4 S Ct 122; Norman v. Baltimore & O. R. Co. 265 NY 37, 191 NE 726, 92 ALR 1523, affirmed in 294 US 240, 79 L ed 885, 55 S Ct 407, 95 ALR 1352.

As to what money constitutes legal tender, see infra, § 18.

[7] Legal Tender Case, 110 US 421, 28 L ed 204, 4 S Ct 122; Veazie Bank v. Fenno, 8 Wall.(US) 533, 19 L ed 482.

It is against public policy to allow individuals or corporations to issue notes as a common currency or circulating medium without express legislative sanction. Thomas v. Richmond, 12 Wall.(US) 349, 20 L ed 453.

[8] Norman v. Baltimore & O. R. Co. 294 US 240, 79 L ed 885, 55 S Ct 407, 95 ALR 1352; Legal Tender Case, 110 US 421, 28 L ed 204, 4 S Ct 122; Craig v. Missouri, 4 Pet.(US) 410, 7 L ed 903.

Anno: 31 ALR 246.

As to fiscal management of states, generally, see STATES [Also 25 RCL p. 394, §§ 27 et seq.].

[9] See infra, § 17.

[10] Legal Tender Case, 110 US 421, 28 L ed 204, 4 S Ct 122; Sturges v. Crowninshield, 4 Wheat.(US) 122, 4 L ed 529; Townsend v. Townsend, Peck(Tenn) 1, 14 Am Dec 722.

Anno: 31 ALR 246.

The states cannot declare what shall be money, or regulate its value, since whatever power there is over the currency is vested in Congress. Norman v. Baltimore & O. R. Co. 294 US 240, 79 L ed 885, 55 S Ct 407, 95 ALR 1352, affirming 265 NY 37, 191 NE 726, 92 ALR 1523.

If a state establishes a tender law it must be for coin the value of which is regulated by Congress. Anno: 31 ALR 246.

[11] Markle v. Hatfield, 2 Johns.(NY) 455, 3 Am Dec 446; Westfall v. Braley, 10 Ohio St 188, 75 Am Dec 509; Thorp v. Wegefarth, 56 Pa 82, 93 Am Dec 789; Bayard v. Shunk, 1 Watts & S(Pa) 92, 37 Am Dec 441; Wainwright v. Webster, 11 Vt 576, 34 Am Dec 707; Tancil v. Seaton, 28 Gratt(Va) 601, 26 Am Rep 380.

[12] Woodruff v. Trapnall, 10 How(US) 190, 13 L ed 383.

[13] Woodruff v. Trapnall, 10 How(US) 190, 13 L ed 383.

The expression "intended to circulate as money," as used in provisions of some state Constitutions to the effect that "the legislature shall, in no case, have power to issue treasury warrants, treasury notes, or paper of any description intended to circulate as money," implies that the paper in question must have a fitness for general circulation as a substitute for money in the common transactions of business; it does not apply to warrants made payable to an individual to whom the state is indebted, although the state may direct its officers to receive such warrants in payment of debts due the state. Houston & T. C. R. Co. v. Texas, 177 US 66, 44 L ed 673, 20 S Ct 545.

[14] Craig v. Missouri, 4 Pet.(US) 410, 7 L ed 903.

The prohibition of Art. 1, § 10, of the United States Constitution, expressly forbidding states to coin money or make anything but gold and silver legal tender for the payment of debts, takes from the paper of state banks all coercive circulation, and leaves it to stand on the credit of the banks. Veazie Bank v. Fenno, 8 Wall.(US) 533, 19 L ed 482. Anno: 31 ALR 246.

[15] Bally v. Gentry, 1 Mo 164, 13 Am Dec 486.

[16] Thomas v. Richmond, 12 Wall.(US) 349, 20 L ed 453.

As to the right of municipal corporations generally to borrow money or incur indebtedness, see MUNICIPAL CORPORATIONS [Also 19 RCL p. 779, § 84].

[17] Legal Tender Cases, 12 Wall.(US) 457, 20 L ed 287.

[18] Legal Tender Case, 110 US 421, 28 L ed 204, 4 S Ct 122; United States v. Ballard, 14 Wall.(US) 457, 20 L ed 845.

the same rule has been applied with regard to an option to purchase property at the price offered to the optionor by a third person.[9]

G. Consideration

1. In General; Necessity

§ 85. Generally; definitions and nature of consideration.

Technically, consideration is defined as some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other.[10] Again, consideration for a promise is defined as an act or a forbearance; or the creation, modification, or destruction of a legal relation; or a return promise bargained for and given in exchange for the promise.[11] Consideration is, in effect, the price bargained[12] and paid for a promise[13]—that is, something given in exchange for the promise.[14] In some jurisdictions consideration is defined by statute.[15]

Generally, considerations are classified as "good" and "valuable."[16] A "good" consideration, sometimes called a "meritorious" consideration, is such as that of blood, or of natural love and affection, or of love and affection based on kindred by blood or marriage,[17] whereas a "valuable" consideration is generally understood as money or something having monetary value.[18]

Although historically the terms "quid pro quo" and "nudum pactum" applied only with regard to contracts which were at common law enforceable by an action of debt, these terms are now generally used with regard to the consideration for contracts generally—that is, consideration is referred to as the "quid pro quo," and any promise not supported by consideration is said to be "nudum pactum."[19] Consideration is, however, not identical with quid

specified sum and as much more than such sum as such stock may be sold for to any other person, was held in Huston v Harrington, 58 Wash 51, 107 P 874, to be too indefinite and uncertain, as to the price, to be enforced.

9. Slaughter v Mallet Land & Cattle Co. (CA5 Tex) 141 F 202, cert den 201 US 646, 50 L ed 903, 26 S Ct 761; Marske v Willard, 69 Ill 276, 48 NE 290; Hayes v O'Brien, 149 Ill 403, 37 NE 73; Levy v Peabody, 230 Mass 264, 130 NE 261; Nu-Way Service Stations v Vandenberg Bros. Oil Co. 283 Mich 551, 278 NW 683; Driebe v Ft. Penn Realty Co. 331 Pa 314, 200 A 62, 117 ALR 1091; Peerless Dept. Stores v George M. Snook Co. 123 W Va 77, 15 SE2d 169, 136 ALR 130; Goerke Motor Co. v Lonergan, 236 Wis 544, 295 NW 671.

Annotation: 136 ALR 139, 140.

10. Becker v Colonial Life Ins. Co. 153 App Div 382, 138 NYS 491.

58 Columbia L Rev 929 et seq.

It is said that the most widely used definition of "consideration" is a benefit to the promisor or a loss or detriment to the promisee. Test v Heaberlin, 254 Iowa 521, 118 NW2d 73.

11. Byerly v Duke Power Co. (CA4 NC) 217 F2d 803, citing Restatement, Contracts § 75.

12. La Flamme v Hoffman, 148 Me 444, 95 A2d 802; Re Sadler's Estate, 232 Miss 349, 98 So 2d 863; Coast Nat. Bank v Bloom, 113 NJL 597, 174 A 576, 95 ALR 528.

13. Howard College v Turner, 71 Ala 429; Re Sadler's Estate, 232 Miss 349, 98 So 2d 863; Coast Nat. Bank v Bloom, 113 NJL 597, 174 A 576, 95 ALR 528.

14. Phoenix Mut. L. Ins. Co. v Raddin, 120 US 183, 30 L ed 644, 7 S Ct 500; Re Sadler's Estate, 232 Miss 349, 98 So 2d 863; James v Fulcrod, 5 Tex 512.

15. Wilson v Blair, 65 Mont 155, 211 P 289, 27 ALR 1235; Clements v Jackson County Oil & Gas Co. 61 Okla 247, 161 P 216.

16. Thompson v Thompson, 17 Ohio St 649.

17. Williston, Contracts 3d ed § 110.

18. § 95, infra.

19. Contracts which were at common law enforceable by an action of debt generally derived their obligatory force from a duty imposed by law. This duty was based either on the form of the contract or on what was known as quid pro quo. By this was meant that the person owing the duty had received from the person to whom the duty was due something which he was bound to return or pay for. In the absence of quid pro quo, the engagement, except in the case of formal contracts, was termed "nudum pactum"—a phrase derived from the civil law. When the English courts finally declared that an action of assumpsit might be maintained for the nonperformance of a simple promise, they limited the right of action to cases in which there existed an element which came to be known as "consideration." Any promise not supported by a consideration they likewise termed "nudum pactum." The term "consideration" is thus in some respects analogous to the causa of the civil law and to quid pro quo in debt. In fact the latter term has sometimes been treated as though it were synonymous with consideration. Shackleford v Hendley, 1 AK Marsh (Ky) 496; Todd v Weber, 95 NY 181; Justice v Lang, 42 NY 493.

Williston, Contracts 3d ed §§ 99 et seq., 103.

For translation of legal phrases and maxims, see Am Jur 2d Desk Book, Document 185.

The consideration, in the legal sense of the word, of a contract is the quid pro quo, that which the party to whom a promise is made does or agrees to do in return for the promise. Phoenix Mut. L. Ins. Co. v Raddin, 120 US 183, 30 L ed 644, 7 S Ct 500.

20. Davis v Morgan, 117 Ga 504, 43 SE 732; Stonestreet v Southern Oil Co. 226 NC 261, 37 SE2d 676.

pro quo. The policy of the courts in requiring a consideration for the maintenance of a contract action appears to be to prevent the enforcement of gratuitous promises. It is said that when one receives a naked promise and such promise is broken, he is no worse off than he was; he gave nothing for it, he has lost nothing by it, and on its breach he has suffered no damage cognizable by courts. No benefit accrued to him who made the promise, nor was any injury sustained by him who received it. Such promises are not made within the scope of transactions intended to confer rights enforceable at law.[20] This argument loses much of its force because of the rule that the courts do not ordinarily inquire into the adequacy of the consideration, and any consideration, however slight, is legally sufficient to support even an onerous promise.[1] In view of this rule it has been said that consideration is as much a form as a seal at common law.[2]

At common law, a seal was deemed to dispense with, or raise a presumption of, consideration.[3] In most jurisdictions now, however, private seals have been abolished by statute and are declared to be without effect.[4] In addition, in jurisdictions which have adopted the Uniform Commercial Code,[5] the provision in the Code article on "Sales" that the affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument applies, and the law with respect to sealed instruments does not apply to such a contract or offer.[6]

§ 86. Necessity.

It is well settled, as a general rule, that consideration is an essential element of, and is necessary to the enforceability or validity of, a contract.[7] It fol-

Williston, Contracts 3d ed §§ 99 et seq., 103.

1. § 102, infra.

2. Holmes, J., in Krell v Codman, 154 Mass 454, 28 NE 578.

3. See Seals (1st ed § 13).

4. See Seals (1st ed § 8).

5. See Am Jur 2d Desk Book, Document 130 (and supp).

6. Uniform Commercial Code § 2-203.

7. Tilley v Cook County (Tilley v Chicago) 103 US 155, 26 L ed 374; Heryford v Davis, 102 US 235, 26 L ed 160; Farrington v Tennessee, 95 US 679, 24 L ed 558; Chorpenning v United States, 94 US 397, 24 L ed 126; Byerly v Duke Power Co. (CA4 NC) 217 F2d 803; Lewis v Ogram, 149 Cal 505, 87 P 60; Davis v Seymour, 59 Conn 531, 21 A 1004; Porter v Title Guaranty & S. Co. 17 Idaho 364, 106 P 299; Leopold v Salkey, 89 Ill 412; Bright v Coffman, 15 Ind 371; Caylor v Caylor, 22 Ind App 666, 52 NE 465; Stewart v Todd, 190 Iowa 283, 173 NW 619, 20 ALR 1272, reh den 190 Iowa 296, 327, 180 NW 146, 20 ALR 1301; Neal v Coburn, 92 Me 139, 42 A 348; Harper v Davis, 115 Md 349, 80 A 1012; Hills v Snell, 104 Mass 173; De Moss v Robinson, 46 Mich 62, 8 NW 712; Wilson v Blair, 65 Mont 155, 211 P 289, 27 ALR 1235;

seal[17] or bond or specialty,[18] and the NIL does not destroy the significance of a seal[19] in states where a seal imparts a special quality to a writing. The mere fact, however, that a corporate instrument bears a seal does not necessarily establish the instrument as a specialty as in the case of an individual, since in such case the seal may be used only as a mark of genuineness.[20]

The Commercial Code—Commercial paper, declares that an instrument otherwise negotiable is within this article even though it is under a seal,[1] with the intent to place sealed instruments on the same footing as any other commercial paper without affecting any other statutes or rules of law relating to sealed instruments except so far as they are inconsistent.[2]

§ 214. Revenue stamps.[3]

Certain obligations for the payment of money come under the laws imposing stamp taxes, but instruments omitting required revenue stamps are valid unless the statute expressly invalidates them.[4] The revenue stamp is no part of a promissory note, and the omission of the stamp or failure to cancel the stamps does not affect its negotiability.[5]

III. CONSIDERATION

A. In General

§ 215. Generally.

This portion of the article treats of the necessity, sufficiency, and legality of consideration for a bill or note or an obligation thereon. Treated elsewhere are matters of consideration, or "value," for a transfer of a bill or note,[6] consideration for an extension or modification, as distinguished from a renewal instrument,[7] the effect of executory consideration on the unconditional nature of an order or promise,[8] the effect of the presence or absence of a statement of consideration,[9] and notice of, or from, the consideration.[10]

17. Alropa Corp. v Myers (DC Del) 55 F Supp 936; Clarke v Pierce, 215 Mass 552, 102 NE 1094.

18. Alropa Corp. v Myers (DC Del) 55 F Supp 936; Wooleyhan v Green, 34 Del 503, 155 A 602.

19. Balliet v Fetter, 314 Pa 284, 171 A 466.

20. Sigler v Mt. Vernon Bottling Co. (DC Dist Col) 158 F Supp 234, affd 104 App DC 260, 261 F2d 378.

1. Uniform Commercial Code § 3–113.

2. Comment to Uniform Commercial Code § 3–113.

See Otto v Powers, 177 Pa Super 253, 110 A2d 847.

3. *Practice Aids.*—Provision as to payment for revenue stamps. 2 Am Jur Legal Forms 2:748.

4. See Stamp Taxes (1st ed §§ 12 et seq., 29).

5. Goodale v Thorn, 199 Cal 307, 249 P 11; Newhall Sav. Bank v Buck, 197 Iowa 732, 197 NW 986; Farmers Sav. Bank v Neel, 193 Iowa 685, 187 NW 555, 21 ALR 1116; Currie-McGraw Co. v Friedman, 135 Miss 701, 100 So 273; Bank of High Hill v Rockey (Mo App) 277 SW 573; Security State Bank v Brown, 110 Neb 237, 193 NW 336.

6. §§ 334 et seq. infra.

While the NIL defines "value" in terms of "consideration" (§ 216, infra); and uses the term "value" in describing the character of an original party for accommodation (§ 118, supra), in the Commercial Code "consideration" is distinguished from "value." The former refers to what the obligor has received for his obligation, and is important only on the question whether his obligation can be enforced against him. (Comment 1 to Uniform Commercial Code § 3–408). "Value" is important only on the question whether the holder who has acquired that obligation qualifies as a particular kind of holder. Comment 2 to Uniform Commercial Code § 3–303.

7. §§ 302 et seq., infra.

8. § 141, supra.

9. §§ 90, 145, 188, 189, supra.

10. §§ 452 et seq., infra.

Like any other contract, a negotiable instrument requires a consideration as between the original parties, or a recognized substitute therefor,[11] but such an instrument is presumed to have been issued for a valuable consideration.[12]

B. What Constitutes

§ 216. Generally.

The general principles as to what constitutes consideration for a contract, full discussion of which appears in another article,[13] apply in determining what constitutes consideration for a bill or note. Any consideration,[14] that is, any valuable consideration as distinguished from "good" consideration,[15] sufficient to support a simple contract, supports a negotiable instrument.

Thus, while nothing is a consideration unless it is known and agreed to as such by both parties,[16] and these definitions are not completely comprehensive,[17] consideration may be said to consist in any benefit to the promisor, or in a loss or detriment to the promisee,[18] or to exist when, at the desire of the

11. § 237, infra.

12. See Vol. 12.

13. See Contracts (1st ed §§ 75 et seq.).

14. Flores v Woodspecialties, Inc. 138 Cal App 2d 763, 292 P2d 626.

Under the heading, "What constitutes consideration," the NIL declares that value is any consideration sufficient to support a simple contract. Negotiable Instrument Law § 25. Compare Negotiable Instrument Law § 191, which states that "value" means valuable consideration.

Apart from the "except" clause relating to an antecedent obligation, other obligations on an instrument are subject to the ordinary rules of contract law relating to contracts not under seal, with respect to the necessity or sufficiency of consideration. Comment 3 to Uniform Commercial Code § 3–408.

15. Sullivan v Sullivan, 122 Ky 707, 92 SW 966; Campbell v Jefferson, 296 Pa 368, 145 A 912, 63 ALR 1180 (slight loss, inconvenience, or benefit is valuable); Re Smith, 226 Wis 556, 277 NW 141.

Courts often speak of "good" consideration in the sense of a sufficient or valuable consideration, rather than "good" in the technical and limited sense.

16. Philpot v Gruninger, 14 Wall (US) 570, 20 L ed 743; United Beef Co. v Childs, 306 Mass 187, 27 NE2d 962; Suske v Straka, 229 Minn 408, 39 NW2d 745 (while preexisting indebtedness would constitute consideration for a note, this is not so where plaintiff testified that the note was "a present"); Leach v Treber, 164 Neb 419, 82 NW2d 544 (detriment to promisee); First Nat. Bank v Chandler (Tex Civ App) 58 SW2d 1056, error dismd; Good v Dyer, 137 Va 114, 119 SE 277.

Consideration is the price voluntarily paid for a promisor's undertaking. Philpot v Gruninger, 14 Wall (US) 570, 20 L ed 743; 174 A 576, 95 ALR 528 (bargained for and paid).

Consideration is a matter of contract, and that which is claimed to be such must be within the express or implied contemplation of the parties. Van Houten v Van Houten, 202 Iowa 1085, 209 NW 293.

It is a question of fact for the jury whether a note given by a practically helpless invalid to his nurse was a gift, or compensation for services rendered. Meginnes v McCheaney, 179 Iowa 563, 160 NW 50.

17. Irwin v Lombard University, 56 Ohio St 9, 46 NE 63.

18. Howard v Tarr (CA8 Mo) 261 F2d 561 (applying Ohio law); Hance Hardware Co. v Howard, 40 Del 209, 8 A2d 30; Tegtmeyer v Mordlund, 259 Ill App 247; Kelley, Glover & Vale, Inc. v Heitman, 220 Ind 625, 44 NE2d 981, cert den 319 US 672, 87 L ed 1713, 63 S Ct 1320; First State Bank v Williams, 143 Iowa 177, 121 NW 702; Bryan v Glass, 6 La Ann 740; Amherst Academy v Cowls, 6 Pick (Mass) 427; Becker County Nat. Bank v Davis, 204 Minn 603, 284 NW 789; Leach v Treber, 164 Neb 419, 82 NW2d 544 (trouble, injury, inconvenience, prejudice, or detriment to promisee); Coast Nat. Bank v Bloom, 113 NJL 597, 174 A 576, 95 ALR 528; Cockrell v McKenna, 103 NJL 166, 134 A 687, 48 ALR 234; Mills v Bonin, 239 NC 498, 80 SE2d 365; L. A. Randolph Co. v Lewis, 196 NC 51, 144 SE 545, 62 ALR 1474; City Trust & Sav. Bank v Schwartz, 68 Ohio App 80, 22 Ohio Ops 176, 39 NE2d 548; First Nat. Bank v Boxley, 129 Okla 159, 264 P 184, 64 ALR 588; Van Bebber v Vechill, 166 Or 10, 109 P2d 1046; Campbell v Jefferson, 296 Pa 368, 145 A 912, 63 ALR 1180; Shayne of Miami, Inc. v Greybow, Inc. 232 SC 161, 101 SE2d 486.

A valuable consideration in the sense of the law may consist either in some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss

promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, the consideration being the act, abstinence, or promise.[19] It has been said generally that to give a consideration value for the supporting of a promise, it must be such as deprives the person to whom the promise is made of a right which he possessed before, or else confers upon the other party a benefit which he could not otherwise have had.[20]

Consideration may be given to the promisor or to some other person. It matters not from whom the consideration moves or to whom it goes. If it is bargained for as the exchange for the promise, the promise is not gratuitous.[1] Consideration need not move from the promisee,[2] and it need not be pecuniary or beneficial to the promisor.[3] Consideration moving to the promisor may be a benefit to a third person[4] or a detriment incurred on his behalf.[5]

Consideration is not always a fact question. If all the facts concerning the issue of consideration are without dispute, such issue becomes a question of law.[6]

§ 217. Adequacy.

The law concerns itself only with the existence of legal consideration for a bill or note. Mere inadequacy of the consideration is not within this concern,[7] in the absence of fraud,[8] mistake, undue influence,[9] mental incapacity of the

by the other. Howard v Tarr (CA8 Mo) 261 F2d 561 (applying Ohio law); Currie v Miss (Eng) LR 10 Exch 153; See Seth v Lew Hing, 125 Cal App 729, 14 P2d 537, 15 P2d 190, which also sets forth a statutory definition.

19. Becker County Nat. Bank v Davis, 204 Minn 603, 284 NW 789; Irwin v Lombard University, 56 Ohio St 9, 46 NE 63.

20. Westmont Nat. Bank v Payne, 108 NJL 133, 156 A 652.

1. Shayne of Miami, Inc. v Greybow, Inc. 232 SC 161, 101 SE2d 486 (quoting Restatement, CONTRACTS § 75(2)).

2. Flores v Woodspecialties, Inc. 138 Cal App 2d 763, 292 P2d 626; Hance Hardware Co. v Howard, 40 Del 209, 8 A2d 30.

3. Howard v Tarr (CA8 Mo) 261 F2d 561 (applying Ohio law); Moriconi v Flemming, 125 Cal App 2d 742, 271 P2d 182; Re Berbecker, 277 Ill App 201; Kelley, Glover & Vale, Inc. v Heitman, 220 Ind 625, 44 NE2d 981, cert den 319 US 672, 87 L ed 1713, 63 S Ct 1320; Chick v Trevett, 20 Me 462; Greenwood Leflore Hospital Com. v Turner, 213 Miss 200, 56 So 2d 496; Leach v Treber, 164 Neb 419, 82 NW2d 544; County Trust Co. v Mara, 242 App Div 206, 273 NYS 597, affd 266 NY 540, 195 NE 190; First Nat. Bank v Boxley, 129 Okla 159, 264 P 184, 64 ALR 588; Shayne of Miami, Inc. v Greybow, Inc. 232 SC 161, 101 SE2d 486; Ballard v Burton, 64 Vt 387, 24 A 769.

4. Bromfield v Trinidad Nat. Invest. Co. (CA10) 36 F2d 616, 71 ALR 512; Tegtmeyer v Nordlund, 259 Ill App 247; Greenwood Leflore Hospital Com. v Turner, 213 Miss 200, 56 So 2d 496; Coast Nat. Bank v Bloom, 113 NJL 597, 174 A 576, 95 ALR 528; First Nat. Bank v Boxley, 129 Okla 159, 264 P 184, 64 ALR 588; Swanson v Sanders, 75 SD 40, 58 NW2d 809; Barrett v Mahnken, 6 Wyo 541, 48 P 202.

5. Brainard v Harris, 14 Ohio 107; Third Nat. Bank & Trust Co. v Rodgers, 330 Pa 523, 198 A 320; Skagit State Bank v Moody, 86 Wash 286, 150 P 425, LRA1916A 1215.

6. Jones v Hubbard (Tex Civ App) 302 SW 2d 493, error ref n r e.

7. Walker v Winn, 142 Ala 560, 39 So 12; Poggetto v Bowen, 18 Cal App 2d 173, 63 P2d 857; Smock v Pierson, 68 Ind 405; Central Sav. Bank v O'Connor, 132 Mich 578, 94 NW 11; Campbell v Jefferson, 296 Pa 368, 145 A 912, 63 ALR 1180; Ballard v Burton, 64 Vt 387, 24 A 769; Good v Dyer, 137 Va 114, 119 SE 277; Hatten's Estate, 233 Wis 199, 288 NW 278.

8. Lorber v Tooley, 47 Cal App 2d 47, 117 P2d 421.

Inadequacy sufficient to shock the conscience constitutes in itself a badge of fraud. Harshbarger v Eby, 28 Idaho 753, 156 P 619; Wolford v Powers, 85 Ind 294; Hannon v Fink, 66 Okla 115, 167 P 1152; Rauschenbach v McDaniel's Estate, 122 W Va 632, 11 SE2d 852.

9. Shocket v Fickling, 229 SC 412, 93 SE 2d 203; Rauschenbach v McDaniel's Estate, 122 W Va 632, 11 SE2d 852.

obligor,[10] or a statute requiring the quantum of consideration to be weighed.[11] The adequacy in fact, as distinguished from value in law, is for the parties to judge for themselves.[12] It is ordinarily immaterial that the consideration for a bill or note is inadequate as compared with the amount of the order or promise,[13] or that the obligor, knowing the circumstances or having an opportunity to inform himself, is disappointed in his expectations.[14]

Legal or valuable consideration may be of slight value,[15] or it may be a trifling benefit, loss, or act,[16] or it may be of value only to the promising party.[17] It may be of indeterminate value,[18] such as property the value of which is incapable of reduction to any fixed sum and is altogether a matter of opinion,[19] the good will of a business,[20] or an act which affords the promising party pleasure or gratification, pleases his fancy, or otherwise merits, in his judgment, his appreciation. However, it is obvious that in the case of a pecuniary or property consideration, there is a more objective standard by which the law can judge the nonexistence or gross inadequacy of value than in the case of satisfaction of desire or fancy.[1]

10. Rauschenbach v McDaniel's Estate, supra.

11. Herbert v Lankershim, 9 Cal 2d 409, 71 P2d 220 (statute providing that moral obligation is good consideration to the extent of the obligation but no further).

12. Philpot v Gruninger, 14 Wall (US) 570, 20 L ed 743; Price v Jones, 105 Ind 543, 5 NE 683; Amherst Academy v Cowls, 6 Pick (Mass) 427; Re Hore's Estate, 220 Minn 374, 19 NW2d 783, 161 ALR 1366; Ballard v Burton, 64 Vt 387, 24 A 769; Good v Dyer, 137 Va 114, 119 SE 277; Rauschenbach v McDaniel's Estate, 122 W Va 632, 11 SE2d 852 (purely a matter for the deceased maker to have determined, and his estate must pay the note); Hatten's Estate, 233 Wis 199, 288 NW 278; Sheldon v Blackman, 188 Wis 4, 205 NW 486.

There is no rule by which the courts can be guided if they undertake the determination of such adequacy. Wolford v Powers, 85 Ind 294.

13. Littlegreen v Gardner, 208 Ga 523, 67 SE2d 713; Re Hore's Estate, 220 Minn 374, 19 NW2d 783, 161 ALR 1366 (personal services may constitute sufficient consideration regardless of their economic value as compared to the amount of the note); Miller v McKenzie, 95 NY 575; Shocket v Fickling, 229 SC 412, 93 SE2d 203; Hatten's Estate, 233 Wis 199, 288 NW 278.

A note is valid as founded on sufficient consideration where, for a loan of $1,500 in gold coin, made at a time when that amount of gold would be worth $2,500 in paper currency, the note was executed for $2,500, without specifying in what kind of money it was payable. Cox v Smith, 1 Nev 161. Compare Turner v Young, 27 Ind 373.

Appreciation of the way in which medical services are performed will support a note to a doctor for an amount exceeding what would otherwise be the value of services. Foxworthy v Adams, 136 Ky 403, 124 SW 381.

Valid consideration supporting a note need not be of balanced value with the instrument. Rauschenbach v McDaniel's Estate, 122 W Va 632, 11 SE2d 852.

14. Philpot v Gruninger, 14 Wall (US) 570, 20 L ed 743; Harshberger v Eby, 28 Idaho 753, 156 P 619; Smock v Pierson, 68 Ind 405; Hannon v Fink, 66 Okla 115, 167 P 1152.

15. First Nat. Bank v Trott, 236 Ill App 412; Smock v Pierson, 68 Ind 405; Good v Dyer, 137 Va 114, 119 SE 277.

Slight loss or inconvenience to the promisee upon his entering into the contract, or like benefit to the promisor, is deemed a valuable consideration. Campbell v Jefferson, 296 Pa 368, 145 A 912, 63 ALR 1180.

16. Ballard v Burton, 64 Vt 387, 24 A 769; Good v Dyer, 137 Va 114, 119 SE 277.

17. Smock v Pierson, 68 Ind 405.

18. Price v Jones, 105 Ind 543, 5 NE 683; Smock v Pierson, 68 Ind 405; Miller v Finley, 26 Mich 249; Sheldon v Blackman, 188 Wis 4, 205 NW 486.

19. Miller v Finley, 26 Mich 249.

20. Harshbarger v Eby, 28 Idaho 753, 156 P 619 (business, property, and good will); Smock v Pierson, 68 Ind 405 (even though business proves unsuccessful).

In Magee v Pope, 234 Mo App 191, 112 SW2d 891, it was held that the practice and good will of a physician was not a salable item and did not constitute consideration and the maker was entitled to cancellation of a note given therefor.

1. Wolford v Powers, 85 Ind 294; Foxworthy v Adams, 136 Ky 403, 124 SW 381; Hatten's Estate, 233 Wis 199, 288 NW 278.

U. S., XX., 685); *Gunn* v. *Barry*, 15 Wall., 610 (82 U. S., XXI., 212); *Walker* v. *Whitehead*, 16 Wall., 314 (83 U. S., XXI., 357).

As to the position taken by the advocates of the "homestead exemption," that the States can exempt articles of necessity as against antecedent contracts, and that the amount of the exemption must necessarily be a matter of legislative discretion, we must admit that there would be great force in the second branch of this proposition, if the first were sound and could be successfully maintained. But it is completely answered by the cases already herein cited. A State cannot minister, even to the most pressing necessities of her citizens, by impairing the obligation of subsisting contracts. Whatever power a distinct civic community may have, in this respect, to the States of this Union it is prohibited by the express language of the National Constitution. In our view, the true doctrine, sustained by the great weight of authority is, that such property as was subject to execution at the time the debt was contracted, must continue subject to execution until the debt is paid, so long as it remains in the hands of the debtor.

Mr. **A. W. Tourgee**, for defendant in error:

The remedy embraces everything that the creditor may lawfully do or have done, in his behalf, upon a violation of the contract. All that is included in a suit or action, from the issue of process to the satisfaction of judgment, is a part and parcel of the creditor's remedy. If the term "obligation" includes the whole of the remedy, then any change in the conduct of an action or the enforcement of a judgment which tends, in any degree, to prevent, hinder, delay or render in any manner less speedy and efficacious, any part of the remedy, would be violative of the constitutional inhibition.

2 Kent, Com., 397; 3 Story, Com., sec. 1392, p. 268; *Sturges* v. *Crowninshield*, 4 Wheat., 122, 200, 201; *Mason* v. *Haile*, 12 Wheat., 370; *Beers* v. *Haughton*, 9 Pet., 329, 359; *Cook* v. *Moffat*, 5 How., 316.

Again; if a creditor has a right to subject the property of the debtor to the satisfaction of his claim, he has the right to subject the whole of it, not exempt at the date of his contract. Yet, in *Bronson* v. *Kinzie*, 1 How., 315, *Chief Justice* Taney, delivering the opinion of the court, says: "Undoubtedly the State may regulate the mode of proceeding in its courts at pleasure, both as to past and future contracts. It may, for example, shorten the periods within which claims may be barred. It may, if it think proper, direct that the necessary implements of agriculture or the tools of the mechanic, or articles of necessity in household furniture, like wearing apparel, be not liable to execution on judgments."

This language has been several times cited with approval.

Gunn v. *Barry*, 15 Wall., 610 (82 U. S., XXI., 212).

There is no human subtility which can distinguish between an exemption from execution against the person, and an exemption from execution against property. Both are a part of the remedy. If the State has power to exempt certain articles because they are necessaries, the power to define what are necessaries must be admitted.

There are certain decisions of the Supreme Courts of some of the States, which take the broad ground that the remedy is not within the obligation of a contract, to any extent whatever, and is, consequently, within the absolute control of the State. According to these, it is inconsistent to hold that the State cannot exempt from execution, property which the debtor has an undoubted right to sell or incumber, up to the very hour of lien obtained by the creditor.

The most important of these cases are: *Morse* v. *Goold*, 11 N. Y., 281; *Jacobs* v. *Smallwood*, 63 N. C., 112; *Hill* v. *Kessler*, 63 N. C., 437; *Garrett* v. *Chesire*, 69 N. C., 396; *Wilson* v. *Sparks*, 72 N. C., 288; *Edwards* v. *Kearzey*, 75 N. C., 409.

The effect of what is termed the homestead provision of North Carolina, is not to deny the creditor's right, but to regulate the manner in which it shall be enforced. It does not prevent him from holding his debtor liable, but simply says that a certain portion of the debtor's real estate shall not be subject to sale during his life nor until the majority of his youngest child. It is not so much for the ease and comfort of the debtor, as for the benefit of the State that it was enacted; not to favor the debtor, but to prevent the evils of almost universal pauperism. The purpose of the provision is to prevent pauperism, ignorance and crime, by assuring the citizen of a sufficiency to prevent absolute want during his lifetime; not for his sake nor to prevent his creditor from having his due, but because the public weal demanded that the scath of the years of revolution should not fall upon unprotected heads, and the State be burdened with an unnumbered host of hopeless paupers, in consequence.

It affects the remedy of the creditor only incidentally, in the performance of a high public behest. The safety and health of the Commonwealth are above private right. The sacredness of private property disappears before the imperious demands of public necessity. When two rights are in conflict, the greater must prevail.

See, *Munn* v. *Ill.* (*ante*, 77); *R. R. Co.* v. *Iowa* (*ante*, 94); *Peik* v. *R. R. Co.* (*ante*, 97).

Mr. Justice **Swayne** delivered the opinion of the court:

The Constitution of North Carolina of 1868 took effect on the 24th of April in that year. Sections 1 and 2 of article X., declare that personal property of any resident of the State, of the value of $500, to be selected by such resident, shall be exempt from sale under execution or other final process issued for the collection of any debt; and that every homestead, and the buildings used therewith, not exceeding in value $1,000, to be selected by the owner, or, in lieu thereof, at the option of the owner, any lot in a city, town or village, with the buildings used thereon, owned and occupied by any resident of the State, and not exceeding in value $1,000, shall be exempt in like manner from sale for the collection of any debt under final process.

On the 22d of August, 1868, the Legislature passed an Act which prescribed the mode of laying off the homestead, and setting off the personal property so exempted by the Constitution. On the 7th of April, 1869, another Act was passed, which repealed the prior Act, and prescribed a different mode of doing what the prior

Act provided for. This latter Act has not been repealed or modified.

Three several judgments were recovered against the defendant in error: one on the 15th of December, 1868, upon a bond dated the 25th of September, 1865; another on the 10th of October, 1868, upon a bond dated February 27, 1866; and the third on the 7th of January, 1868, for a debt due prior to that time. Two of these judgments were docketed, and became liens upon the premises in controversy on the 16th of December, 1868. The other one was docketed, and became such lien on the 18th of January, 1869. When the debts were contracted for which the judgments were rendered, the exemption laws in force were the Acts of January 1, 1854, and of February 16th, 1859. The first-named Act exempted certain enumerated articles of inconsiderable value, and "such other property as the freeholders appointed for that purpose might deem necessary for the comfort and support of the debtor's family, not exceeding in value $50, at cash valuation." By the Act of 1859, the exemption was extended to fifty acres of land in the country, or two acres in a town, of not greater value than $500.

On the 22d of January, 1869, the premises in controversy were duly set off to the defendant in error, as a homestead. He had no other real estate, and the premises did not exceed $1,000 in value. On the 6th of March, 1869, the sheriff, under executions issued on the judgments, sold the premises to the plaintiff in error, and thereafter executed to him a deed in due form. The regularity of the sale is not contested.

The Act of August 23, 1868, was then in force. The Acts of 1854 and 1859 had been repealed. *Wilson* v. *Sparks*, 72 N. C., 208. No point is made upon these Acts by the counsel upon either side. We shall, therefore, pass them by without further remark.

The plaintiff in error brought this action in the Superior Court of Granville County, to recover possession of the premises so sold and conveyed to him. That court adjudged that the exemption created by the Constitution and the Act of 1868 protected the property from liability under the judgments, and that the sale and conveyance by the sheriff were, therefore, void. Judgment was given accordingly. The Supreme Court of the State affirmed the judgment. The plaintiff in error thereupon brought the case here for review. The only federal question presented by the record is, whether the exemption was valid as regards contracts made before the adoption of the Constitution of 1868.

The counsel for the plaintiff in error insists upon the negative of this proposition. The counsel upon the other side, frankly conceding several minor points, maintains the affirmative view. Our remarks will be confined to this subject.

The Constitution of the United States declares that "No State shall pass any * * * law impairing the obligation of contracts."

A contract is the agreement of minds, upon a sufficient consideration, that something specified shall be done, or shall not be done.

The lexical definition of "impair" is "to make worse; to diminish in quantity, value, excellence or strength; to lessen in power; to weaken; to enfeeble; to deteriorate."—Webster, Dic.

"Obligation" is defined to be "the act of obliging or binding; that which obligates; the binding power of a vow, promise, oath or contract," etc. Webster, Dic.

"The word is derived from the Latin word *obligatio*, tying up; and that from the verb *obligo*, to bind or tie up; to engage by the ties of a promise or oath, or form of law; and *obligo* is compounded of the verb *ligo*, to tie or bind fast, and the preposition *ob*, which is prefixed to increase its meaning." *Blair* v. *Williams*, 4 Litt., 35, and *Lapsley* v. *Brashears*, 4 Litt., 47. [Opinion in above cases, 4 Litt., 65].

The obligation of a contract includes every thing within its obligatory scope. Among these elements nothing is more important than the means of enforcement. This is the breath of its vital existence. Without it, the contract, as such, in the view of the law, ceases to be, and falls into the class of those "imperfect obligations," as they are termed, which depend for their fulfillment upon the will and conscience of those upon whom they rest. The ideas of right and remedy are inseparable. "Want of right and want of remedy are the same thing." 1 Bac. Abr., tit. Actions in General, letter B.

In *Von Hoffman* v. *Quincy*, 4 Wall., 535 [71 U. S., XVIII., 403], it was said: "A statute of frauds embracing pre-existing parol contracts not before required to be in writing would affect its validity. A statute declaring that the word 'ton' should, in prior as well as subsequent contracts, be held to mean half or double the weight before prescribed would affect its construction. A statute providing that a previous contract of indebtment may be extinguished by a process of bankruptcy would involve its discharge; and a statute forbidding the sale of any of the debtor's property under a judgment upon such a contract would relate to the remedy."

It cannot be doubted, either upon principle or authority, that each of such laws would violate the obligation of the contract, and the last not less than the first. These propositions seem to us too clear to require discussion. It is also the settled doctrine of this court, that the laws which subsist at the time and place of making a contract enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. This rule embraces alike those which affect its validity, construction, discharge and enforcement. *Von Hoffman* v. *Quincy* (*supra*), *McCracken* v. *Hayward*, 2 How., 608.

In *Green* v. *Biddle*, 8 Wheat., 1, this court said, touching the point here under consideration: "It is no answer, that the Acts of Kentucky now in question are regulations of the remedy, and not of the right to the lands. If these Acts so change the nature and extent of existing remedies as materially to impair the rights and interests of the owner, they are just as much a violation of the compact as if they overturned his rights and interests."

"One of the tests that a contract has been impaired is, that its value has by legislation been diminished. It is not by the Constitution to be impaired at all. This is not a question of degree or manner or cause, but of encroaching in any respect on its obligation—dispensing with any part of its force." *Bk.* v. *Sharp*, 6 How., 301.

It is to be understood that the encroachment thus denounced must be material. If it be not

material, it will be regarded as of no account.

These rules are axioms in the jurisprudence of this court. We think they rest upon a solid foundation. Do they not cover this case; and are they not decisive of the question before us?

We will, however, further examine the subject.

It is the established law of North Carolina that stay laws are void, because they are in conflict with the national Constitution. *Jacobs* v. *Smallwood*, 63 N. C., 112; *Jones* v. *Chittenden*, 1 L. Repos. (N. C.), 385: *Barnes* v. *Barnes*, 8 Jones, L. 366. This ruling is clearly correct. Such laws change a term of the contract by postponing the time of payment. This impairs its obligation, by making it less valuable to the creditor. But it does this solely by operating on the remedy. The contract is not otherwise touched by the offending law. Let us suppose a case. A party recovers two judgments—one against A, the other against B—each for the sum of $1,500, upon a promissory note. Each debtor has property worth the amount of the judgment, and no more. The Legislature thereafter passes a law declaring that all past and future judgments shall be collected "in four equal annual installments." At the same time, another law is passed, which exempts from execution the debtor's property to the amount of $1,500. The court holds the former law void and the latter valid. Is not such a result a legal solecism? Can the two judgments be reconciled? One law postpones the remedy, the other destroys it; except in the contingency that the debtor shall acquire more property—a thing that may not occur and that cannot occur if he die before the acquisition is made. Both laws involve the same principle and rest on the same basis. They must stand or fall together. The concession that the former is invalid cuts away the foundation from under the latter. If a State may stay the remedy for one fixed period, however short, it may for another, however long. And if it may exempt property to the amount here in question, it may do so to any amount. This, as regards the mode of impairment we are considering, would annul the inhibition of the Constitution, and set at naught the salutary restriction it was intended to impose.

The power to tax involves the power to destroy. *McCulloch* v. *Md.*, 4 Wheat., 416. The power to modify at discretion the remedial part of a contract is the same thing.

But it is said that imprisonment for debt may be abolished in all cases, and that the time prescribed by a statute of limitations may be abridged.

Imprisonment for debt is a relic of ancient barbarism. Cooper's Justinian, 658; 12 Tables, Tab. 3. It has descended with the stream of time. It is a punishment rather than a remedy. It is right for fraud, but wrong for misfortune. It breaks the spirit of the honest debtor, destroys his credit, which is a form of capital, and dooms him, while it lasts, to helpless illeness. Where there is no fraud, it is the opposite of a remedy. Every right-minded man must rejoice when such a blot is removed from the statute-book.

But upon the power of a State, even in this class of cases, see the strong dissenting opinion of Washington *J.*, in *Mason* v. *Haile*, 12 Wheat., 370.

Statutes of limitation are statutes of repose. They are necessary to the welfare of society. The lapse of time constantly carries with it the means of proof. The public as well as individuals are interested in the principle upon which they proceed. They do not impair the remedy, but only require its application within the time specified. If the period limited be unreasonably short, and designed to defeat the remedy upon pre-existing contracts, which was part of their obligation, we should pronounce the statute void. Otherwise, we should abdicate the performance of one of our most important duties. The obligation of a contract cannot be substantially impaired in any way by a state law. This restriction is beneficial to those whom it restrains, as well as to others. No community can have any higher public interest than in the faithful performance of contracts and the honest administration of justice. The inhibition of the Constitution is wholly prospective. The States may legislate as to contracts thereafter made, as they may see fit. It is only those in existence when the hostile law is passed that are protected from its effect.

In *Bronson* v. *Kinzie*, 1 How., 311, the subject of exemptions was touched upon but not discussed. There a mortgage had been executed in Illinois. Subsequently, the Legislature passed a law giving the mortgagor a year to redeem after sale under a decree, and requiring the land to be appraised, and not to be sold for less than two thirds of the appraised value. The law was held to be void in both particulars as to pre-existing contracts. What is said as to exemptions is entirely *obiter;* but, coming from so high a source, it is entitled to the most respectful consideration. The court, speaking through *Chief Justice* Taney, said: "A State may, if it thinks proper, direct that the necessary implements of agriculture, or the tools of the mechanic, or articles of necessity in household furniture, shall, like wearing apparel, not be liable to execution on judgments. Regulations of this description have always been considered in every civilized community as properly belonging to the remedy to be executed or not by every sovereignty, according to its own views of policy and humanity." He quotes with approbation the passage which we have quoted from *Green* v. *Biddle*. To guard against possible misconstruction, he is careful to say further: "Whatever belongs merely to the remedy may be altered according to the will of the State, provided the alteration does not impair the obligation of the contract. But, if that effect is produced, it is immaterial whether it is done by acting on the remedy, or directly on the contract itself. In either case, it is prohibited by the Constitution."

The learned *Chief Justice* seems to have had in his mind the maxim "*De minimis*," etc. Upon no other ground can any exemption be justified. "Policy and humanity" are dangerous guides in the discussion of a legal proposition. He who follows them far is apt to bring back the means of error and delusion. The prohibition contains no qualification, and we have no judicial authority to interpolate any. Our duty is simply to execute it.

Where the facts are undisputed, it is always the duty of the court to pronounce the legal result. *Merch. Bk.* v. *St. Bk.*, 10 Wall., 604 [77 U. S., XIX., 1008]. Here there is no question of legislative discretion involved. With the constitutional prohibition, even as expounded by the late *Chief Justice*, before us on one hand, and on the other the State Constitution of 1868, and the laws passed to carry out its provisions, we cannot hesitate to hold that both the latter do seriously impair the obligation of the several contracts here in question. We say, as was said in *Gunn* v. *Barry*, 15 Wall., 622 [82 U. S., XXI., 214], that no one can cast his eyes upon the new exemptions thus created without being at once struck with their excessive character, and hence their fatal magnitude. The claim for the retrospective efficacy of the Constitution or the laws cannot be supported. Their validity as to contracts subsequently made admits of no doubt. *Bronson* v. *Kinzie*, *supra*.

The history of the National Constitution throws a strong light upon this subject. Between the close of the War of the Revolution and the adoption of that instrument, unprecedented pecuniary distress existed throughout the country.

"The discontents and uneasiness, arising in a great measure from the embarrassment in which a great number of individuals were involved, continued to become more extensive. At length, two great parties were formed in every State, which were distinctly marked, and which pursued distinct objects with systematic arrangement." 5 Marshall, L. of Washington, 75. One party sought to maintain the inviolability of contracts, the other to impair or destroy them. "The emission of paper money, the delay of legal proceedings, and the suspension of the collection of taxes, were the fruits of the rule of the latter, wherever they were completely dominant." 5 Marshall, L. of Washington, 86.

"The system called justice was, in some of the States, iniquity reduced to elementary principles. * * * In some of the States, creditors were treated as outlaws. Bankrupts were armed with legal authority to be persecutors and, by the shock of all confidence, society was shaken to its foundations." Fisher Ames' Works; ed. of 1859, 120.

"Evidences of acknowledged claims on the public would not command in the market more than one fifth of their nominal value. The bonds of solvent men, payable at no very distant day, could not be negotiated but at a discount of thirty, forty or fifty per cent. per annum. Landed property would rarely command any price; and sales of the most common articles for ready money could only be made at enormous and ruinous depreciation.

State Legislatures, in too many instances, yielded to the necessities of their constituents, and passed laws by which creditors were compelled to wait for the payment of their just demands, on the tender of security, or to take property at a valuation, or paper money falsely purporting to be the representative of specie." Ramsey, Hist. U. S., 77.

"The effects of these laws interfering between debtors and creditors were extensive. They destroyed public credit and confidence between man and man, injured the morals of the people, and in many instances insured and aggravated the ruin of the unfortunate debtors for whose temporary relief they were brought forward." 2 Ramsey, Hist. S. C., 429.

Besides the large issues of continental money, nearly all the States issued their own bills of credit. In many instances the amount was very large. 2 Phillips' Hist. Sketches of Am. Paper Currency, 29. The depreciation of both became enormous. Only one per cent. of the "continental money" was assumed by the new government. Nothing more was ever paid upon it. Act of Aug. 4, 1790, sec. 4. 1 Stat. at L., 140. 2 Phillips' Hist. American Paper Currency 194. It is needless to trace the history of the emissions by the States.

The Treaty of Peace with Great Britain declared that "The creditors on either side shall meet with no lawful impediment to the recovery of the full amount in sterling money of all *bona fide* debts heretofore contracted." The British Minister complained earnestly to the American Secretary of State, of violations of this guaranty. Twenty-two instances of laws in conflict with it in different States were specifically named. 1 Am. St. Papers, pp. 195, 196 199, and 237. In South Carolina, "laws were passed in which property of every kind was made a legal tender in payment of debts, although payable according to contract in gold and silver. Other laws installed the debt, so that of sums already due, only a third and afterwards only a fifth, was securable in law." 2 Ramsey, Hist. S. C., 429. Many other States passed laws of a similar character. The obligation of the contract was as often invaded after judgment as before. The attacks were quite as common and effective in one way as in the other. To meet these evils in their various phases, the national Constitution declared that "No State should emit bills of credit, make anything but gold and silver coin a legal tender in payment of debts, or pass any law * * * impairing the obligation of contracts." All these provisions grew out of previous abuses. 2 Curt. Hist. of the Const. 366. See also the Federalist, Nos. 7 and 44. In the number last mentioned, Mr. Madison said that such laws were not only forbidden by the Constitution, but were "contrary to the first principles of the social compact, and to every principle of sound legislation."

The treatment of the malady was severe, but the cure was complete.

"No sooner did the new government begin its auspicious course than order seemed to arise out of confusion. Commerce and industry awoke, and were cheerful at their labors, for credit and confidence awoke with them. Everywhere was the appearance of prosperity, and the only fear was that its progress was too rapid to consist with the purity and simplicity of ancient manners." Fisher Ames' Works, *supra*, 123.

"Public credit was reanimated. The owners of property and holders of money freely parted with both, well knowing that no future law could impair the obligation of the contract." 2 Ramsey, Hist. sup. 433.

Chief Justice Taney, in *Bronson* v. *Kinzie*, *supra*, speaking of the protection of the remedy, said: "*It is this protection which the clause of the Constitution now in question mainly intended to secure.*"

The point decided in *Dart. Coll.* v. *Woodward*, 4 Wheat. 518, had not, it is believed, when the Constitution was adopted, occurred to anyone. There is no trace of it in the Federalist, nor in any other contemporaneous publication. It was

first made and judicially decided under the Constitution in that case. Its novelty was admitted by *Chief Justice* Marshall, but it was met and conclusively answered in his opinion.

We think the views we have expressed carry out the intent of contracts and the intent of the Constitution. The obligation of the former is placed under the safeguard of the latter. No State can invade it; and Congress is incompetent to authorize such invasion. Its position is impregnable, and will be so while the organic law of the nation remains as it is. The trust touching the subject with which this court is charged is one of magnitude and delicacy. We must always be careful to see that there is neither non-feasance nor misfeasance on our part.

The importance of the point involved in this controversy induces us to restate succinctly the conclusions at which we have arrived, and which will be the ground of our judgment.

The remedy subsisting in a State when and where a contract is made and is to be performed is a part of its obligation, and any subsequent law of the State which so affects that remedy as substantially to impair and lessen the value of the contract is forbidden by the Constitution, and is, therefore, void.

The judgment of the Supreme Court of North Carolina is reversed and the cause will be remanded, with directions to proceed in conformity to this opinion.

Mr. Justice **Clifford**, concurring:

I concur in the judgment in this case, upon the ground that the state law, passed subsequent to the time when the debt in question was contracted, so changed the nature and extent of the remedy for enforcing the payment of the same as it existed at the time as materially to impair the rights and interests which the complaining party acquired by virtue of the contract merged in the judgment.

Where an appropriate remedy exists for the enforcement of the contract at the time it was made, the State Legislature cannot deprive the party of such a remedy, nor can the Legislature append to the right such restrictions or conditions as to render its exercise ineffectual or unavailing. State Legislatures may change existing remedies, and substitute others in their place; and, if the new remedy is not unreasonable, and will enable the party to enforce his rights without new and burdensome restrictions, the party is bound to pursue the new remedy, the rule being, that a State Legislature may regulate at pleasure the modes of proceeding in relation to past contracts as well as those made subsequent to the new regulation.

Examples where the principle is universally accepted may be given to confirm the proposition. Statutes for the abolition of imprisonment for debt are of that character, and so are statutes requiring instruments to be recorded, and statutes of limitation.

All admit that imprisonment for debt may be abolished in respect to past contracts as well as future; and it is equally well settled that the time within which a claim or entry shall be barred may be shortened, without just complaint from any quarter. Statutes of the kind have often been passed; and it has never been held that such an alteration in such a statute impaired

period allowed in the new law was so short and unreasonable as to amount to a substantial denial of the remedy to enforce the right. Aug., Lim., 6th ed., sec. 22; *Jackson* v. *Lamphire*, 3 Pet., 280.

Beyond all doubt, a State Legislature may regulate all such proceedings in its courts at pleasure, subject only to the condition that the new regulation shall not in any material respect impair the just rights of any party to a pre-existing contract. Authorities to that effect are numerous and decisive; and it is equally clear that a State Legislature may, if it thinks proper, direct that the necessary implements of agriculture, or the tools of the mechanic, or certain articles of universal necessity in household furniture, shall, like wearing apparel, not be liable to attachment and execution for simple contract debts. Regulations of the description mentioned have always been considered in every civilized community as properly belonging to the remedy, to be exercised or not by every sovereignty, according to its own views of policy and humanity.

Creditors as well as debtors know that the power to adopt such regulations reside in every State, to enable it to secure its citizens from unjust, merciless and oppressive litigation, and protect those without other means in their pursuits of labor, which are necessary to the well-being and the very existence of every community.

Examples of the kind were well known and universally approved both before and since the Constitution was adopted, and they are now to be found in the statutes of every State and Territory within the boundaries of the United States; and it would be monstrous to hold that every time some small addition was made to such exemptions, that the statute making it impairs the obligation of every existing contract within the jurisdiction of the State passing the law.

Here remedy, it is agreed, may be altered, at the will of the State Legislature, if the alteration is not of a character to impair the obligation of the contract; and it is properly conceded that the alteration, though it be of the remedy, if it materially impairs the right of the party to enforce the contract, is equally within the constitutional inhibition. Difficulty would doubtless attend the effort to draw a line that would be applicable in all cases between legitimate alteration of the remedy, and provisions which, in the form of remedy, impair the right; nor is it necessary to make the attempt in this case, as the courts of all nations agree, and every civilized community will concede, that laws exempting necessary wearing apparel, the implements of agriculture owned by the tiller of the soil, the tools of the mechanic, and certain articles or utensils of a household character, universally recognized as articles or utensils of necessity, are as much within the competency of a State Legislature as laws regulating the limitation of actions, or laws abolishing imprisonment for debt. *Bronson* v. *Kinzie*, 1 How., 311.

Expressions are contained in the opinion of the court which may be construed as forbidding all such humane legislation, and it is to exclude the conclusion that any such views have my

state the reasons which induced me to reverse the judgment of the state court.

Mr. Justice **Hunt**.

I concur in the judgment in this case, for the reasons following:

By the Constitution of North Carolina of 1868, the personal property of any resident of the State, to the value of $500, is exempt from sale under execution; also a homestead, the dwelling and buildings thereon, not exceeding in value $1,000.

The debts in question were incurred before the exemptions took effect. The court now holds that the exemptions are invalid. In this I concur, not for the reason that any and every exemption made after entering into a contract is invalid, but that the amount here exempted is so large, as seriously to impair the creditor's remedy for the collection of the debt.

I think that the law was correctly announced by *Chief Justice* Taney in *Bronson* v. *Kinzie*, 1 How., 311, when he said: "A State may, if it thinks proper, direct that the necessary implements of agriculture, the tools of a mechanic, or articles of necessity in household furniture, like wearing apparel, be not liable to execution on judgments."

The principle was laid down with the like accuracy by *Judge* Denio, in *Morse* v. *Goold*, 11 N. Y., 281, where he says: "There is no universal principle of law that every part of the property of a debtor is liable to be seized for the payment of a judgment against him. * * * The question is, whether the law which prevailed when the contract was made has been so far changed that there does not remain a substantial and reasonable mode of enforcing it in the ordinary and regular course of justice. Taking the mass of contracts and the situation and circumstances of debtors, as they are ordinarily found to exist, no one would probably say that exempting the team and household furniture of a householder to the amount of $150, from levy or execution, would directly affect the efficiency of remedies for the collection of debts." *Mr. Justice* Woodbury lays down the same rule in the *Bk.* v. *Sharp*, 6 How., 301.

In my judgment, the exemption provided for by the North Carolina Constitution is so large, that, in regard to the mass of contracts and the situation and circumstances of debtors as they are ordinarily found to exist, it would seriously affect the efficiency of remedies for the collection of debts, and that it must, therefore, be held to be void.

Dissenting, *Mr. Justice* **Harlan**.

Cited—86 U. S., 637; 102 U. S., 419; 107 U. S., 233, 750, 798; 108 U. S., 65; 5 Dill., 193, 213, 315, 418; 1 McCrary, 571; 66 Ind., 408, 509.

COUNTY OF RAY, *Plff. in Err.*,

v.

HORATIO D. VANSYCLE.

(See S. C., 6 Otto, 675–688.)

Missouri Constitution—estoppel as to county bonds.

1. The section of the Constitution of Missouri relating to municipal subscriptions, is a limitation upon the future power of the Legislature, and was

ling application to laws in existence when the Constitution was adopted.

2. When a county, on issuing its bonds to a railroad company, received payment therefor in stock of the company, which it continues to hold, and has paid interest on such bonds for several years, it is estopped from repudiating the acts of its agents in issuing the bonds, as against a *bona fide* holder thereof.

[No. 216.]

Argued Feb. 8, 1875. Decided Apr. 15, 1878.

IN ERROR to the Circuit Court of the United States for the Western District of Missouri.

Statement by Mr. Justice **Harlan**.

This was an action by Vansycle to recover the amount due on various interest coupons attached to bonds, issued in the year 1869, in the name of the County of Ray, Missouri, whereby that County acknowledged itself indebted to the St. Louis and St. Joseph Railroad Company in the sum of $1,000, which it promised to pay to that company or bearer, at the American Exchange Bank in New York, on the first day of January, 1879, with 8 per cent. interest, payable annually, upon the presentation and delivery of the coupons.

Each bond contained these recitals:

"This bond being issued under and pursuant to an order of the County Court of Ray County, made under the authority of the Constitution of the State of Missouri and the laws of the General Assembly of the State of Missouri, and authorized by a vote of the people of said County at a special election held for that purpose.

In testimony whereof the said County of Ray has executed this bond, by the presiding justice of the County Court of said County, under the order of said court, signing his name thereto, and by the clerk of said court, under order thereof, attesting the same, and affixing thereto the seal of said court. This done at the Town of Richmond, County of Ray, aforesaid, this second day of———, 1869.

(L. S.) C. W. NARRAMORE,
Presiding Justice of the County Court of Ray County, Missouri.

Attest: GEO. N. MCGEE,
Clerk of the County Court of Ray County, Missouri."

Vansycle was a lawful holder for value of the bonds, and received them without actual notice or knowledge of any defects or irregularities in their issue.

The main facts connected with the issue of the bonds, and out of which this suit arises, cover a period of more than ten years, commencing with the year 1859.

An Act of the General Assembly of the State of Missouri, approved December 8, 1859, and amended January 5, 1860, incorporated the Missouri River Valley Railroad Company, with power to construct a railroad from any point on the North Missouri Railroad in Randolph County, by way of Brunswick, in Chariton County; thence, through Carroll, Ray, Platte and Clay Counties, to Weston, in Platte County; and authorized the county court of any county in which any part of such railroad might be, to subscribe to the stock of the company to invest its funds in such stock, and raise the funds by tax to be voted by the legal voters of the county, in such manner as the county court might prescribe for the purpose of paying such stock. It

The general principles stated above apply to the constitutions as well as to the laws of the several states insofar as they are repugnant to the Constitution and laws of the United States.[9] Moreover, a construction of a statute which brings it in conflict with a constitution will nullify it as effectually as if it had, in express terms, been enacted in conflict therewith.[10]

The Minnesota cases of *Cook v. Iverson* and *State v. Sutton* correctly set forth the binding effect of a constitutional provision.

L. O. COOKE v. SAMUEL G. IVERSON
108 Minnesota Reports
P. 388
Reported in 122 N.W. 251

"Every officer under a constitutional government must act according to law and subject to its restrictions, and every departure therefrom or disregard thereof must subject him to the restraining and controlling power of the people, acting through the agency of the judiciary; for it must be remembered that the people act through the courts, as well as through the executive or the legislature. One department is just as representative as the other, and the judiciary is the department which is charged with the special duty of determining the limitations which the law places upon all official action."

If a member of the executive department of the state is subject to the control of the judiciary in the discharge of purely ministerial duties, it logically follows that he is subject to such direction if he is threatening to execute an

[9] Gunn v Barry, 15 Wall (US) 610, 21 L ed 212; Cohen v Virginia, 6 Wheat (US) 264, 5 L ed 257.

[10] Flournoy v First Nat. Bank, 197 La. 1067, 3 So 2d 244; Gilkeson v Missouri P. R. Co. 222 Mo. 173, 121 SW 138; Peay v Nolan, 157 Tenn. 222, 7 SW 2d 815, 60 ALR 408.

unconstitutional statute, to the irreparable injury of a party in his person or property. Rippe v. Becker, 56 Minn. 100, 57 N.W. 331, 22 L.R.A. 857. If a statute be unconstitutional it is as if it never had been. Rights cannot be built up under it, and, if an executive officer attempts to enforce it, his act is his individual and not his official act, and he is subject to the control of the courts as would be a private individual. Cooley, Const. Lim. 250; Ex parte Young, 209 U.S. 123, 28 Sup. Ct. 441, 52 L. Ed. 714.

The pivotal question then is: Can the language of this constitutional prohibition be fairly construed as excepting therefrom the building by the state of free highways, including bridges? If it can be, it is our duty so to construe it. But it cannot be assumed that the framers of the constitution and the people who adopted it did not intend that which is the plain import of the language used. When the language of the constitution is positive and free from all ambiguity, all courts are not at liberty, by a resort to the refinements of legal learning, to restrict its obvious meaning to avoid the hardships of particular cases. We must accept the constitution as it reads when its language is unambiguous, for it is the mandate of the sovereign power. State v. Sutton, 63 Minn. 147, 65 N.W. 262, 30 L.R.A. 630, 56 Am. St. 459; Lindberg v. Johnson, 93 Minn. 267, 101 N.W. 74.

STATE ex rel. H. W. CHILDS, Attorney General v. JOHN B. SUTTON
63 Minnesota Reports
P. 147
Reported in 65 N.W. 262

In treating of constitutional provisions, we believe it is the general rule among courts to regard them as mandatory, and not to leave it to the will or pleasure of a legislature to obey or disregard them. Where the language of

§ 394. Federal reserve banks as depositaries for and fiscal agents of Home Owners' Loan Corporation.

The Federal Reserve banks are authorized, with the approval of the Secretary of the Treasury, to act as depositaries, custodians, and fiscal agents for the Home Owners' Loan Corporation. (Apr. 27, 1934, ch. 168, § 8, 48 Stat. 646.)

ABOLISHMENT OF HOME OWNERS' LOAN CORPORATION

For dissolution and abolishment of the Home Owners' Loan Corporation, referred to in the section, by act June 30, 1953, ch. 170, § 21, 67 Stat. 126, see note under section 1463 of this title

§ 395. Federal reserve banks as depositaries, custodians and fiscal agents for Commodity Credit Corporation.

The Federal Reserve banks are authorized to act as depositaries, custodians, and fiscal agents for the Commodity Credit Corporation. (July 16, 1943, ch. 241, § 3, 57 Stat. 568.)

TRANSFER OF FUNCTIONS

Administration of program of Commodity Credit Corporation was transferred to Secretary of Agriculture by 1946 Reorg. Plan No. 3, § 501, eff. July 16, 1946, 11 F. R. 7877, 60 Stat. 1100. See note under section 713 of Title 15, Commerce and Trade.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of the Corporations of the Department of Agriculture, the boards of directors and officers of such corporations; the Advisory Board of the Commodity Credit Corporation; and the Farm Credit Administration or any agency, officer or entity of, under, or subject to the supervision of the Administration were excepted from the functions of officers, agencies and employees transferred to the Secretary of Agriculture by 1953 Reorg. Plan No. 2, § 1, eff. June 4, 1953, 18 F. R. 3219, 67 Stat. 633, set out as a note under section 511 of Title 5, Executive Departments and Government Officers and Employees.

FEDERAL RESERVE NOTES

§ 411. Issuance to reserve banks; nature of obligation; redemption.

Federal reserve notes, to be issued at the discretion of the Board of Governors of the Federal Reserve System for the purpose of making advances to Federal reserve banks through the Federal reserve agents as hereinafter set forth and for no other purpose, are authorized. The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal reserve banks and for all taxes, customs, and other public dues. They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve bank. (Dec. 23, 1913, ch. 6, § 16, 38 Stat. 265; Jan. 30, 1934, ch. 6, § 2 (b) (1), 48 Stat. 337; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704.)

REFERENCES IN TEXT

Phrase "hereinafter set forth" is from section 16 of the Federal Reserve Act, act Dec. 23, 1913. Reference probably means as set forth in sections 17 et seq. of the Federal Reserve Act. For distribution of the sections in this code see note under section 226 of this title, and the Tables.

CODIFICATION

Section is comprised of first par. of section 16 of act Dec. 23, 1913. Pars. 2—4, 5 and 6, 7, 8—11, 13 and 14 of section 16, and pars. 15—18 of section 16, as added June 21, 1917, ch. 32, § 8, 40 Stat. 238, are classified to sections 412—414, 415, 416, 418—421, 360, 248 (c) and 467, respectively, of this title.

Par. 12 of section 16, formerly classified to section 422 of this title, was repealed by act June 26, 1934, ch. 756, § 1, 48 Stat. 1225.

AMENDMENTS

1934—Act Jan. 30, 1934, omitted provision permitting redemption in gold, from last sentence.

CHANGE OF NAME

Act Aug. 23, 1935, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

CROSS REFERENCES

Gold coinage discontinued, see section 315b of Title 31, Money and Finance.

§ 412. Application for notes; collateral required.

Any Federal Reserve bank may make application to the local Federal Reserve agent for such amount of the Federal Reserve notes hereinbefore provided for as it may require. Such application shall be accompanied with a tender to the local Federal Reserve agent of collateral in amount equal to the sum of the Federal Reserve notes thus applied for and issued pursuant to such application. The collateral security thus offered shall be notes, drafts, bills of exchange, or acceptances acquired under the provisions of sections 82, 342—347, 347c, and 372 of this title, or bills of exchange endorsed by a member bank of any Federal Reserve district and purchased under the provisions of sections 348a and 353—359 of this title, or bankers' acceptances purchased under the provisions of said sections 348a and 353—359 of this title, or gold certificates, or direct obligations of the United States. In no event shall such collateral security be less than the amount of Federal Reserve notes applied for. The Federal Reserve agent shall each day notify the Board of Governors of the Federal Reserve System of all issues and withdrawals of Federal Reserve notes to and by the Federal Reserve bank to which he is accredited. The said Board of Governors of the Federal Reserve System may at any time call upon a Federal Reserve bank for additional security to protect the Federal Reserve notes issued to it. (Dec. 23, 1913, ch. 6, § 16, 38 Stat. 265; Sept. 7, 1916, ch. 461, 39 Stat. 754; June 21, 1917, ch. 32, § 7, 40 Stat. 236; Feb. 27, 1932, ch. 58, § 3, 47 Stat. 57; Feb. 3, 1933, ch. 34, 47 Stat. 794; Jan. 30, 1934, ch. 6, § 2 (b) (2), 48 Stat. 338; Mar. 6, 1934, ch. 47, 48 Stat. 398; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704; Mar. 1, 1937, ch. 20, 50 Stat. 23; June 30, 1939, ch. 256, 53 Stat. 991; June 30, 1941, ch. 264, 55 Stat. 395; May 25, 1943, ch. 102, 57 Stat. 85; June 12, 1945, ch. 186, § 2, 59 Stat. 237.)

CODIFICATION

Section is comprised of second par. of section 16 of act Dec. 23, 1913. For classification to this title of other paragraphs of section 16, see note under section 411 of this title.

AMENDMENTS

1945—Act of June 12, 1945, substituted ", or direct obligations of the United States." for proviso following "gold certificates" in first sentence which limited period during which direct obligations of the United States could be accepted as collateral security.

1943—Act May 25, 1943, substituted "until June 30, 1945" for "until June 30, 1943," in proviso.

1941—Act June 30, 1941, substituted "until June 30, 1943" for "until June 30, 1941" in proviso.

1939—Act June 30, 1939, substituted "until June 30, 1941" for "until June 30, 1939" in proviso.

1937—Act Mar. 1, 1937, extended until June 30, 1939, the period within which direct obligations of the United

the Secretary of the Treasury under section 913 of Title 31. Federal Reserve notes so deposited shall not be reissued except upon compliance with the conditions of an original issue. (Dec. 23, 1913, ch. 6, § 16, 38 Stat. 267; June 21, 1917, ch. 32, § 7, 40 Stat. 236; Aug. 23, 1935, ch. 614, § 203(a), 49 Stat. 704; June 30, 1961, Pub. L. 87-66, § 8(b), 75 Stat. 147.)

CODIFICATION

Section is comprised of seventh par. of section 16 of act Dec. 23, 1913. For classification to this title of other paragraphs of section 16, see note under section 411 of this title.

AMENDMENTS

1961—Pub. L. 87-66 provided for recovery of collateral upon payment of notes of series prior to 1928 and removed requirement of reserve or redemption fund for such notes.

CHANGE OF NAME

Act Aug. 23, 1935, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

§ 417. Custody and safe-keeping of notes issued to and collateral deposited with reserve agent.

All Federal Reserve notes and all gold certificates and lawful money issued to or deposited with any Federal Reserve agent under the provisions of the Federal Reserve Act shall be held for such agent, under such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe, in the joint custody of himself and the Federal Reserve bank to which he is accredited. Such agent and such Federal Reserve bank shall be jointly liable for the safe-keeping of such Federal Reserve notes, gold certificates, and lawful money. Nothing herein contained, however, shall be construed to prohibit a Federal Reserve agent from depositing gold certificates with the Board of Governors of the Federal Reserve System, to be held by such Board subject to his order, or with the Treasurer of the United States, for the purposes authorized by law. (June 21, 1917, ch. 32, § 7, 40 Stat. 236; Jan. 30, 1934, ch. 6, § 2 (b) (6), 48 Stat. 339; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704.)

REFERENCES IN TEXT

For distribution of the Federal Reserve Act, referred to in the text, in this code, see section 226 of this title and note thereunder.

AMENDMENTS

1934—Act Jan. 30, 1934, dropped the word "gold" wherever it appeared before words "gold certificates."

CHANGE OF NAME

Act Aug. 23, 1935, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

CROSS REFERENCES

Gold coinage discontinued, see section 315b of Title 31, Money and Finance.

§ 418. Printing of notes; denomination and form.

In order to furnish suitable notes for circulation as Federal reserve notes, the Comptroller of the Currency shall, under the direction of the Secretary of the Treasury, cause plates and dies to be engraved in the best manner to guard against counterfeits and fraudulent alterations, and shall have printed therefrom and numbered such quantities of such notes of the denominations of $1, $2, $5, $10, $20, $50, $100, $500, $1,000, $5,000, $10,000 as may be required to supply the Federal reserve banks. Such notes shall be in form and tenor as directed by the Secretary of the Treasury under the provisions of this chapter and shall bear the distinctive numbers of the several Federal reserve banks through which they are issued. (Dec. 23, 1913, ch. 6, § 16, 38 Stat. 267; Sept. 26, 1918, ch. 177, § 3, 40 Stat. 969; June 4, 1963, Pub. L. 88-36, title I, § 3, 77 Stat. 54.)

REFERENCES IN TEXT

In the original "this chapter" reads "this Act," meaning the Federal Reserve Act, act Dec. 23, 1913. For distribution of the Federal Reserve Act in this code, see note under section 226 of this title.

CODIFICATION

Section is comprised of eighth par. of section 16 of act Dec. 23, 1913. For classification to this title of other paragraphs of section 16, see note under section 411 of this title.

AMENDMENTS

1963—Pub. L. 88-36 inserted "$1, $2," following "notes of the denominations of".

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Secretary of the Treasury, made by 1950 Reorg. Plan No. 26, § 1, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 419. Place of deposit of notes prior to delivery to banks.

When such notes have been prepared, they shall be deposited in the Treasury, or in the designated depositary or mint of the United States nearest the place of business of each Federal reserve bank and shall be held for the use of such bank subject to the order of the Comptroller of the Currency for their delivery, as provided by this chapter. (Dec. 23, 1913, ch. 6, § 16, 38 Stat. 267; May 29, 1920, ch. 214, § 1, 41 Stat. 654.)

REFERENCES IN TEXT

In the original "this chapter" reads "this Act," meaning the Federal Reserve Act, act Dec. 23, 1913. For distribution of the Federal Reserve Act in this code, see note under section 226 of this title.

CODIFICATION

Section is comprised of ninth par. of section 16 of act Dec. 23, 1913. For classification to this title of other paragraphs of section 16, see note under section 411 of this title.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Secretary of the Treasury, made by 1950 Reorg. Plan No. 26, § 1, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 420. Control and direction of plates and dies by comptroller; expense of issue and retirement of notes paid by banks.

The plates and dies to be procured by the Comptroller of the Currency for the printing of such circulating notes shall remain under his control and direction, and the expenses necessarily incurred in executing the laws relating to the procuring of such notes, and all other expenses incidental to their issue and retirement, shall be paid by the Federal reserve banks, and the Board of Governors of the Federal Reserve System shall include in its estimate of expenses levied against the Federal reserve banks a sufficient amount to cover the expenses provided for in sections 411—416 and 418—421 of this title. (Dec. 23, 1913, ch. 6, § 16, 38 Stat. 267; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704.)

REFERENCES IN TEXT

In the original "provided for in sections 411—416 and 418—421 of this title" reads "herein provided for."

CODIFICATION

Section is comprised of tenth par. of section 16 of act Dec. 23, 1913. For classification to this title of other paragraphs of section 16, see note under section 411 of this title.

CHANGE OF NAME

Act Aug. 23, 1935, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Secretary of the Treasury, made by 1950 Reorg. Plan No. 26, § 1, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 421. Examination of plates and dies.

The examination of plates, dies, bed pieces, and so forth, and regulations relating to such examination of plates, dies, and so forth, of national-bank notes provided for in section 108 of this title, is extended to include notes provided for in sections 411—416 and 418—421 of this title. (Dec. 23, 1913, ch. 6, § 16, 38 Stat. 267.)

REFERENCES IN TEXT

In the original "provided for in sections 411—416 and 418—421 of this title" reads "herein provided for."

CODIFICATION

Section is comprised of eleventh par. of section 16 of act Dec. 23, 1913. For classification to this title of other paragraphs of section 16, see note under section 411 of this title.

§ 422. Repealed. June 26, 1934, ch. 756, § 1, 48 Stat. 1225.

Section, act Dec. 23, 1913, ch. 6, § 16, 38 Stat. 267, made permanent appropriations for printing notes besides authorizing the use of certain printing stock on hand December 23, 1913. See section 725 (b) of Title 31, Money and Finance.

CIRCULATING NOTES AND BONDS SECURING SAME

§ 441. Retirement of circulating notes by member banks; application for sale of bonds securing circulation.

At any time during a period of twenty years from December 23, 1915, any member bank desiring to retire the whole or any part of its circulating notes may file with the Treasurer of the United States an application to sell for its account, at par and accrued interest, United States bonds securing circulation to be retired. (Dec. 23, 1913, ch. 6, § 18, 38 Stat. 268.)

CODIFICATION

Section is comprised of first par. of section 18 of act Dec. 23, 1913. Pars. 2 and 3, 4, 5, and 7—9 of section 18 are classified to sections 442, 443, 444, and 446—448 of this title, respectively. Par. 6 of section 18, which was classified to section 446 of this title, was repealed by act June 12, 1945, ch. 166, § 3, 59 Stat. 238.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

§ 442. Purchase of bonds by reserve banks.

The Treasurer shall, at the end of each quarterly period, furnish the Board of Governors of the Federal Reserve System with a list of such applications, and the Board of Governors of the Federal Reserve System may, in its discretion, require the Federal reserve banks to purchase such bonds from the banks whose applications have been filed with the Treasurer at least ten days before the end of any quarterly period at which the Board of Governors of the Federal Reserve System may direct the purchase to be made: *Provided*, That Federal reserve banks shall not be permitted to purchase an amount to exceed $25,000,000 of such bonds in any one year, and which amount shall include bonds acquired under sections 301—308 and 341 of this title by the Federal reserve bank.

Provided further, That the Board of Governors of the Federal Reserve System shall allot to each Federal reserve bank such proportion of such bonds as the capital and surplus of such bank shall bear to the aggregate capital and surplus of all the Federal reserve banks. (Dec. 23, 1913, ch. 6, § 18, 38 Stat. 268; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704.)

CODIFICATION

Section is comprised of second and third pars. of section 18 of act Dec. 23, 1913. For classification to this title of other paragraphs of section 18, see note under section 441 of this title.

DERIVATION

Act Feb. 21, 1887, ch. 96, § 9, 11 Stat. 169.

CROSS REFERENCES

All coins and currencies of the United States to be legal tender for all debts, see sections 462 and 821 of this title.

§ 457. Gold coins of United States.

The gold coins of the United States shall be a legal tender in all payments at their nominal value when not below the standard weight and limit of tolerance provided by law for the single piece, and, when reduced in weight below such standard and tolerance, shall be a legal tender at valuation in proportion to their actual weight. (R. S. § 3585.)

DERIVATION

Act Feb. 12, 1873, ch. 131, § 14, 17 Stat. 426.

CROSS REFERENCES

Acquisition and use of gold in violation of law to subject the gold to forfeiture and subject person to penalty equal to twice the value of the gold, see section 449 of this title.

All coins and currencies of United States as legal tender, see sections 462 and 821 of this title.

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 316b of this title.

Provisions requiring obligations to be payable in gold declared against public policy, see section 463 of this title.

§ 458. Standard silver dollars; paid in silver.

Silver dollars coined under the Act of February 28, 1878, ch. 20, 20 Stat. 25, 26, together with all silver dollars coined by the United States, of like weight and fineness prior to the date of such Act, shall be a legal tender, at their nominal value, for all debts and dues public and private, except where otherwise expressly stipulated in the contract. But nothing in this section shall be construed to authorize the payment in silver of certificates of deposit issued under the provisions of sections 428 and 429 of this title. (Feb. 28, 1878, ch. 20, § 1, 20 Stat. 25.)

CODIFICATION

Section is from the first section of the Bland-Allison Coinage of Silver Act.

Portions of the original text omitted here provided for the coinage of silver dollars of the weight of 412½ grains Troy of standard silver with the devices and superscriptions provided by act Jan. 18, 1837, ch. 3, 5 Stat. 137; and for the purchase of bullion to be coined into silver dollars. The provision for the purchase of bullion was repealed by act July 14, 1890, ch. 708, § 5, 26 Stat. 289. The provision for the coinage of silver dollars was omitted as superseded or obsolete.

CROSS REFERENCES

All coins and currencies of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 463 of this title.

Obligations payable in any coin or currency which at the time is a legal tender notwithstanding a provision for payment in a particular kind of coin or currency, see section 463 of this title.

§ 459. Subsidiary silver coins.

The silver coins of the United States in existence June 9, 1879, of smaller denominations than $1 shall be a legal tender in all sums not exceeding $10 in full payment of all dues public and private. (June 9, 1879, ch. 12, § 3, 21 Stat. 6.)

CODIFICATION

Prior to its incorporation into the Code, this section read as follows: "The present silver coins of the United States of smaller denominations than one dollar shall hereafter be a legal tender in all sums not exceeding ten dollars in full payment of all dues public and private."

The twenty-cent piece, the coinage of which was authorized by act Mar. 3, 1875, ch. 143, § 1, 18 Stat. 478, was made a legal tender at its nominal value for any amount not exceeding five dollars in any one payment, by section 2 of that act. The act was repealed by act May 2, 1878, ch. 79, 20 Stat. 47.

CROSS REFERENCES

All coins and currencies of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 821 of this title.

§ 460. Minor coins.

The minor coins of the United States shall be a legal tender, at their nominal value for any amount not exceeding 25 cents in any one payment. (R. S. § 3587.)

DERIVATION

Act Feb. 12, 1873, ch 131, § 16, 17 Stat. 427.

CROSS REFERENCES

All coins and currencies of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 821 of this title.

§ 461. Commemorative coins.

CODIFICATION

Section, making certain enumerated commemorative coins legal tender, is omitted as executed in view of section 376a of this title discontinuing coinage and issuance of commemorative coins under acts enacted prior to Mar. 1, 1939.

Section was from acts Apr. 13, 1904, ch. 1253, § 6, 33 Stat. 178; June 1, 1918, ch. 91, § 1, 40 Stat. 594; May 10, 1920, ch. 176, § 1, 41 Stat. 595; May 10, 1920, ch. 177, § 1, 41 Stat. 595; May 12, 1920, ch. 182, § 1, 41 Stat. 597; Mar. 4, 1921, ch. 163, § 1, 41 Stat. 1363; Feb. 2, 1922, ch. 45, 42 Stat. 362; Jan. 24, 1923, ch. 86, § 1, 42 Stat. 1172; Feb. 26, 1923, ch. 113, § 1, 42 Stat. 1287; Mar. 17, 1926, ch. 58, § 1, 43 Stat. 23; Jan. 14, 1926, ch. 79, § 5, 43 Stat. 749; Feb. 24, 1926, ch. 302, §§ 1—3, 43 Stat. 965, 966; Mar. 3, 1925, ch. 462, § 4, 43 Stat. 1264; May 17, 1926, ch. 307, § 1, 44 Stat. 559; Mar. 7, 1928, ch. 135, § 1, 45 Stat. 198; June 16, 1933, ch. 82, § 1, 48 Stat. 149; May 9, 1934, ch. 265, §§ 1—4, 48 Stat. 679; May 14, 1934, ch. 286, §§ 1—3, 48 Stat. 776; May 26, 1934, ch. 358, §§ 1—4, 48 Stat. 807; June 21, 1934, ch. 698, §§ 1—4, 48 Stat. 1200; May 2, 1935, ch. 88, §§ 1—5, 49 Stat. 165, 166; May 3, 1935, ch. 90, §§ 1—4, 49 Stat. 174; June 5, 1935, ch. 176, 49 Stat. 324; Mar. 18, 1936, ch. 149, §§ 1—5, 49 Stat. 1165; Mar. 20, 1936, ch. 164, §§ 1—3, 49 Stat. 1187; Apr. 13, 1936, ch. 212, §§ 1—3, 49 Stat. 1205; May 5, 1936, ch. 300, §§ 1—3, 49 Stat. 1257; May 5, 1936, ch. 304, §§ 1—3, 49 Stat. 1259; May 6, 1936, ch. 331, §§ 1—3, 49 Stat. 1262, 1263; May 15, 1936, ch. 399, §§ 1—3, 49 Stat. 1276; May 15, 1936, ch. 402, §§ 1—3, 49 Stat. 1277, 1278; May 15, 1936, ch. 406, §§ 1—3, 49 Stat. 1352, 1353; May 26, 1936, ch. 466, §§ 1—3, 49 Stat. 1387, 1388; June 16, 1936, ch. 583, §§ 1—3, 49 Stat. 1522; June 16, 1936, ch. 584, §§ 1—3, 49 Stat. 1523; June 16, 1936, ch. 586, §§ 1—3, 49 Stat. 1524; June 24, 1936, ch. 760, §§ 1—3, 49 Stat. 1911; June 26, 1936, ch. 835, §§ 1—3, 49 Stat. 1972; June 26, 1936, ch. 837, §§ 1—3, 49 Stat. 1973; June 24, 1937, ch. 377, §§ 1—3, 50 Stat. 308; June 28, 1937, ch. 384, §§ 1—3, 50 Stat. 322, 323.

§ 462. Coins and currencies.

All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single

many cases the absence of authority affords a strong presumption against its having any legal foundation.[14]

§ 50. Actions contrary to public policy and practical considerations.

It does not follow, from the general statement that there is no wrong without a remedy, that a remedy is always obtainable in the courts.[15] Indeed, it is not sufficient for the maintenance of an action to remedy a supposed wrong that a technical right of action exists, unless it is at the same time practical, and in the interest of sound government to permit the action to prevail.[16] Practical considerations must at times determine the bounds of correlative rights and duties and the point beyond which the courts will decline to impose legal liability.[17] Thus, because of their legal unity, actions between husband and wife were ordinarily barred at common law;[18] and considerations of public policy forbid the bringing of actions against the state or its subdivisions, except with its consent.[19] The maxim that there is no wrong without a remedy is not applicable to acts which the written law has declared to be rightful,[20] especially things not malum in se, authorized by a valid act of the legislature and performed with due care and skill in strict conformity with the provisions of the act.[1] Public policy also forbids the maintenance of any suit in a court of justice, the trial of which would inevitably lead to the disclosure of matters which the law itself regards as confidential, and respecting which it will not allow the confidence to be violated.[2]

§ 51. Actions based upon plaintiff's wrongful, illegal, or immoral acts or conduct.

It is universally recognized that any conduct or any contract of an illegal, vicious, or immoral nature cannot be the proper basis for a legal or equitable proceeding,[3] and the parties will be left in the dilemma which they themselves devised.[4] The law does not permit one to profit by his own fraud or take advantage of his own wrong or found any claim on his own iniquity or acquire property by his own wrong,[5] and no court, particularly a court of equity,[6] will lend its aid to a party who grounds his action upon an immoral or illegal act[7]

14. Shearman v Folland (Eng) [1950] 2 KB 43, 18 ALR2d 652.

15. Pacific Steam Whaling Co. v United States, 187 US 447, 47 L ed 253, 23 S Ct 154.

16. Robertson v New Orleans & G. N. R. Co. 158 Miss 24, 129 So 100, 69 ALR 1180.

17. Comstock v Wilson, 257 NY 231, 177 NE 431, 76 ALR 676.

18. See HUSBAND AND WIFE (1st ed § 584).

19. See STATES, TERRITORIES, AND DEPENDENCIES (1st ed § 91).

20. Pietsch v Milbrath, 123 Wis 647, 101 NW 388, 102 NW 342.

1. Frazer v Chicago, 186 Ill 480, 57 NE 1055.

2. Totten v United States, 92 US 105, 23 L ed 605.

4. Robenson v Yann, 224 Ky 56, 5 SW2d 271; Piechowiak v Bissell, 305 Mich 486, 9 NW2d 685.

5. Davis v Brown, 94 US 423, 24 L ed 204; Union Bank v Stafford, 12 How (US) 327, 13 L ed 1008; Watts v Malatesta, 262 NY 80, 186 NE 210, 88 ALR 1072; Riggs v Palmer, 115 NY 506, 22 NE 188; Byers v Byers, 223 NC 85, 25 SE2d 466; Merit v Losey, 194 Or 89, 240 P2d 933; Smith v Germania F. Ins Co. 102 Or 569, 202 P 1088, 19 ALR 1444; Slater v Slater, 365 Pa 321, 74 A2d 179; Langley v Devlin, 95 Wash 171, 163 P 395, 4 ALR 32.

Hyams v Stuart King [1908] 2 KB (Eng) 696 (CA).

6. Finnie v Walker (CA2) 257 F 698, 5 ALR 831.

7. The Florida (Collins v The Florida) 101 US 37, 25 L ed 898; Hunter v Wheate, 53 App DC 206, 289 F 604, 31 ALR 980; Western U. Teleg. Co. v McLaurin, 108 M'ss 273, 66 So 739; Pennington v Tould, 47 NJ Eq

or an illegal contract,[8] or whose conduct in connection with the transaction upon which his claim is based is illegal or criminal.[9] No action can be founded upon acts which constitute a violation of criminal or penal laws of the state[10] or upon one's own dishonest, fraudulent,[11] or tortious act or conduct,[12] or upon his own moral turpitude.[13] Hence, an action will not lie to recover money or property which is the fruit of an employment involving a violation of law, where a recovery would have to be based on the illegal contract,[14] or to recover back the consideration given for the maintenance of illicit relations with the defendant.[15]

§ 52. — Where parties are in pari delicto.

The principle which precludes an action based upon the plaintiff's wrongful, immoral, or illegal act applies where both plaintiff and defendant were parties to such act; there may be times when the objection that the plaintiff has broken the law may sound ill in the mouth of the defendant,[16] yet, as a general rule under the doctrine of in pari delicto,[17] no action will lie to recover on a claim based upon, or in any manner depending upon, a fraudulent, illegal, or immoral transaction[18] or contract[19] to which the plaintiff was a party.[20] It is a trite and

8. Standard Oil Co. v Clark (CA2 NY) 163 F2d 917, cert den 333 US 873, 92 L ed 1149, 68 S Ct 901, 902.

9. Falconi v Federal Deposit Ins. Corp. (CA3 Pa) 257 F2d 287.

There is no recorded instance where a court of law or of equity has given aid or comfort to one wrongdoer against his fellow wrongdoer seeking a division of the loot. Piechowiak v Bissell, 305 Mich 486, 9 NW2d 685.

10. Capps v Postal Teleg.-Cable Co. 197 Miss 118, 19 So2d 491; Desmet v Sublett, 54 NM 355, 225 P2d 141; Lloyd v North Carolina R. Co. 151 NC 536, 66 SE 604; Stevens v Hallmark (Tex Civ App) 109 SW 2d 1106.

11. Picture Plays Theatre Co. v Williams, 75 Fla 556, 78 So 674, 1 ALR 1; D. I. Felsenthal Co. v Northern Assur. Co. 284 Ill 343, 120 NE 268, 1 ALR 602; Baltimore & O. S. W. R. Co. v Evans, 169 Ind 410, 82 NE 773.

12. Talbot v Seeman, 1 Cranch (US) 1, 2 L ed 15.

13. Levy v Kansas City (CA8) 168 F 524; Newton v Illinois Oil Co. 316 Ill 416, 147 NE 465, 40 ALR 1200.

14. Boylston Bottling Co. v O'Neill, 231 Mass 498, 121 NE 411, 2 ALR 902; Woodson v Hopkins, 85 Miss 171, 37 So 1000, 38 So 298; Buck v Albee, 26 Vt 184; Lemon v Grosskopf, 22 Wis 447.

Annotation: 2 ALR 906.

15. Hill v Freeman, 73 Ala 200; Monatt v Parker, 30 La Ann 585; Otis v Freeman, 199 Mass 160, 85 NE 168; Platt v Elias, 186 NY 374, 79 NE 1; Denton v English, 11 SCL (2 Nott & M'C) 581; Lanham v Meadows

16. Western U. Teleg. Co. v McLarvin, 10 Miss 273, 66 So 739.

17. Grapico Bottling Co. v Ennis, 140 M 502, 106 So 97, 44 ALR 124.

18. Hunter v Wheate, 53 App DC 206, 2 F 604, 31 ALR 980; Kearney v Webb, 27 Ill 17, 115 NE 844, 3 ALR 1631; Re Brow 147 Kan 395, 76 P2d 857, 116 ALR 101 (holding that such rule does not apply whe the one complained of is an official of t court, who seeks to retain to his own u certain moneys he acquired by his official mi conduct); Bowlan v Lunsford, 176 Okla 11 54 P2d 666 (plaintiff attempting to recov damages from a man who induced her to su mit to an operation which produced an abo tion where she was of full age and volunta ily consented to the operation); Gulf, C. & S F. R. Co. v Johnson, 71 Tex 619, 9 SW 60.

A court will not extend aid to either of t parties to a criminal act or listen to the complaints against each other, but will lea them where their own act has placed ther Stone v Freeman, 298 NY 268, 82 NE 571, 8 ALR2d 304.

19. Ring v Spina (CA2 NY) 148 F2d 6 160 ALR 371; Reilly v Clyne, 27 Ariz 4 234 P 35, 40 ALR 1005; Berka v Woodwar 125 Cal 119, 57 P 777; Western U. Tel. C v Yopst, 118 Ind 248, 20 NE 222; Grapi Bottling Co. v Ennis, 140 Miss 502, 106 97, 44 ALR 124; Short v Bullion-Beck C. Min. Co. 20 Utah 20, 57 P 720; Rolle Murray, 112 Va 780, 72 SE 665.

Major v Canadian P. R. Co. 51 Ont L R 370, 67 DLR 341, affd 64 Can SC 367, DLR 242.

That which one promises to give for illegal or immoral consideration he can be compelled to give, and that which he given on such a consideration he cannot cover. Platt v Elias, 186 NY 374, 79

commonplace maxim that where parties are equally in wrong the courts will not give one legal redress against the other but will leave them where it finds them.[1] Neither law nor equity interferes to relieve either of the persons who engage in fraudulent transactions, against the other from the consequences of their own misconduct.[2]

Some courts have applied the rule in pari delicto to transactions with a public officer or an official of the court,[3] but most take the position that the rule does not apply to prevent maintenance of an action against public officers for the recovery of money acquired by official misconduct.[4]

However, illegality is no defense when merely collateral to the cause of action sued on;[5] one offender against the law cannot set up as a defense to an action the fact that plaintiff was also an offender, unless the parties were engaged in the same illegal transaction. It is only in such a case that the maxim, "in pari delicto potior est conditio defendentis et possidentis," applies,[6] and not even then when the plaintiff's unlawful participation was innocent, being induced by the fraud of the defendant on which the action is based.[7] Nor will a plaintiff be barred of his action against the defendant by the fact that he has done a wrong to a third person.[8] Moreover, courts will grant relief against present wrongs and to enforce existing rights, although the property involved was acquired by some past illegal act.[9] It is generally agreed, although there is authority to the contrary,[10] that one who has entrusted another with money or property for an illegal use or purpose may maintain an action to recover such property or money so long as it has not been used by the person to whom it was given.[11]

There can be no recovery as between the parties on a contract made in violation of a statute, the violation of which is prohibited by a penalty, although the statute does not pronounce the contract void or expressly prohibit the same. Sandage v Studebaker Bros. Mfg. Co. 142 Ind 148, 41 NE 380.

Although a man may contract that a future event may come to pass over which he has no, or only a limited, power, including contracts for the conveyance of land that he does not own, an agreement that on its face requires an illegal act, either of the contractor or a third person, no more imposes a liability to damages for nonperformance than it creates an equity to compel the contractor to perform. Sage v Hampe, 235 US 99, 59 L ed 147, 35 S Ct 94.

20. Ford v Caspers (CA7 Ill) 128 F2d 884; Duncan v Dazey, 318 Ill 500, 149 NE 495.

1. Clark v United States, 102 US 322, 26 L ed 181; Re Brown's Estate, 147 Kan 395, 76 P2d 857, 116 ALR 1012; Smith v Smith, 68 Nev 10, 226 P2d 279.

Annotation: 116 ALR 1018.

2. Ford v Caspers (CA7 Ill) 128 F2d 884.

3. *Annotation:* 116 ALR 1019, 1023.

4. Re Sylvester, 195 Iowa 1329, 192 NW 442, 30 ALR 180; Re Brown's Estate, 147 Kan 395, 76 P2d 857, 116 ALR 1012; Berman v Coakley, 243 Mass 348, 137 NE 667, 26 ALR 92.

Annotation: 116 ALR 1023-1031.

5. Loughran v Loughran, 292 US 216, 78 L ed 1219, 54 S Ct 684, reh den 292 US 615, 78 L ed 1474, 54 S Ct 861.

6. Wallace v Cannon, 38 Ga 199.

7. Doe ex dem. Hutchinson v Horn, 1 Ind 363; Jekshewitz v Groswald, 265 Mass 413, 164 NE 609, 62 ALR 525; Cooper v Cooper, 147 Mass 370, 17 NE 892; Sears v Wegner, 150 Mich 388, 114 NW 224; Blossom v Barrett, 37 NY 434; Morrill v Palmer, 68 Vt 1, 33 A 829; Pollock v Sullivan, 53 Vt 507.

This principle is particularly applicable in actions for deceit in inducing unlawful cohabitation by representations of a lawful marriage. See Annotation: 72 ALR2d 956.

8. Langley v Devlin, 95 Wash 171, 163 P 395, 4 ALR 32; Matta v Katsoulas, 192 Wis 212, 212 NW 261, 50 ALR 291.

9. Loughran v Loughran, 292 US 216, 78 L ed 1219, 54 S Ct 684, reh den 292 US 615, 78 L ed 1474, 54 S Ct 861.

10. Lancaster v Ames, 103 Me 87, 68 A 533; Stone v Freeman, 298 NY 268, 82 NE2d 571, 8 ALR2d 304.

Annotation: 8 ALR2d 314, § 3; 316, § 4.

11. Okeechobee County v Nuveen (CA5 Fla) 145 F2d 684, cert den 324 US 881, 89 L ed 1432, 65 S Ct 1028; Kearney v Webb, 278 Ill 17, 115 NE 844, 3 ALR 1631; Ware v Spinney, 76 Kan 289, 91 P 787.

Annotation: 8 ALR2d 312, § 3; 317, § 5.

VIII. DEPARTMENTAL SEPARATION OF GOVERNMENTAL POWERS

A. In General

§ 210. Principle of separation, generally.

In considering the nature of any government, it must be remembered that the power existing in every body politic is an absolute despotism; in constituting a government, the body politic distributes that power as it pleases and in the quantity it pleases, and imposes what checks it pleases upon its public functionaries. The natural and necessary distribution of that power, with respect to individual security, is into legislative, executive, and judicial departments. It is obvious, however, that every community may make a perfect or imperfect separation and distribution of that power at its will.[1]

17. Halter v Nebraska, 205 US 34, 51 L ed 696, 27 S Ct 419; Columbus Packing Co. v State, 100 Ohio St 285, 126 NE 291, 29 ALR 1429, ovrld on another point 106 Ohio St 469, 140 NE 376, 37 ALR 1525; State v Peet, 80 Vt 449, 68 A 661; State ex rel. Jarvis v Daggett, 87 Wash 253, 151 P 648.

Absent congressional action the test is that of uniformity against locality; more accurately, the question is whether the state interest is outweighed by a national interest. California v Zook, 336 US 725, 93 L ed 1005, 69 S Ct 841, reh den 337 US 921, 93 L ed 1729, 69 S Ct 1152.

The right of the several states to enact legislation during the silence of Congress has been recognized in respect to such subjects as—

— insolvency. See Insolvency (1st ed § 8).

— the regulation of dealers in patented articles. See Patents (1st ed § 8).

— the recital of the consideration of notes given for the price of patent rights. Woods v Carl, 203 US 358, 51 L ed 219, 27 S Ct 99.

— the prohibition for the use of the United States flag for advertising purposes. Halter v Nebraska, 205 US 34, 51 L ed 696, 27 S Ct 419, affg 74 Neb 757, 105 NW 298.

— the establishment of quarantine regulations. See Health (1st ed § 7).

— regulations with regard to the speed of railroad trains. See Railroads.

— regulations with regard to rates of transportation between points within the boundaries of a state. See Public Utilities.

— the erection of bridges, dams, and other structures constituting obstructions to navigation or otherwise pertaining to navigation. See Highways, Streets, and Bridges (1st ed, Bridges § 11); Waters.

— pilotage. See Shipping.

18. Morgan's L. & T. R. & S. S. Co. v Board of Health, 118 US 455, 30 L ed 237, 6 S Ct 1114.

19. Mayo v United States, 319 US 441, 87 L ed 1504, 63 S Ct 1137, 147 ALR 761, reh den 320 US 810, 88 L ed 489, 64 S Ct 27.

1. Compagnie Francaise de Nav. a Vapeur v State Bd. of Health, 186 US 380, 46 L ed 1209, 22 S Ct 811.

And see § 150, supra.

2. Livingston v Moore, 7 Pet (US) 469, 8 L ed 751 (per Johnson, J.).

A characteristic feature,[3] and one of the cardinal[4] and fundamental principles, of the American constitutional system is that the governmental powers are divided among the three departments of government, the legislative, executive, and judicial, and that each of these is separate from the others.[5] The principle of separation of the powers of government operates in a broad manner to confine legislative powers to the legislature, executive powers to the executive department, and those which are judicial in character to the judiciary.[6] We are not a parliamentary government in which the executive branch is also part of the legislature.[7]

It has been said that the object of the Federal Constitution was to establish three great departments of government: the legislative, the executive, and the judicial departments. The first was to pass the laws, the second, to approve and execute them, and the third, to expound and enforce them.[8] And since the

3. Trybulski v Bellows Falls Hydro-Electric Corp. 112 Vt 1, 20 A2d 117.

4. Bloemer v Turner, 281 Ky 832, 137 SW 2d 387.

5. O'Donoghue v United States, 289 US 516, 77 L ed 1356, 53 S Ct 740; Springer v Philippine Islands, 277 US 189, 72 L ed 845, 48 S Ct 480; J. W. Hampton Jr., & Co. v United States, 276 US 394, 72 L ed 624, 48 S Ct 348; Evans v Gore, 253 US 245, 64 L ed 887, 40 S Ct 550, 11 ALR 519; Kilbourn v Thompson, 103 US 168, 26 L ed 377; Fox v McDonald, 101 Ala 51, 13 So 416; Hawkins v Governor, 1 Ark 570; Denver v Lynch, 92 Colo 102, 18 P2d 907, 86 ALR 907; Stockman v Leddy, 55 Colo 24, 129 P 220; Norwalk Street R. Co.'s Appeal, 69 Conn 576, 37 A 1080, 38 A 708; Florida Nat. Bank of Jacksonville v Simpson (Fla) 59 So 2d 751, 33 ALR2d 581; Burnett v Green, 97 Fla 1007, 122 So 570, 69 ALR 244; Re Speer, 53 Idaho 293, 23 P2d 239, 88 ALR 1086; People v Kelly, 347 Ill 221, 179 NE 898, 80 ALR 890; People ex rel. Rusch v White, 334 Ill 465, 166 NE 100, 64 ALR 1006; Greenfield v Russel, 292 Ill 392, 127 NE 102, 9 ALR 1334; Ellingham v Dye, 178 Ind 336, 99 NE 1, error dismd 231 US 250, 58 L ed 206, 34 S Ct 92; Overshiner v State, 156 Ind 187, 59 NE 468; Parker v State, 135 Ind 534, 35 NE 179; State v Barker, 116 Iowa 96, 89 NW 204; Harris v Allegany County, 130 Md 488, 100 A 733; Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059; Anway v Grand Rapids R. Co. 211 Mich 592, 179 NW 350, 12 ALR 26; People v Dickerson, 164 Mich 148, 129 NW 199; Veto Case, 69 Mont 325, 222 P 428, 35 ALR 592; Searle v Yensen, 118 Neb 835, 226 NW 464, 69 ALR 257; Tyson v Washington County, 78 Neb 211, 110 NW 634; Saratoga Springs v Saratoga Gas, E. L. & P. Co. 191 NY 123, 83 NE 693; State ex rel. Atty.-Gen. v Knight, 169 NC 333, 85 SE 418; Re Minneapolis, St. P. & S. Ste. M. R. Co. 30 ND 221, 152 NW 513; State v Blaisdell, 22 ND 86, 132 NW 769; Riley v Carter, 165 Okla 262, 25 P2d 666, 88 ALR 1018; Simpson v Hill, 128 Okla 269, 263 P 635, 56 ALR 706; Baskin v State, 107 Okla 272, 232 P 388, 40 ALR 941; Wilson v Philadelphia School Dist. 328 Pa 225, 195 A 90, 113 ALR 1401; State ex rel. Richards v Whisman, 36 SD 260, 154 NW 707, error dismd 241 US 643, 60 L ed 1218, 36 S Ct 449; Langever v Miller, 124 Tex 80, 76 SW2d 1025, 96 ALR 836; Trimmier v Carlton, 116 Tex 572, 296 SW 1070; Peterson v Grayce Oil Co. (Tex Civ App) 37 SW2d 367, affd 128 Tex 550, 98 SW2d 781; Kimball v Grantsville City, 19 Utah 368, 57 P 1; Sabre v Rutland R. Co. 86 Vt 347, 85 A 693; State v Huber, 129 W Va 198, 40 SE2d 11, 168 ALR 808; State v Thompson, 149 Wis 488, 137 NW 20.

Annotation: 3 ALR 451; 69 ALR 266.

The theory of our government is one of separation of powers. Att. Gen. ex rel. Cook v O'Neill, 200 Mich 649, 274 NW 445.

Our constitution and fabric of government divide governmental powers into three grand divisions and prohibit the assumption by those exercising the powers of one of them of the just powers of another. Butler v Printing Comrs. 68 W Va 493, 70 SE 119.

See State v Bates, 96 Minn 110, 104 NW 709, for a good discussion of the source of the doctrine of the separation of the powers of government.

6. Norwalk Street R. Co.'s Appeal, 69 Conn 576, 37 A 1080, 38 A 708; State v Warmoth, 22 La Ann 1; McCrea v Roberts, 89 Md 238, 43 A 39; Wright v Wright, 2 Md 429; Wenham v State, 65 Neb 394, 91 NW 421; Henry v Cherry, 30 RI 13, 73 A 97; State v Fleming, 7 Humph (Tenn) 152.

Annotation: 69 ALR 266.

Neither the legislative, executive, nor judicial department of the federal government can lawfully exercise any authority beyond the limits marked out by the Constitution. Scott v Sandford, 19 How (US) 393, 15 L ed 691.

7. People v Tremaine, 281 NY 1, 21 NE2d 891.

8. Martin v Hunter, 1 Wheat (US) 304, 4 L ed 97.

The difference between the departments is that the legislature makes, the executive executes, and the judiciary construes; the law; but the maker of the law may commit something to the discretion of the other departments. Wayman v Southard, 10 Wheat (US) 1, 6 L ed 253.

9. Hale v State, 55 Ohio St 210, 45 NE 199; Blalock v Johnston, 180 SC 40, 185 SE 61, 105 ALR 1115.

10. § 213, infra.

The United States Supreme Court has said that so far as their powers are derived from the Constitution the departments may be regarded as independent of each other, but beyond that all are subject to regulations by law touching upon the discharge of duties required to be performed. Evans v Gore, 253 US 245, 64 L ed 887, 40 S Ct 550, 11 ALR 519; Kendall v United States, 12 Pet (US) 524, 9 L ed 1181; People v McCullough, 254 Ill 9, 98 NE 156.

11. Humphrey v United States, 295 US 602, 79 L ed 1611, 55 S Ct 869.

12. Per Marshall, Ch. J., Osborn v Bank of United States, 9 Wheat (US) 738, 6 L ed 204.

13. Snodgrass v State, 67 Tex Crim 615, 150 SW 162.

By reason of the distribution of powers under a constitution, assigning to the legislature and the judiciary each its separate and distinct functions, one department is not permitted to trench upon the functions and powers of the other. State ex rel. Bushman v Vandenberg, 203 Or 326, 276 P2d 432, 280 P2d 344.

14. State ex rel. Du Fresne v Leslie, 100 Mont 449, 50 P2d 959, 101 ALR 1329; State v Fabbri, 98 Wash 207, 167 P 133.

15. Any fundamental or basic power necessary to government cannot be delegated. Wilson v Philadelphia School Dist. 328 Pa 225, 195 A 90, 113 ALR 1401.

16. As to whether the Federal Constitution requires departmental separation of state gov-

17. Porter v Investors' Syndicate, 287 US 346, 77 L ed 354, 53 S Ct 132 (Montana Constitution); Abbott v McNutt, 218 Cal 225, 22 P2d 510, 89 ALR 1109; Re Battelle, 207 Cal 227, 277 P 725, 65 ALR 1497; Denver v Lynch, 92 Colo 102, 18 P2d 907, 86 ALR 907; Stockman v Leddy, 55 Colo 24, 129 P 220; Burnett v Greene, 97 Fla 1007, 122 So 570, 69 ALR 244; State v Atlantic Coast Line R. Co. 56 Fla 617, 47 So 969; Re Speer, 53 Idaho 293, 23 P2d 239, 88 ALR 1086; Winter v Barrett, 352 Ill 441, 186 NE 113, 89 ALR 1398; People v Kelly, 347 Ill 221, 179 NE 898, 80 ALR 890; People ex rel. Rusch v White, 334 Ill 465, 166 NE 100, 64 ALR 1006; State v Shumaker, 200 Ind 716, 164 NE 408, 63 ALR 218; State v Barker, 116 Iowa 96, 89 NW 204; Rouse v Johnson, 234 Ky 473, 28 SW2d 745, 70 ALR 1077; State ex rel. Young v Butler, 105 Me 91, 73 A 560; Harris v Allegany County, 130 Md 488, 100 A 733; Re Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059; American State Bank v Jones, 184 Minn 493, 239 NW 144, 78 ALR 770; University of Mississippi v Waugh, 105 Miss 623, 62 So 82 affd 237 US 589, 59 L ed 1131, 35 S Ct 720; State v J. J. Newman Lumber Co. 103 Miss 802, 59 So 923; State ex rel. Hadley v Washburn, 167 Mo 680, 67 SW 592; State v Field, 17 Mo 529; Searle v Yensen, 118 Neb 835, 226 NW 464, 69 ALR 257; Follmer v State, 94 Neb 217, 142 NW 908; Tyson v Washington County, 78 Neb 211, 110 NW 634; State v Roy, 40 NM 397, 60 P2d 646, 110 ALR 1; State ex rel. Dushek v Watland, 51 ND 710, 201 NW 680, 39 ALR 1169; Riley v Carter, 165 Okla 262, 25 P2d 666, 88 ALR 1018; Simpson v Hill, 128 Okla 269, 263 P 635, 56 ALR 706; Hopper v Oklahoma County, 43 Okla 288, 143 P 4; Macartney v Shipherd, 60 Or 133, 117 P 814; State v George, 22 Or 142, 29 P 356; Biggs v McBride, 17 Or 640, 21 P 878; Langever v Miller, 124 Tex 80, 76 SW2d 1025, 96 ALR 836; Union Cent. L. Ins. Co. v Chowning, 86 Tex 654, 26 SW 982; State v Mounts, 36 W Va 179, 14 SE 407; Public Serv. Com. v Grimshaw, 49 Wyo 158, 53 P2d 1, 109 ALR 534. See also State ex rel. Dushek v Wat-

constitutional distribution of the powers of government was made on the assumption by the people that the several departments would be equally careful to use the powers granted for the public good alone, the doctrine is generally accepted that none of the several departments is subordinate, but that all are co-ordinate,[9] independent,[10] coequal,[11] and potentially coextensive.[12] The rule is generally recognized that constitutional restraints are overstepped where one department of government attempts to exercise powers exclusively delegated to another;[13] officers of any branch of the government may not usurp or exercise the powers of either of the others,[14] and, as a general rule, one branch of government cannot permit its powers to be exercised by another branch.[15]

§ 211. — As express or implied constitutional requirement.[16]

Frequently, there appears in a state constitution an express division of the powers of government among the three departments;[17] and all persons charge

with official duties under one of the departments may be forbidden from exercising any of the functions of another except as expressly permitted by the constitution itself.[18] A state constitutional provision that no person belonging to one department shall exercise the powers properly belonging to another is to be strictly applied.[19] The constitution may, however, make it a duty for officers of one department of the government to assist in the functions of another department, and laws passed in furtherance of such acts are not violative of the doctrine of separation of powers.[20]

A constitutional requirement with respect to the separation of the three departments of the government which exists in a state constitution is generally held to refer to the state government and state officers, and not to the government of municipal corporations or their officers.[1]

Annotation: 69 ALR 266; 89 ALR 1114, 15; 79 L ed 476.

The origin of a constitutional provision decreeing a separation of powers is very well known. It first found expression, at least with clarity and precision, in the writings of Montesquieu, with which the members of the Federal Constitutional Convention of 1787 were familiar, early appeared in the organic laws of some of the states, and was adopted as a basic principle in the Constitution of the United States in 1787, from which it entered into the constitutions of nearly all of the states, including that of Texas, both as a republic and as a state. Langever v Miller, 124 Tex 80, 76 SW2d 1025, 96 ALR 836.

18. Porter v Investors' Syndicate, 287 US 346, 77 L ed 354, 53 S Ct 132 (Montana Constitution); Montgomery v State, 231 Ala 1, 163 So 365, 101 ALR 1394; Hawkins v Governor, 1 Ark 570; Abbott v McNutt, 218 Cal 225, 22 P2d 510, 89 ALR 1109; Re Battelle, 207 Cal 227, 277 P 725, 65 ALR 1497; Denver v Lynch, 92 Colo 102, 18 P2d 907, 86 ALR 907; Stockman v Leddy, 55 Colo 24, 129 P 220; Florida Nat. Bank of Jacksonville Simpson (Fla) 59 So 2d 751, 33 ALR2d 31; Burnett v Greene, 97 Fla 1007, 122 So 70, 69 ALR 244; Singleton v State, 38 Fla 297, 21 So 21; Re Speer, 53 Idaho 293, 23 P 2d 239, 88 ALR 1086; Winter v Barrett, 352 Ill 441, 186 NE 113, 89 ALR 1398; People v Kelly, 347 Ill 221, 179 NE 898, 80 ALR 890; Fergus v Marks, 321 Ill 510, 152 NE 557, 46 ALR 960; State v Shumaker, 200 Ind 716, 164 NE 408, 63 ALR 218; State v Noble, 118 Ind 350, 21 NE 244; Rouse v Johnson, 234 Ky 473, 28 SW2d 745, 70 ALR 1077; Re Dennett, 32 Me 508; Harris v Allegany County, 130 Md 488, 100 A 733; Re Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059; American State Bank v Jones, 184 Minn 498, 239 NW 144, 78 ALR 770; State ex rel. Hadley v Washburn, 167 Mo 680, 67 SW 592; Searle v Yensen, 118 Neb 835, 226 NW 464, 69 ALR 257; Follmer v State, 94 Neb 217, 142 NW 908; State v Roy, 40 NM 397, 60 P2d 646, 110 ALR 1; Riley v Carter, 165 Okla 262, 25 P2d 666, 88 ALR 1018; Simpson v Hill, 128 Okla 269, 263 P 635, 56 ALR 706; Hopper v Oklahoma County, 43 Okla 288, 143 P 4; Union Cent. L. Ins. Co. v Chowning, 86 Tex 654, 26 SW 982; Kimball v Grantsville City, 19 Utah 368, 57 P 1; Public Serv. Com. v Grimshaw, 49 Wyo 158, 53 P2d 1, 109 ALR 534.

Annotation: 69 ALR 266, 267; 89 ALR 1115; 79 L ed 476.

A state constitutional provision that no person or group of persons charged with the exercise of powers properly belonging to one of the departments of government shall exercise any power properly belonging to either of the others establishes a government of laws instead of a government of men, a government in which laws authorized to be made by the legislative branch are equally binding upon all citizens, including public officers and employees. Springfield v Clouse, 356 Mo 1239, 206 SW2d 539.

The plain meaning of state constitutional provisions declaring that neither of the three departments of government shall exercise powers properly belonging to either of the others, and that no person shall exercise the powers of more than one of them at the same time, is that no judge of any court can act as a member of the legislature or fill an executive office, and that no member of the legislature or any official of the executive department can fill a judicial office. State v Huber, 129 W Va 198, 40 SE2d 11, 163 ALR 808.

19. Transport Workers Union, etc. v Gadola, 322 Mich 332, 34 NW2d 71.

20. A statute requiring the governor to secure the introduction into the legislature of budget bills prepared by the budget commission and cause amendments to be presented, if desirable, during the passage of the bill is not invalid on the theory that it attempts to confer power on the governor and budget commission to dictate the introduction of bills in the legislature, where the constitution makes it the governor's duty to recommend for the consideration of the legislature such measures as he may deem expedient, and also makes it the duty of the officials who constitute the budget commission to prepare a general revenue bill to be presented to the house of representatives by the governor. Taylor v Davis, 212 Ala 282, 102 So 433, 40 ALR 1052.

1. Poynter v Walling (Del) 177 A2d 641;

On the other hand, in the Federal Constitution,[2] and in a few of the state constitutions,[3] no specific provision is made for a separation of governmental powers. Under these constitutions, however, and even under the constitutions in which such a clause has actually been inserted, irrespective of the existence of such a distributing clause, it is held that the creation of the three departments may operate as an apportionment of the different classes of powers. It has been said that where the provision that the legislative, executive, and judicial powers shall be preserved separate and distinct is not found in a constitution in terms, it may exist there in substance in the organization and distribution of the powers of the department.[4] The basis of this theory is that the distribution of the powers of the state by the constitution to the legislative, executive, and judicial departments operates by implication as an inhibition against the imposition upon any one department of such powers which distinctively belong to one of the other departments.[5] Thus, it has been said that grants of legislative, executive, and judicial powers of the three departments of government are, in their nature, exclusive, and that no department, as such, can rightfully exercise any of the functions necessarily belonging to the other.[6] It has also been said that the mere apportionment of sovereign powers among the three co-ordinate branches of the government, without more, imposes upon each of those branches the affirmative duty of exercising its own peculiar powers for itself, and prohibits the delegation of any of those powers, except in cases expressly permitted.[7]

A distributive clause in a state constitution prevents the exercise of the functions of one department of the government by another department, but has no relation to the exercise or division of the powers of one particular branch of the government by the officers who comprise that branch and does not control the question as to which one of several executive officers should perform an executive function.[8]

§ 212. — Importance of principle.

It has been said that the principle of the separation of the powers of government is fundamental to the very existence of constitutional government as

Sarlls v State, 201 Ind 88, 166 NE 270, 67 ALR 718 (statute providing commission and city manager forms of governments for cities); State v Mankato, 117 Minn 458, 136 NW 264; Barnes v Kirksville, 266 Mo 270, 180 SW 545; State v Noble, 82 Neb 267, 117 NW 723; Greenville v Pridmore, 86 SC 442, 68 SE 636; Walker v Spokane, 62 Wash 312, 113 P 775.

Annotation: 67 ALR 740.

2. Springer v Philippine Islands, 277 US 189, 72 L ed 845, 48 S Ct 480.

Annotation: 79 L ed 476.

3. Re Sims, 54 Kan 1, 37 P 135 (Kansas Constitution).

Ohio, for another example, has no specific constitutional provision for a separation of powers.

4. Springer v Philippine Islands, 277 US 189, 72 L ed 845, 48 S Ct 480 (Federal Constitution); State v Brill, 100 Minn 499, 111 NW 294, 639; Zanesville v Zanesville Tel. & Tel. Co. 64 Ohio St 67, 59 NE 781; Kimball v Grantsville City, 19 Utah 368, 57 P 1.

The doctrine of separation of powers arises not from any single provision of the Federal Constitution but because behind the words of the constitutional provisions are postulates which limit and control. National Mut. Ins. Co. v Tidewater Transfer Co. 337 US 582, 93 L ed 1556, 69 S Ct 1173.

5. Zanesville v Zanesville Tel. & Tel. Co. 64 Ohio St 67, 59 NE 781.

6. State ex rel. Mason v Baker, 69 ND 488, 288 NW 202.

7. Reelfoot Lake Levee Dist. v Dawson, 97 Tenn 151, 36 SW 1041, ovrld on another point Arnold v Knoxville, 115 Tenn 195, 90 SW 469.

8. State ex rel. Kostas v Johnson, 224 Ind 540, 69 NE2d 592, 168 ALR 1118; Follmer v State, 94 Neb 217, 142 NW 908.

established in the United States.[9] The principle has also been referred to as one of the chief merits of the American system of written constitutions.[10] It has been declared that the division of governmental powers into executive, legislative, and judicial represents probably the most important principle of government declaring and guaranteeing the liberties of the people,[11] and that it is a matter of fundamental necessity,[12] and is essential to the maintenance of a republican form of government.[13] One of America's most distinguished jurists has stated that no maxim has been more universally received and cherished as a vital principle of freedom.[14]

Although there may be a blending of powers in certain respects,[15] in a broad sense the safety of our institutions depends in no small degree on the strict observance of the independence of the several departments.[16] Each constitutes a check upon the exercise of its power by any other department,[17] and, accordingly, a concentration of power in the hands of one person or class is prevented,[18] and a commingling of essentially different powers in the same hands is precluded.[19] No arbitrary and unlimited power is vested in any department;[20]

9. National Mut. Ins. Co. v Tidewater Transfer Co. 337 US 582, 93 L ed 1556, 69 S Ct 1173; Norwalk Street R. Co.'s Appeal, 69 Conn 576, 37 A 1080, 38 A 708; People ex rel. Leaf v Orvis, 374 Ill 536, 30 NE2d 28, 132 ALR 1382, cert den 312 US 705, 85 L ed 1138, 61 S Ct 827; Tyson v Washington County, 78 Neb 211, 110 NW 634; Enterprise v State, 156 Or 623, 69 P2d 953; Langever v Miller, 124 Tex 80, 76 SW2d 1025, 96 ALR 836.

It is necessary, if government is to function constitutionally, for each of the repositories of constitutional power to keep within its power. Rescue Army v Municipal Court of Los Angeles, 331 US 549, 91 L ed 1666, 67 S Ct 1409.

10. O'Donoghue v United States, 289 US 516, 77 L ed 1356, 53 S Ct 740; Kilbourn v Thompson, 103 US 168, 26 L ed 377; People v Brady, 40 Cal 198; State v Brill, 100 Minn 499, 111 NW 294, 639; Searle v Yensen, 118 Neb 835, 226 NW 464, 69 ALR 257; Enterprise v State, 156 Or 623, 69 P2d 953.

11. Searle v Yensen, 118 Neb 835, 226 NW 464, 69 ALR 257; Enterprise v State, 156 Or 623, 69 P2d 953 (quoting the famous declaration of Montesquieu that "there can be no liberty . . . if the power of judging be not separated from the legislative and executive powers").

12. Tucker v State, 218 Ind 614, 35 NE2d 270.

13. Tucker v State, supra; Dearborn Twp. v Dail, 334 Mich 673, 55 NW2d 201.

14. Dash v Van Kleeck, 7 Johns (NY) 477 (per Kent, Ch. J.).

15. § 214, infra.

16. McCray v United States, 195 [illegible], 49 L ed 78, 24 S Ct 769; Powell v Pennsylvania, 127 US 678, 32 L ed 253, 8 S Ct 992, 1257; Kilbourn v Thompson, 103 US 168, 26 L ed 377; Sinking Fund Cases, 99 US 700, 25 L ed 496; Lincoln Federal Labor Union v Northwestern Iron & Metal Co. 149 Neb 507, 31 NW2d 477; Wenham v State, 65 Neb 394, 91 NW 421; Ex parte Kair, 28 Nev 127, 425, 80 P 463, 82 P 453; State ex rel. Schorr v Kennedy, 132 Ohio St 510, 9 NE2d 278, 110 ALR 1428; State ex rel. Bushman v Vandenberg, 203 Or 326, 276 P2d 432, 280 P2d 344; Enterprise v State, 156 Or 623, 69 P2d 953; U'Ren v Bagley, 118 Or 77, 245 P 1074, 46 ALR 1173; State v Peel Splint Coal Co. 36 W Va 802, 15 SE 1000.

The preservation of the inherent powers of the three branches of government, free from encroachment or infringement by one upon the other, is essential to the safekeeping of the American system of constitutional rule. Simmons v State, 160 Fla 626, 36 So 2d 207.

As to the independence of the separate departments, see § 213, infra.

17. Greenwood Cemetery Land Co. v Routt, 17 Colo 156, 28 P 1125; Re Davies, 168 NY 89, 61 NE 118.

18. State v Denny, 118 Ind 382, 21 NE 252; Enterprise v State, 156 Or 623, 69 P2d 953; De Chastellux v Fairchild, 15 Pa 18.

By the mutual checks and balances by and between the branches of government, democracy undertakes to preserve the liberties of the people from excessive concentrations of authority. United Public Workers v Mitchell, 330 US 75, 91 L ed 754, 67 S Ct 556.

The primary purpose of the doctrine of separation of powers is to prevent the combination in the hands of a single person or group of the basic or fundamental powers of government. Parker v Riley, 18 Cal 2d 83, 113 P2d 873, 134 ALR 1405.

19. O'Donoghue v United States, 289 US 516, 77 L ed 1356, 53 S Ct 740.

It is particularly essential that the respective branches of the government keep within the powers assigned to each by the constitution, since

such power is regarded as a condition subversive of the constitution,[1] and the chief characteristic and evil of tyrannical and despotic forms of government.[2]

§ 213. Independence of separate departments.

Each of the several departments of government derives its authority directly or indirectly from the people and is responsible to them.[3] Each has exclusive cognizance of the matters within its jurisdiction[4] and is supreme within its own sphere.[5] In the exercise of the powers of government assigned to them severally, the departments operate harmoniously and independently of each other, and the action of any one of them in the lawful exercise of its own powers is not subject to control by either of the others.[6] Each department of government must exercise its own delegated powers, and unless otherwise limited by the constitution, each exercises such inherent power as will protect it in the performance of its major duty; one department may not be controlled or even embarrassed by another department unless the constitution so ordains.[7] For any one of the three equal and co-ordinate branches of government to police or supervise the operations of the others strikes at the very heart and core of the entire structure.[8]

92 L ed 1694, 68 S Ct 1294, reh den 335 US 836, 93 L ed 389, 69 S Ct 11.

Separation of powers is not a mere matter of convenience or of governmental mechanism, but its object is basic and vital, namely, to preclude a commingling of the essentially different powers of government in the same hands. State ex rel. Black v Burch, 226 Ind 445, 80 NE2d 294, 560, 81 NE2d 850.

20. State ex rel. Davis v Stuart, 97 Fla 69, 120 So 335, 64 ALR 1307.

1. Sinking Fund Cases, 99 US 700, 25 L ed 496; McPherson v State, 174 Ind 60, 90 NE 610; State v Johnson, 61 Kan 803, 60 P 1068.

2. State v Barker, 116 Iowa 96, 89 NW 204; State v Johnson, 61 Kan 803, 60 P 1068; State v Brill, 100 Minn 499, 111 NW 294, 639; Enterprise v State, 156 Or 623, 69 P2d 953.

3. Wright v Wright, 2 Md 429; De Chastellux v Fairchild, 15 Pa 18; Ekern v McGovern, 154 Wis 157, 142 NW 595; State ex rel. Mueller v Thompson, 149 Wis 488, 137 NW 20.

4. Fox v McDonald, 101 Ala 51, 13 So 416; White County v Gwin, 136 Ind 562, 36 NE 237; State v Denny, 118 Ind 382, 21 NE 252; State v Noble, 118 Ind 350, 21 NE 244; State v Doherty, 25 La Ann 119; McCully v State, 102 Texas 509, 53 SW 134.

5. Montgomery v State, 231 Ala 1, 163 So 365, 101 ALR 1394; Hawkins v Governor, 1 Ark 570; Denver v Lynch, 92 Colo 102, 18 P2d 907, 86 ALR 907; People ex rel. Billings v Bissell, 19 Ill 229; Wright v Wright, 2 Md 429; Re Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059; State v Blaisdell, 22 ND 86, 132 NW 769; McCully v State, 102 Texas 509, 53 SW 134; Langever v Miller, 124 Tex 80, 76 SW2d 1025, 96 ALR 836; Kimball v Grantsville City, 19 Utah 368, 57 P 1; State ex rel. Mueller v Thompson, 149 Wis 488, 137 NW 20.

6. Humphrey v United States, 295 US 602, 79 L ed 1611, 55 S Ct 869; O'Donoghue v United States, 289 US 516, 77 L ed 1356, 53 S Ct 740; Parsons v Tuolomne County Water Co. 5 Cal 43; State v Atlantic Coast Line R. Co. 56 Fla 617, 47 So 969; People v Bissell, 19 Ill 229; State v Shumaker, 200 Ind 716, 164 NE 408, 63 ALR 218; Blalock v Johnston, 180 SC 40, 185 SE 51, 105 ALR 1115; Langever v Miller, 124 Tex 80, 76 SW2d 1025, 96 ALR 836; Christie v Lueth, 265 Wis 326, 61 NW2d 338.

Each department should be kept completely independent of the others, independent not in the sense that they shall not co-operate in the common end of carrying into effect the purpose of the constitution, but in the sense that the acts of each shall never be controlled by, or subjected to, directly or indirectly, the coercive influence of either of the other departments. State ex rel. Black v Burch, 226 Ind 445, 80 NE2d 294, 560, 81 NE2d 850.

Annotation: 153 ALR 522.

7. State v Shumaker, 200 Ind 716, 164 NE 408, 63 ALR 218.

When a written constitution provides for the separation of powers of government between three major branches, it is presumed to intend that within the scope of their constitutionally conferred fields of activities the three separate departments of government are to be independent, subject, of course, to any limitations upon this presumption found in the clear and express provisions of the constitution itself. Du Pont v Du Pont (Sup) 32 Del Ch 413, 85 A2d 724.

8. Renck v Superior Court of Maricopa

C. JUDICIAL POWERS

1. IN GENERAL

§ 219. Generally.[1]

The power to maintain a judicial department is an incident to the sovereignty of each state.[2] Under the doctrine of the separation of the powers of government,[3] judicial power, as distinguished from executive and legislative power, is vested in the courts as a separate magistracy.[4]

The judiciary is an independent department of the state and of the federal government, deriving none of its judicial power from either of the other departments. This is true although the legislature may create courts under the provisions of the constitution. When a court is created, the judicial power is conferred by the constitution, and not by the act creating the court.[5] It was said at an early period in American law that the judicial power in every well-organized government ought to be coextensive with the legislative power so far, at least, as private rights are to be enforced by judicial proceedings.[6] The rule is now well settled that under the various state governments, the constitution confers on the judicial department all the authority necessary to exercise powers as a co-ordinate department of the government.[7] Moreover, the independence of the judiciary is the means provided for maintaining the supremacy of the constitution.[8]

In a general way the courts possess the entire body of judicial power. The other departments cannot, as a general rule, properly assume to exercise any part of this power,[9] nor can the constitutional courts be hampered or limited in the discharge of their functions by either of the other two branches.[10]

1. Discussed at this point is the judicial power in its constitutional relationship to the other powers of government. A broad discussion of judicial power, generally, will be found in the article, COURTS.

Hoxie v New York, N. H. & H. R. Co. 82 Conn 352, 73 A 754.

2. § 210, supra.

3. Brydonjack v State Bar, 208 Cal 439, 281 P 1018, 66 ALR 1507; Norwalk Street R. Co.'s Appeal, 69 Conn 576, 37 A 1080, 38 A 708; Brown v O'Connell, 36 Conn 432; Burnett v Green, 97 Fla 1007, 122 So 570, 69 ALR 244; Ex parte Earman, 85 Fla 297, 95 So 755, 31 ALR 1226; State v Shumaker, 200 Ind 623, 157 NE 769, 162 NE 441, 163 NE 272, 58 ALR 954; State v Denny, 118 Ind 382, 21 NE 252; Flournoy v Jeffersonville, 17 Ind 69; Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059; American State Bank v Jones, 184 Minn 498, 239 NW 144, 78 ALR 770.

4. Brown v O'Connell, 36 Conn 432; Norwalk Street R. Co.'s Appeal, 69 Conn 576, 37 A 1080, 38 A 708; Parker v State, 135 Ind 534, 35 NE 179; Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059.

5. Kendall v United States, 12 Pet (US) 524, 9 L ed 1181.

6. Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1509.

7. Riley v Carter, 165 Okla 262, 25 P2d 666, 88 ALR 1018.

8. State v Noble, 118 Ind 350, 21 NE 244; Attorney General ex rel. Cook v O'Neill, 280 Mich 649, 274 NW 445; Washington-Detroit Theatre Co. v Moore, 249 Mich 673, 229 NW 618, 68 ALR 105.

The whole of judicial power reposing in the sovereignty is granted to courts except as restricted in the constitution. Washington-Detroit Theatre Co. v Moore, supra.

9. Vidal v Backs, 218 Cal 99, 21 P2d 952, 86 ALR 1131; Shaw v Moore, 104 Vt 529, 162 A 373, 86 ALR 1139.

And see § 217, supra, and §§ 234 et seq., infra.

I certify that the foregoing is my amended return to Order to Show Cause issued out of the District Court on January 8, 1969.

The Act of February 12, 1873, 17 Stat 426 fixed the Gold Dollar at 25.8 grains, Troy weight 9/10 fine for the Gold Dollar.

The Act of February 28, 1878 fixed the Silver Dollar at 412 1/2 grains Troy weight of Silver. These are the last two Constitutional Act of Congress, pursuant to the Constitution in which they coined money, regulated the value thereof and fixed the Standard of weights and measures. The Congress cannot abdicate or delegate these legislative powers. Usurpation by the Executive or his Agents is void. Thus the Silver clad-copper coins are a debasing of the Coins when once the Standard has been fixed. They are also not a legal tender, and are unconstitutional and void. These debased Coins and void Federal Reserve Notes constitute a shallow and impudent artifice, the least covert of all modes of knavery, a miserable scheme of robbery, all of which were the final characteristics of Arbitrary and profligate governments preceeding their downfall. No longer does any sentiment of honor influence the governing power of this Nation.

Based upon the Law and Facts presented to me, the Appeal is not allowed in this Court.

February 4, 1969

BY THE COURT

MARTIN V. MAHONEY
Justice of the Peace
Credit River Twp.
Scott County, Minn.

Lightning Over the Treasury Building

CHAPTER I

The Goldsmiths

Once upon a time, gold—being the most useless of all metals—was held in low esteem. Things which possessed intrinsic value were labored for—fought for—accumulated—and prized. These things became the standards of value and the mediums of exchange in the respective localities producing them.

One of the most urgent requirements of man is a wife, and it used to be that one of the most prized possessions of a father was a strong, hard working daughter; and she was considered his property. In those days he didn't give a dowry with her to get rid of her—but if a young blade desired her he had to recompense the Dad before he could lead her away to his cave. Good milch cows were as scarce as good girls—so a wooer hit upon the happy idea, one day, of offering a cow to the "Old Man" for his daughter. The deal was made and cows became, probably, the first money in history.

Since that ancient date most everything that you can think of has been used for money. Carpets, cloth, ornaments, beads, shells, feathers, teeth, hides, tobacco, gophers' tails, woodpeckers' heads, salt, fish hooks, nails, beans, spears,

bronze, silver and gold—and later, receipts for gold which did not exist—have all been used for money.

The latter article was the invention of the goldsmith and has yielded greater profits than all other inventions combined. It all came about like this:

Women have always had a fondness for beautiful ornaments. The plainer women—the ones who needed decorating with trinkets—were the ones who received the fewest ornaments. This was because men were the ones who supplied them, and—as contradictory as it may seem—the more beautiful the lady was, the more ornaments she usually received. Rings for her fingers—rings for her toes—rings for her ears—and rings for her nose—bracelets, anklets, tiaras, throatlets, pendants and foibles of yellow gold were hung on her like decorations on a Christmas tree.

Gold was also used to beautify the palaces of the kings, and of the near kings, shrines and temples. It was held in such high esteem that the people actually began to worship it—making gods and goddesses of it. It became the most desired of all substances. Because of the high esteem in which it was held it superseded all of its competitors in the civilized world as a medium of exchange. The value of other goods was measured by the amount of gold for which those goods could be exchanged.

The yellow metal, for convenience sake, and because the gold itself—and not the ornaments which could be made from it—was in demand, was shaped into rings, bars, discs and cubes, usually bearing an imprint of the kingly or princely owner.

Every community, or city, had its king or ruler. These rulers were all eager to increase their hoard of gold. Raiding expeditions were promoted and the weaker tribes, or kingdoms, were looted of the gold which they had accumulated. At times they would become so prosaic and unromantic as to carry on legitimate trade with other communi-

ties and obtain the gold in that way—but that was usually too slow and unexciting.

When the king arrived home with the precious stuff, his worries were not over. There were thieves in those days. There were also goldsmiths. The goldsmiths were the manufacturers of the ornaments which the ladies wore, and they always had a considerable amount of the coveted metal on hand. To safeguard their treasures they built strong-rooms on their premises in which to store the gold entrusted to their care.

It was not surprising, then, that the custom grew for the leader, upon his return from his thieving expedition, to leave the hoard of gold which he had obtained, with the goldsmith for safe-keeping. The merchants, too, who had traded profitably with other nations, communities or tribes, as well as other merchants and raiders passing through the city where the goldsmith lived, found it convenient—and usually safe—to leave their gold in the strong-room of the goldsmith.

When the gold was weighed and safely deposited in the strong-room, the goldsmith would give the owner a warehouse receipt for his deposit. These receipts were of various sizes, or for various amounts; some large, others smaller and others still more small. The owner of the gold, when wishing to transact business, would not as a rule take the actual gold out of the strong-room but would merely hand over a receipt for gold which he had in storage.

The goldsmith soon noticed that it was quite unusual for anyone to call for his gold. The receipts, in various amounts, passed from hand to hand instead of the gold itself being transferred. He thought to himself: "Here I am in possession of all this gold and I am still a hard working artisan. It doesn't make sense. Why there are scores of my neighbors who would be glad to pay me interest for the use of this gold which is lying here and never called for.

It is true, the gold is not mine—but it is in my possession, which is all that matters."

The birth of this new idea was promptly followed by action. At first he was very cautious, only loaning a little at a time—and that, on tremendous security. But gradually he became bolder and larger amounts of the gold were loaned.

One day the amount of loan requested was so large that the borrower didn't want to carry the gold away. The goldsmith solved the problem, pronto, by merely suggesting that the borrower be given a receipt for the amount of gold borrowed—or several receipts for various amounts totalling the amount of gold figuring in the transaction. To this the borrower agreed, and off he walked with the receipts, leaving the gold in the strong-room of the goldsmith.

After his client left, the goldsmith smiled broadly. He could have a cake and eat it too. He could lend gold and still have it. The possibilities were well nigh limitless. Others, and still more neighbors, friends, strangers and enemies expressed their desire for additional funds to carry on their businesses—and so long as they could produce sufficient collateral they could borrow as much as they needed—the goldsmith issuing receipts for ten times the amount of gold in his strong-room, *and he not even the owner of that.*

Everything was hunky-dory so long as the real owners of the gold didn't call for it—or so long as the confidence of the people was maintained—or a whispering campaign was not begun; in which case, upon the discovery of the facts, the goldsmith was usually taken out and shot.

In this manner, through the example of the goldsmiths, bank credit entered upon the scene. The practice of issuing receipts—entries in bank ledgers and figures in bank pass books—balancing the borrower's debt against the bank's obligation to pay, and multiplying the obligations to pay by thirty or forty times the amount of money which they (the

banks) hold, is a hangover of the goldsmith's racket and is the cause of most of the distress in America and the civilized world today.

As a result of the enormous profits being made by the bankers, the United Nations scheme has been formed to protect them in their franchise and to enable them to exploit the world.

The Bank of Amsterdam, established in 1609 in the City of Amsterdam, was, it seems, the first institution which followed the practice of the goldsmiths under the title of banking. It accepted deposits and gave separate receipts for each deposit of its many depositors, each deposit comprising a new account. The procedure greatly multiplied the number of receipts outstanding. The receipts constituted the medium of exchange in the country.

At first these bankers did not think of or did not intend to follow the practice of the goldsmiths in issuing more receipts than they had in gold, but their avarice soon gained control and that practice was introduced and pursued. The receipts were not covered by gold but by mortgages and property which they believed could be converted into gold on short notice, if necessary.

All went well for a time, but in 1795 the truth leaked out. It was found that the outstanding receipts called for several times the amount of gold which was held by the bank. This discovery caused a panic and a run on the bank resulting in its destruction—because the demand for its gold far exceeded its supply.

The collapse of the Bank of Amsterdam should have been an object lesson to all posterity, but alas, avaricious men again took advantage of the forgetfulness and gullibility of the people and the fraud was revived and perpetuated.

CHAPTER II

The Bank of England

For centuries, in England, the Christians were taught, and believed, that it was contrary to Christian ethics to loan money at usury, or interest. During those centuries the Church and the State saw eye to eye, for they were practically one and the same. It was, therefore, not only un-Christian, but also illegal to loan money at interest.

The laws of King Alfred, in the Tenth Century, provided that the effects and lands of those who loaned money upon interest should be forfeited to the Crown and the lender should not be buried in consecrated ground. Under Edward the Confessor, in the next Century, it was provided that the usurer should forfeit all his property, be declared an outlaw and banished from England.

During the reign of Henry II, in the Twelfth Century, the estates of usurers were forfeited at their death and their children disinherited. In the Thirteenth Century, King John confiscated and gathered in the wealth of all known usurers. In the Fourteenth Century, the crime of loaning money at interest was made a capital offense, and during the reign of James I, it was held that the taking of usury was no better than taking a man's life.

In view of these facts it is quite understandable how the Jews became, for the most part, the money lenders and the goldsmiths of England. They for some reason had no compunction of conscience on the matter. They lived outside the pale of the teachings of the New Testament and ignored the unmistakable commands of the Old regarding usury. It is true that they had to carry on their business secretly, but carry it on they did.

On the Constitutionality of the Bank of the United States, *1791*

Jefferson to Washington:

I consider the foundation of the Constitution as laid on this ground: That "all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people . . ." To take a single step beyond the boundaries thus specially drawn around the powers of Congress is to take possession of a boundless field of power, no longer susceptible of any definition.

The incorporation of a bank, and the powers assumed by this bill, have not, in my opinion, been delegated to the United States by the Constitution.

I. They are not among the powers specially enumerated: for these are: 1. A power to lay taxes for the purpose of paying the debts of the United States; but no debt is paid by this bill, nor any tax laid. Were it a bill to raise money, its origination in the Senate would condemn it by the Constitution.

2. "To borrow money." But this bill neither borrows money nor insures the borrowing it. The proprietors of the bank will be just as free as any other money-holders to lend or not to lend their money to the public. The operation proposed in the bill, first, to lend them two millions, and then to borrow them back again, cannot change the nature of the latter act, which will still be a payment, and not a loan, call it by what name you please.

3. To "regulate commerce with foreign nations, and among the states, and with the Indian tribes." To erect a bank, and to regulate commerce, are very different acts. He who erects a bank creates a subject of commerce in its bills; so does he who makes a bushel of wheat or digs a dollar out of the mines; yet neither of these persons regulates commerce thereby. To make a thing which may be bought and sold is not to prescribe regulations for buying and selling. Besides, if this was an exercise of the power of regulating commerce, it would be void, as extending as much to the internal commerce of every State, as to its external. For the power given to Congress by the Constitution does not extend to the internal regulation of the commerce of a State (that is to say of the commerce between citizen and citizen), which remain exclusively with its own legislature; but to its external commerce only, that is to say, its commerce with another State, or with foreign nations, or with the Indian tribes. Accordingly the bill does not propose the measure as a regulation of trade, but as "productive of considerable advantages to trade." Still less are these powers covered by any other of the special enumerations.

II. Nor are they within either of the general phrases, which are the two following:

1. To lay taxes to provide for the general welfare of the United States, that is to say, "to lay taxes for the purpose of providing for the general welfare." For the laying of taxes is the power, and the general welfare the purpose for which the power is to be exercised. They are not to lay taxes *ad libitum* for any purpose they please but only to pay the debts or provide for the welfare of the Union. In like manner, they are not to do anything they please to provide for the general welfare but only to lay taxes for that purpose. To consider the latter phrase, not as describing the purpose of the first, but as giving a distinct and independent power to do any act they please, which might be for the good of the Union, would render all the preceding and subsequent enumerations of power completely useless.

It would reduce the whole instrument to a single phrase, that of instituting a Congress with power to do whatever would be for the good of the United States; and, as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they please.

It is an established rule of construction where a phrase will bear either of two meanings to give it that which will allow some meaning to the other parts of the instrument and not that which would render all the others useless. Certainly no such universal power was meant to be given them. It was intended to lace them up straitly within the enumerated powers, and those without which, as means, these powers could not be carried into effect. It is known that the very power now proposed as a means was rejected as an end by the Convention which formed the Constitution. A proposition was made to them to authorize Congress to open canals, and an amendatory one to empower them to incorporate. But the whole was rejected, and one of the reasons for rejection urged in debate was that then they would have a power to erect a bank, which would render the great cities, where there were prejudices and jealousies on the subject, adverse to the reception of the Constitution.

2. The second general phrase is "to make all laws necessary and proper for carrying into execution the enumerated powers." But they can all be carried into execution without a bank. A bank therefore is not necessary and consequently not authorized by this phrase.

It has been urged that a bank will give great facility or convenience in the collection of taxes. Suppose this were true: yet the Constitution allows only the names which are "necessary," not those which are merely "convenient" for effecting the enumerated powers. If such a latitude of construction be allowed to this phrase as to give any nonenumerated power, it will go to every one, for there is not one which ingenuity may not torture into a convenience in some instance or other, to some one of so long a list of enumerated powers. It would swallow up all the delegated powers and reduce the whole to one power, as before observed. Therefore it was that the Constitution restrained them to the *necessary* means, that is to say, to those means without which the grant of power would be nugatory. . . .

Perhaps, indeed, bank bills may be a more convenient vehicle than treasury orders. But a little difference in the degree of convenience cannot constitute the necessity which the Constitution makes the ground for assuming any nonenumerated power. . . .

It may be said that a bank whose bills would have a currency all over the States would be more convenient than one whose currency is limited to a single State. So it would be still more convenient that there should be a bank whose bills should have a currency all over the world. But it does not follow from this superior conveniency that there exists anywhere a power to establish such a bank or that the world may not get on very well without it.

Can it be thought that the Constitution intended that for a shade or two of convenience, more or less, Congress should be authorized to break down the most ancient and fundamental laws of the several States; such as those against mortmain, the laws of alienage, the rules of descent, the acts of distribution, the laws of escheat and forfeiture, the laws of monopoly? Nothing but a necessity invincible by any other means can justify such a prostitution of laws, which constitute the pillars of our whole system of jurisprudence. Will Congress be too strait-laced to carry the Constitution into honest effect, unless they may pass over the foundation laws of the State government for the slightest convenience of theirs?

The negative of the President is the shield provided by the Constitution to protect against the invasions of the legislature: 1. The right of the executive. 2. Of the judiciary. 3. Of the States and States legislatures. The present is the case of a right remaining exclusively with the States, and consequently one of those intended by the Constitution to be placed under its protection. . . .

Veto of the Bank Renewal Bill, *Andrew Jackson, 1832*

The bill "to modify and continue" the act entitled "An act to incorporate the subscribers to the Bank of the United States" was presented to me on the 4th July instant. Having considered it with that solemn regard to the principles of the Constitution which the day was calculated to inspire, and come to the conclusion that it ought not to become a law, I herewith return it to the Senate, in which it originated, with my objections.

A bank of the United States is in many respects convenient for the Government and useful to the people. Entertaining this opinion, and deeply impressed with the belief that some of the powers and privileges possessed by the existing bank are unauthorized by the Constitution, subversive of the rights of the States, and dangerous to the liberties of the people, I felt it my duty at an early period of my Administration to call the attention of Congress to the practicability of organizing an institution combining all its advantages and obviating these objections. I sincerely regret that in the act before me I can perceive none of those modifications of the bank charter which are necessary, in my opinion, to make it compatible with justice, with sound policy, or with the Constitution of our country.

The present corporate body, denominated the president, directors, and company of the Bank of the United States, will have existed at the time this act is intended to take effect twenty years. It enjoys an exclusive privilege of banking under the authority of the General Government, a monopoly of its favor and support, and, as a necessary consequence, almost a monopoly of the foreign and domestic exchange. The powers, privileges, and favors bestowed upon it in the original charter, by increasing the value of the stock far above its par value, operated as a gratuity of many millions to the stockholders.

An apology may be found for the failure to guard against this result in the consideration that the effect of the original act of incorporation could not be certainly foreseen at the time of its passage. The act before me proposes another gratuity to the holders of the same stock, and in many cases to the same men, of at least seven millions more. This donation finds no apology in any uncertainty as to the effect of the act. On all hands it is conceded that its passage will increase at least 20 or 30 per cent more the market price of the stock, subject to the payment of the annuity of $200,000 per year secured by the act, thus adding in a moment one-fourth to its par value. It is not our own citizens only who are to receive the bounty of our Government. More than eight millions of the stock of this bank are held by foreigners. By this act the American Republic proposes virtually to make them a present of some millions of dollars. For these gratuities to foreigners, and to some of our own opulent citizens the act secures no equivalent whatever. They are the certain gains of the present stockholders under the operation of this act, after making full allowance for the payment of the bonus.

Every monopoly and all exclusive privileges are granted at the expense of the public, which ought to receive a fair equivalent. The many millions which this act proposes to bestow on the stockholders of the existing bank must come directly or indirectly out of the earnings of the American people. It is due to them, therefore, if their Government sell monopolies and exclusive privileges, that they should at least exact for them as much as they are worth in open market. The value of the monopoly in this case may be correctly ascertained. The twenty-eight millions of stock would probably be at an advance of 50 per cent, and command in market at least $42,000,000, subject to the payment of the present bonus. The present value of the monopoly, therefore, is $17,000,000, and this the act proposes to sell for three millions, payable in fifteen annual installments of $200,000 each.

It is not conceivable how the present stockholders can have any claim to the special favor of the Government. The present corporation has enjoyed its monopoly during the period stipulated in the original contract. If we must have such a corporation, why should not the Government sell out the whole stock and thus secure to the people the full market value of the privileges granted? Why should not Congress create and sell twenty-eight millions of stock, incorporating the purchases with all the powers and privileges secured in this act and putting the premium upon the sales into the Treasury?

But this act does not permit competition in the purchase of this monopoly. It seems to be predicated on the erroneous idea that the present stockholders have a prescriptive right not only to the favor but to the bounty of Government. It appears that more than a fourth part of the stock is held by foreigners and the residue is held by a few hundred of our own citizens, chiefly of the richest class. For their benefit does this act exclude the whole American people from competition in the purchase of this monopoly and dispose of it for many millions less than it is worth. This seems the less excusable because some of our citizens not now stockholders petitioned that the door of competition might be opened, and offered to take a charter on terms much more favorable to the Government and country.

But this proposition, although made by men whose aggregate wealth is believed to be equal to all the private stock in the existing bank, has been set aside, and the bounty of our Government is proposed to be again bestowed on the few who have been fortunate enough to secure the stock and at this moment wield the power of the existing institution. I can not perceive the justice or policy of this course. If our Government must sell monopolies, it would seem to be its duty to take nothing less than their full value, and if gratuities must be made once in fifteen or twenty years let them not be bestowed on the subjects of a foreign government nor upon a designated and favored class of men in our own country. It is but justice and good policy as far as the nature of the case will admit, to confine our favors to our own fellow-citizens, and let each in his turn enjoy an opportunity to profit by our bounty. In the bearings of the act before me upon these points I find ample reasons why it should not become a law.

It has been urged as an argument in favor of rechartering the present bank that the calling in its loans will produce great embarrassment and distress. The time allowed to close its concerns is ample, and if it has well managed its pressure will be light, and heavy only in case its management has been bad. If, therefore, it shall produce distress, the fault will be its own, and it would furnish a reason against renewing a power which has been so obviously abused. But will there ever be a time when this reason will be less powerful? To acknowledge its force is to admit that the bank ought to be perpetual, and as a consequence the present stockholders and those inheriting their rights as successors be established a privileged order, clothed both with great political power and enjoying immense pecuniary advantages from their connection with the Government.

The modifications of the existing charter proposed by this act are not such, in my view, as make it consistent with the rights of the States or the liberties of the people. The qualification of the right of the bank to hold real estate, the limitation of its power to establish branches, and the power reserved to Congress to forbid the circulation of small notes are restrictions comparatively of little value or importance. All the objectionable principles of the existing corporation, and most of its odious features, are retained without alleviation. . . .

In another of its bearings this provision is fraught with danger. Of the twenty-five directors of this bank five are chosen by the Government and twenty by the citizen stockholders. From all voice in these elections the foreign stockholders are excluded by the charter. In proportion, therefore, suffrage in the choice of directors is curtailed. Already is almost a third of the stock in foreign hands and not represented in elections. It is constantly passing out of the country, and this act will accelerate its departure. The entire control of the institution would necessarily fall into the hands of a few citizen stockholders, and the ease with which the object would be accomplished would be a temptation to designing men to secure that control in their own hands by monopolizing the remaining stock. There is danger that a president and directors would then be able to elect themselves from year to year, and without responsibility or control manage the whole concerns of the bank during the existence of its charter. It is easy to conceive that great evils to our country and its institutions might flow from such a concentration of power in the hands of a few men irresponsible to the people.

Is there no danger to our liberty and independence in a bank that in its nature has so little to bind it to our country? The president of the bank has told us that most of the State banks exist by its forbearance. Should its influence become concentered, as it may under the operation of such an act as this, in the hands of a self-elected directory whose interests are identified with those of the foreign stockholders, will there not be cause to tremble for the purity of our elections in peace and for the independence of our country in war? Their power would be great whenever they might choose to exert it; but if this monopoly were regularly renewed every fifteen or twenty years on terms proposed by themselves, they might seldom in peace put forth their strength to influence elections or control the affairs of the nation. But if any private citizen or public functionary should interpose to curtail its powers or prevent a renewal of its privileges, it can not be doubted that he would be made to feel its influence.

Should the stock of the bank principally pass into the hands of the subjects of a foreign country, and we should unfortunately become involved in a war with that country, what would be our condition? Of the course which would be pursued by a bank almost wholly owned by the subjects of a foreign power, and managed by those whose interests, if not affections, would run in the same direction there can be no doubt. All its operations within would be in aid of the hostile fleets and armies without. Controlling our currency, receiving our public moneys, and holding thousands of our citizens in dependence, it would be more formidable and dangerous than the naval and military power of the enemy.

If we must have a bank with private stockholders, every consideration of sound policy and every impulse of American feeling admonishes that it should be *purely American*. Its stockholders should be composed exclusively of our own citizens, who at least ought to be friendly to our Government and willing to support it in times of difficulty and danger. So abundant is domestic capital that competition in subscribing for the stock of local banks has recently led almost to riots. To a bank exclusively of American stockholders, possessing the powers and privileges granted by this act, subscriptions for $200,000,000 could readily be obtained. Instead of sending abroad the stock of the bank in which the Government must deposit its funds and on which it must rely to sustain its credit in times of emergency, it would rather seem to be expedient to prohibit its sale to aliens under penalty of absolute forfeiture.

It is maintained by the advocates of the bank that its constitutionality in all its features ought to be considered as settled by precedent and by the decision of the Supreme Court. To this conclusion I can not assent. Mere precedent is a dangerous source of authority, and should not be regarded as deciding questions of constitutional power except where the acquiescence of the people and the States can be considered as well settled. So far from this being the case on this subject, an argument against the bank might be based on precedent. One decided against it. One Congress in 1815, decided against a bank; another in 1816, decided in its favor. Prior to the present Congress, therefore, the precedents drawn from that source were equal. If we resort to the States, the expressions of legislative, judicial, and executive opinions against the bank have been probably to those in its favor as 4 to 1. There is nothing in precedent, therefore, which, if its authority were admitted, ought to weigh in favor of the act before me.

If the opinion of the Supreme Court covered the whole ground of this act, it ought not to control the coordinate authorities of this Government. The Congress, the Executive, and the Court must each for itself be guided by its own opinion of the Constitution. Each public officer who takes an oath to support the Constitution swears that he will support it as he understands it, and not as it is understood by others. It is as much the duty of the House of Representatives, of the Senate, and of the President to decide upon the constitutionality of any bill or resolution which may be presented to them for passage or approval as it is of the supreme judges when it may be brought before them for judicial decision. The opinion of the judges has no more authority over Congress than one opinion of Congress has over the judges, and on this point the President is independent of both. The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve. . . .

The bank is professedly established as an agent of the executive branch of the Government, and its constitutionality is maintained on that ground. Neither upon the propriety of present action nor upon the provisions of this act was the Executive consulted. It has had no opportunity to say that it neither needs nor wants an agent clothed with such powers and favored by such exemptions. There is nothing in its legitimate functions which makes it necessary or proper. Whatever interest or influence, whether public or private, has given birth to this act, it can not be found either in the wishes or necessities of the executive department, by which present action is deemed premature, and the powers conferred upon its agent not only unnecessary, but dangerous to the Government and country.

It is to be regretted that the rich and powerful too often bend the acts of government to their selfish purposes. Distinctions in society will always exist under every just government. Equality of talents, of education, or of wealth can not be produced by human institutions. In the full enjoyment of the gifts of Heaven and the fruits of superior industry, economy, and virtue, every man is equally entitled to protection by law; but when the laws undertake to add to these natural and just advantages artificial distinctions, to grant titles, gratuities, and exclusive privileges, to make the rich richer and the potent more powerful, the humble members of society—the farmers, mechanics, and laborers—who have neither the time nor the means of securing like favors to themselves, have a right to complain of the injustice of their Government. There are no necessary evils in government. Its evils exist only in its abuses. If it would confine itself to equal protection, and, as Heaven does its rains, shower its favors alike on the high and the low, the rich and the poor, it would be an unqualified blessing. In the act before me there seems to be a wide and unnecessary departure from these just principles.

Nor is our Government to be maintained or our Union preserved by invasions of the rights and powers of the several States. In thus attempting to make our General Government strong we make it weak. Its true strength consists in leaving individuals and States as much as possible to themselves—in making itself felt, not in its power, but in its beneficence; not in its control, but in its protection; not in binding the States more closely to the center, but leaving each more unobstructed in its proper orbit.

Experience should teach us wisdom. Most of the difficulties our Government now encounters and most of the dangers which impend over our Union have sprung from an abandonment of the legitimate objects of Government by our national legislation, and the adoption of such principles as are embodied in this act. Many of our rich men have not been content with equal protection and equal benefits, but have besought us to make them richer by act of Congress. By attempting to gratify their desires we have in the results of our legislation arrayed section against section, interest against interest, and man against man, in a fearful commotion which threatens to shake the foundations of our Union. It is time to pause in our career to review our principles, and if possible revive that devoted patriotism and spirit of compromise which distinguished the sages of the Revolution and the fathers of our Union. If we can not at once, in justice to interests vested under improvident legislation, make our Government what it ought to be, we can at least take a stand against all new grants of monopolies and exclusive privileges, against any prostitution of our Government to the advancement of the few at the expense of the many, and in favor of compromise and gradual reform in our code of laws and system of political economy.

ANDREW JACKSON

Note:From the Journals and debates of the Constitutional Convention and the ratification debates in the State Legislatures, it was almost universally agreed that the express purpose of their meetings was to put an end to paper money of any and all descriptions as a legal tender and to insure that the obligation of Contract would no longer be impaired or invaded by any Government.

A standard unit of value no longer exists. Paper money is not redeemable in any thing. Contracts between individuals lack integrity. German paper "Fiat" Money after WW 1 depreciated so fast that the employees would not accept their wages once a week. They demanded and spent their wages twice a day and re-negotiated their employment contract after each 1/2 day. If permitted to continue the same thing will happen here.

and herds of the west are protected from the devastations of those destructive and numerous animals; the "crow certificates," the rewards of those who save the fields of the husbandman from the spoils of their worst enemies, are all receivable for taxes, and all are equally obnoxious to the exceptions taken to the certificates issued under the law of Missouri.

The consideration for the note which is the subject of this suit was a good and valuable consideration, and the note is binding on the parties to it by the express terms of the sixteenth section of the law. The note furnished the parties with the means of paying their taxes, and was a benefit to them. All the certificates have been redeemed by the State.

Congress is not authorized to issue bills of credit. The States may do all that is not prohibited, while Congress can do nothing which is not granted by the Constitution. Congress had no express authority to issue treasury notes, but they were issued. These notes were precisely like the Missouri certificates.

The treasury notes were not bills of credit; for they were not made, by the act under which they were issued, a legal tender. They were freely circulated throughout the United States without objections, and they were most useful instruments in the financial operations of the government during the last war.

This court has not jurisdiction of the case. It is not within the requirements of the twenty-fifth section of the Judiciary Act. The validity of the State law was not drawn in question before the courts of Missouri, and no decision was made in those courts upon the validity of the objection now set up under the Constitution of the United States.

The pleadings do not show that the law was drawn in question; they only deny the promise charged in the declaration. Upon the matters thus presented, and on no others, did the courts of Missouri decide.

Mr. Sheffey, in reply. The whole argument on the part of the State of Missouri in founded [*424 on the assumption that "the certificates are not bills of credit, because they are not made a legal tender.

The provision of the Constitution was introduced to prevent a mischief; one of the most fatal effects on the property of the citizens of the United States; and thus considered, it is to be construed liberally. A strict construction, and particularly one which would render it inoperative, or feeble in its influence, would not be justifiable.

The evils are the same, and the notes will circulate as freely and as extensively whether they are made a tender or not. Whatever paper promise is circulated on the credit of the State is a bill of credit, and is within the sense of the Constitution.

This provision in the Constitution was introduced to prevent the States from resorting to State necessity as an apology for the issue of paper. The States are not allowed to "coin money," and the object clearly was to prevent anything being made by the States which would serve as a circulating medium.

The word "emit" is a peculiar expression. The States may borrow money and give notes, but that is not coining money, nor is it emitting bills of credit; and so "wolf and crow scalp certificates" are only evidence that the counties in the States which authorize them owe so much money for meritorious and beneficial services.

It is denied that the power of the United States to issue bills of credit is the same which has been claimed by the State of Missouri under this law. It does not follow that because the United States may issue such bills the states may do so. The States are especially prohibited such issues by the Constitution.

The proposition which was made in the convention to give to Congress the power to issue bills of credit may have been rejected because that power had been already given in the power to coin money, and regulate its value. Congress has this power, as an incident, like the power to issue debentures; which is exercised as an incident to the power to regulate commerce.

*Mr. *Chief Justice* MARSHALL delivered [*425 the opinion of the court, *Justices* THOMPSON, JOHNSON, and MCLEAN dissenting:

This is a writ of error to a judgment rendered in the Court of Last Resort in the State of Missouri, affirming a judgment obtained by the State in one of its inferior courts against Hiram Craig and others on a promissory note.

The judgment is in these words: "And afterwards at a court," &c., "the parties came into court by their attorneys, and, neither party desiring a jury, the cause is submitted to the court; therefore, all and singular the matters and things being seen and heard by the court, it is found by them that the said defendants did assume upon themselves, in manner and form, as the plaintiff by her counsel alleged. And the court also find that the consideration for which the writing declared upon and the *assumpsit* was made was for the loan of loan-office certificates, loaned by the State at her loan-office at Chariton; which certificates were issued and the loan made in the manner pointed out by an Act of the Legislature of the said State of Missouri, approved the 27th day of June, 1821, entitled 'An Act for the establishment of loan-offices,' and the acts amendatory and supplementary thereto: and the court do further find that the plaintiff has sustained damages by reason of the nonperformance of the assumptions and undertakings of them, the said defendants, to the sum of two hundred and thirty-seven dollars and seventy-nine cents, and do assess her damages to that sum. Therefore, it is considered," &c.

The first inquiry is into the jurisdiction of the court.

The twenty-fifth section of the Judicial Act declares "that a final judgment or decree in any suit in the highest court of law or equity of a State, in which a decision in the suit could be had, where is drawn in question" "the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of such their validity," "may be re-examined, and reversed or affirmed in the Supreme Court of the United States."

To give jurisdiction to this court, it must appear in the *record, 1. That the validity of a statute of the State of Missouri was [*426 drawn in question on the ground of its being

repugnant to the Constitution of the United States. 2. That the decision was in favor of its validity.

1. To determine whether the validity of a statute of the State was drawn in question, it will be proper to inspect the pleadings in the cause, as well as the judgment of the court.

The declaration is on a promissory note, dated on the 1st day of August, 1822, promising to pay to the State of Missouri on the 1st day of November, 1822, at the loan-office in Chariton, the sum of one hundred and ninety-nine dollars ninety-nine cents, and the two per cent. per annum, the interest accruing on the certificates borrowed from the 1st of October, 1821. This note is obviously given for certificates loaned under the Act "for the establishment of loan-offices." That act directs that loans on personal securities shall be made of sums less than two hundred dollars. This note is for one hundred and ninety-nine dollars ninety-nine cents. The act directs that the certificates issued by the State shall carry two per cent. interest from the date, which interest shall be calculated in the amount of the loan. The note promises to repay the sum, with the two per cent. interest accruing on the certificates borrowed, from the 1st day of October, 1821. It cannot be doubted that the declaration is on a note given in pursuance of the act which has been mentioned.

Neither can it be doubted that the plea of *non assumpsit* allowed the defendants to draw into question at the trial the validity of the consideration on which the note was given. Everything which disaffirms the contract, everything which shows it to be void, may be given in evidence on the general issue in an action of *assumpsit*. The defendants, therefore, were at liberty to question the validity of the consideration which was the foundation of the contract, and the constitutionality of the law in which it originated.

Have they done so?

Had the cause been tried before a jury, the regular course would have been to move the court to instruct the jury that the act of Assembly in pursuance of which the note was given was repugnant to the Constitution of the 427*] United States, *and to except to the charge of the judges if in favor of its validity: or a special verdict might have been found by the jury stating the act of Assembly, the execution of the note in payment of certificates loaned in pursuance of that act, and referring its validity to the court. The one course or the other would have shown that the validity of the act of Assembly was drawn into question on the ground of its repugnancy to the Constitution, and that the decision of the court was in favor of its validity. But the one course or the other would have required both a court and jury. Neither could be pursued where the office of the jury was performed by the court. In such a case, the obvious substitute for an instruction to the jury, or a special verdict, is a statement by the court of the points in controversy, on which its judgment is founded. This may not be the usual mode of proceeding, but it is an obvious mode: and if the court of the State has adopted it, this court cannot give up substance for form.

The arguments of counsel cannot be spread on the record. The points urged in argument cannot appear. But the motives stated by the court on the record for its judgment, and which form a part of the judgment itself, must be considered as exhibiting the points to which those arguments were directed, and the judgment as showing the decision of the court upon those points. There was no jury to find the facts and refer the law to the court; but if the court, which was substituted for the jury, has found the facts on which its judgment was rendered, its finding must be equivalent to the finding of a jury. Has the court, then, substituting itself for a jury, placed facts upon the record which, connected with the pleadings, show that the act in pursuance of which this note was executed was drawn into question on the ground of its repugnancy to the Constitution?

After finding that the defendants did assume upon themselves, &c., the court proceeds to find "that the consideration for which the writing declared upon and the *assumpsit* was made was the loan of loan-office certificates loaned by the State at her loan-office at Chariton; which certificates were issued and the loan made in the manner pointed out *by an [*428 Act of the Legislature of the said State of Missouri, approved the 27th of June, 1821, entitled," &c.

Why did not the court stop immediately after the usual finding that the defendants assumed upon themselves? Why proceed to find that the note was given for loan-office certificates issued under the act contended to be unconstitutional, and loaned in pursuance of that act, if the matter thus found was irrelevant to the question they were to decide?

Suppose the statement made by the court to be contained in the verdict of a jury which concludes with referring to the court the validity of the note thus taken in pursuance of the act; would not such a verdict bring the constitutionality of the act as well as its construction directly before the court? We think it would: such a verdict would find that the consideration of the note was loan-office certificates issued and loaned in the manner prescribed by the act. What could be referred to the court by such a verdict but the obligation of the law? It finds that the certificates for which the note was given were issued in pursuance of the act, and that the contract was made in conformity with it. Admit the obligation of the act, and the verdict is for the plaintiff; deny its obligation, and the verdict is for the defendant. On what ground can its obligation be contested, but its repugnancy to the Constitution of the United States? No other is suggested. At any rate, it is open to that objection. If it be in truth repugnant to the Constitution of the United States, that repugnancy might have been urged in the State, and may consequently be urged in this court; since it is presented by the facts in the record, which were found by the court that tried the cause.

It is impossible to doubt that, in point of fact, the constitutionality of the act under which the certificates were issued that formed the consideration of this note, constituted the only real question made by the parties, and the only real question decided by the court. But the record is to be inspected with judicial eyes; and, as it does not state in express terms that this point was made, it has been contended that this court

cannot assume the fact that it was made or determined in the tribunal of the State.

420*] *The record shows distinctly that this point existed, and that no other did exist; the special statement of facts made by the court as exhibiting the foundation of its judgment contains this point and no other. The record shows clearly that the cause did depend, and must depend, on this point alone. If, in such a case, the mere omission of the court of Missouri to say, in terms, that the act of the Legislature was constitutional, withdraws that point from the cause, or must close the judicial eyes of the appellate tribunal upon it, nothing can be more obvious than that the provisions of the Constitution and of an act of Congress may be always evaded; and may be often, as we think they would be in this case, unintentionally defeated.

But this question has frequently occurred, and has, we think, been frequently decided in this court. *Smith* v. *The State of Maryland* (6 Cranch, 286), *Martin* v. *Hunter's Lessee* (1 Wheat., 355), *Miller* v. *Nicholls* (4 Wheat., 311), *Williams* v. *Norris* (12 Wheat., 117), *Wilson et al.* v. *The Black Bird Creek Marsh Company* (2 Peters, 245), and *Harris* v. *Dennie*, in this term, are all, we think, expressly in point. There has been perfect uniformity in the construction given by this court to the twenty-fifth section of the Judicial Act. That construction is, that it is not necessary to state, in terms, on the record, that the Constitution or a treaty or law of the United States has been drawn in question, or the validity of a State law, on the ground of its repugnancy to the Constitution. It is sufficient if the record shows that the Constitution, or a treaty or law of the United States must have been construed, or that the constitutionality of a State law must have been questioned, and the decision has been in favor of the party claiming under such law.

We think, then, that the facts stated on the record presented the question of repugnancy between the Constitution of the United States and the act of Missouri to the court for its decision. If it was presented, we are to inquire,

2. Was the decision of the court in favor of its validity?

The judgment in favor of the plaintiff is a decision in favor of the validity of the contract, 430*] and, consequently, of *the validity of the law by the authority of which the contract was made.

The case is, we think, within the twenty-fifth section of the Judicial Act, and, consequently, within the jurisdiction of this court.

This brings us to the great question in the cause: Is the act of the Legislature of Missouri repugnant to the Constitution of the United States?

The counsel for the plaintiffs in error maintain that it is repugnant to the Constitution, because its object is the emission of bills of credit contrary to the express prohibition contained in the tenth section of the first article.

The Act under the authority of which the certificates loaned to the plaintiffs in error were issued was passed on the 26th of June, 1821, and is entitled "An Act for the establishment of loan-offices." The provisions that are material to the present inquiry are comprehended

in the third, thirteenth, fifteenth, sixteenth, twenty-third, and twenty-fourth sections of the act, which are in these words:

Section the third enacts "that the auditor of public accounts and treasurer, under the direction of the governor, shall, and they are hereby required to issue certificates, signed by the said auditor and treasurer, to the amount of two hundred thousand dollars, of denominations not exceeding ten dollars, nor less than fifty cents (to bear such devices as they may deem the most safe), in the following form, to wit: "This certificate shall be receivable at the treasury, or any of the loan-offices of the State of Missouri, in the discharge of taxes or debts due to the State, for the sum of $———, with interest for the same, at the rate of two per centum per annum from this date, the——— day of ——— 182 ."

The thirteenth section declares "that the certificates of the said loan-office shall be receivable at the treasury of the State, and by all tax-gatherers and other public officers, in payment of taxes or other moneys now due to the State or to any county or town therein, and the said certificates shall also be received by all officers, civil and military, in the State, in the discharge of salaries and fees of office."

The fifteenth section provides "that the commissioners *of the said loan-offices [*431 shall have power to make loans of the said certificates to citizens of this State, residing within their respective districts only, and in each district a proportion shall be loaned to the citizens of each county therein, according to the number thereof," &c.

Section sixteenth. "That the said commissioners of each of the said offices are further authorized to make loans on personal securities by them deemed good and sufficient for sums less than two hundred dollars; which securities shall be jointly and severally bound for the payment of the amount so loaned, with interest thereon," &c.

Section twenty-third. "That the General Assembly shall, as soon as may be, cause the salt springs and lands attached thereto, given by Congress to this State, to be leased out, and it shall always be the fundamental condition in such leases that the lessee or lessees shall receive the certificates hereby required to be issued in payment for salt, at a price not exceeding that which may be prescribed by law; and all the proceeds of the said salt springs, the interest accruing to the State, and all estates purchased by officers of the said several offices under the provisions of this act, and all the debts now due or hereafter to be due to this State, are hereby pledged and constituted a fund for the redemption of the certificates hereby required to be issued, and the faith of the State is hereby also pledged for the same purpose."

Section twenty-fourth. "That it shall be the duty of the said auditor and treasurer to withdraw annually from circulation one-tenth part of the certificates which are hereby required to be issued," &c.

The clause in the Constitution which this act is supposed to violate is in these words: "No State shall" "emit bills of credit."

What is a bill of credit? What did the Constitution mean to forbid?

In its enlarged, and perhaps its literal sense, the term "bill of credit" may comprehend any instrument by which a State engages to pay money at a future day; thus including a certificate given for money borrowed. But the lan-
432*] guage *of the Constitution itself, and the mischief to be prevented, which we know from the history of our country, equally limit the interpretation of the terms. The word "emit" is never employed in describing those contracts by which a State binds itself to pay money at a future day for services actually received, or for money borrowed for present use; nor are instruments executed for such purposes, in common language, denominated "bills of credit." To "emit bills of credit," conveys to the mind the idea of issuing paper intended to circulate through the community for its ordinary purposes, as money, which paper is redeemable at a future day. This is the sense in which the terms have been always understood.

At a very early period of our colonial history the attempt to supply the want of the precious metals by a paper medium was made to a considerable extent, and the bills emited for this purpose have been frequently denominated bills of credit. During the war of our revolution we were driven to this expedient, and necessity compelled us to use it to a most fearful extent. The term has acquired an appropriate meaning; and "bills of credit" signify a paper medium, intended to circulate between individuals and between government and individuals, for the ordinary purposes of society. Such a medium has been always liable to considerable fluctuation. Its value is continually changing; and these changes, often great and sudden, expose individuals to immense loss, are the sources of ruinous speculations, and destroy all confidence between man and man. To cut up this mischief by the roots, a mischief which was felt through the United States, and which deeply affected the interest and prosperity of all, the people declared in their Constitution that no State should emit bills of credit. If the prohibition means anything, if the words are not empty sounds, it must comprehend the emission of any paper medium by a State government for the purpose of common circulation.

What is the character of the certificates issued by authority of the act under consideration? What office are they to perform? Certificates signed by the auditor and treasurer of the State are to be issued by those officers to
433*] the *amount of two hundred thousand dollars, of denominations not exceeding ten dollars, nor less than fifty cents. The paper purports on its face to be receivable at the treasury, or at any loan-office of the State of Missouri, in discharge of taxes or debts due to the State.

The law makes them receivable in discharge of all taxes or debts due to the State, or any county or town therein; and of all salaries and fees of office to all officers, civil and military, within the State, and for salt sold by the lessees of the public salt-works. It also pledges the faith and funds of the State for their redemption.

It seems impossible to doubt the intention of the Legislature in passing this act, or to mistake the character of these certificates, or the office they were to perform. The denominations of the bills—from ten dollars to fifty cents—fitted them for the purpose of ordinary circulation and their reception in payment of taxes, and debts to the government and to corporations, and of salaries and fees, would give them currency. They were to be put into circulation; that is, emitted, by the government. In addition to all these evidences of an intention to make these certificates the ordinary circulating medium of the country, the law speaks of them in this character, and directs the auditor and treasurer to withdraw annually one-tenth of them from circulation. Had they been termed "bills of credit," instead of "certificates," nothing would have been wanting to bring them within the prohibitory words of the Constitution.

And can this make any real difference? Is the proposition to be maintained that the Constitution meant to prohibit names and not things? That a very important act, big with great and ruinous mischief, which is expressly forbidden by words most appropriate for its description, may be performed by the substitution of a name? That the Constitution, in one of its most important provisions, may be openly evaded by giving a new name to an old thing? We cannot think so. We think the certificates emitted under the authority of this act are as entirely bills of credit as if they had been so denominated in the act itself.

But it is contended that though these certificates should be *deemed bills of credit, [*434 according to the common acceptation of the term, they are not so in the sense of the Constitution, because they are not made a legal tender.

The Constitution itself furnishes no countenance to this distinction. The prohibition is general. It extends to all bills of credit, not to bills of a particular description. That tribunal must be bold indeed, which, without the aid of other explanatory words, could venture on this construction. It is the less admissible in this case, because the same clause of the Constitution contains a substantive prohibition to the enactment of tender laws. The Constitution, therefore, considers the emission of bills of credit and the enactment of tender laws as distinct operations, independent of each other, which may be separately performed. Both are forbidden. To sustain the one because it is not also the other; to say that bills of credit may be emitted if they be not made a tender in payment of debts, is, in effect, to expunge that distinct independent prohibition, and to read the clause as if it had been entirely omitted. We are not at liberty to do this.

The history of paper money has been referred to for the purpose of showing that its great mischief consists in being made a tender, and that, therefore, the general words of the Constitution may be restrained to a particular intent.

Was it even true that the evils of paper money resulted solely from the quality of its being made a tender, this court would not feel itself authorized to disregard the plain meaning of words, in search of a conjectural intent to which we are not conducted by the language of any part of the instrument. But we do not think that the history of our country proves

either, that being made a tender in payment of debts is an essential quality of bills of credit, or the only mischief resulting from them. It may, indeed, be the most pernicious; but that will not authorize a court to convert a general into a particular prohibition.

We learn from Hutchinson's History of Massachusetts (Vol. I., p. 402), that bills of credit were emitted for the first time in that colony in 1690. An army returning unexpectedly from an expedition against Canada (which had proved as disastrous as the plan was magnifi-
435*] cent), found the government *totally unprepared to meet their claims. Bills of credit were resorted to for relief from this embarrassment. They do not appear to have been made a tender, but they were not on that account the less bills of credit, nor were they absolutely harmless. The emission, however, not being considerable, and the bills being soon redeemed, the experiment would have been productive of not much mischief had it not been followed by repeated emissions to a much larger amount. The subsequent history of Massachusetts abounds with proofs of the evils with which paper money is fraught, whether it be or be not a legal tender.

Paper money was also issued in other colonies, both in the north and south; and whether made a tender or not, was productive of evils in proportion to the quantity emitted. In the war which commenced in America in 1755, Virginia issued paper money at several successive sessions under the appellation of treasury notes. This was made a tender. Emissions were afterwards made in 1769, in 1771, and in 1773. These were not made a tender, but they circulated together; were equally bills of credit, and were productive of the same effects. In 1775 a considerable emission was made for the purposes of the war. The bills were declared to be current, but were not made a tender. In 1776, an additional emission was made, and the bills were declared to be a tender. The bills of 1775 and 1776 circulated together, were equally bills of credit, and were productive of the same consequences.

Congress emitted bills of credit to a large amount, and did not, perhaps could not, make them a legal tender. This power resided in the States. In May, 1777, the Legislature of Virginia passed an Act for the first time making the bills of credit issued under the authority of Congress a tender so far as to extinguish interest. It was not until March, 1781, that Virginia passed an Act making all the bills of credit which had been emitted by Congress, and all which had been emitted by the State, a legal tender in payment of debts. Yet they were, in every sense of the word, bills of credit previous to that time, and were productive of all the consequences of paper money. We cannot, then, assent to the proposition
436*] *that the history of our country furnishes any just argument in favor of that restricted construction of the Constitution for which the counsel for the defendant in error contends.

The certificates for which this note was given, being in truth "bills of credit" in the sense of the Constitution, we are brought to the inquiry:

Is the note valid of which they form the consideration?

It has been long settled that a promise made in consideration of an act which is forbidden by law is void. It will not be questioned that an act forbidden by the Constitution of the United States, which is the supreme law, is against law. Now, the Constitution forbids a State to "emit bills of credit." The loan of these certificates is the very act which is forbidden. It is not the making of them while they lie in the loan-offices, but the issuing of them, the putting them into circulation, which is the act of emission—the act that is forbidden by the Constitution. The consideration of this note is the emission of bills of credit by the State. The very act which constitutes the consideration is the act of emitting bills of credit in the mode prescribed by the law of Missouri, which act is prohibited by the Constitution of the United States.

Cases which we cannot distinguish from this in principle have been decided in State courts of great respectability, and in this court. In the case of *The Springfield Bank* v. *Merrick et al.* (14 Mass. Rep., 322), a note was made payable in certain bills, the loaning or negotiating of which was prohibited by statute, inflicting a penalty for its violation. The note was held to be void. Had this note been made in consideration of these bills, instead of being made payable in them, it would not have been less repugnant to the statute; and would consequently have been equally void.

In *Hunt* v. *Knickerbocker* (5 Johns. Rep., 327), it was decided that an agreement for the sale of tickets in a lottery not authorized by the Legislature of the State, although instituted under the authority of the government of another State, is contrary to the spirit and policy of the law, and void. The consideration on which the agreement was founded being illegal, the agreement was void. The books, both of *Massachusetts and New York, [*437 abound with cases to the same effect. They turn upon the question whether the particular case is within the principle, not on the principle itself. It has never been doubted that a note given on a consideration which is prohibited by law, is void. Had the issuing or circulation of certificates of this or of any other description been prohibited by a statute of Missouri, could a suit have been sustained in the courts of that State on a note given in consideration of the prohibited certificates? If it could not, are the prohibitions of the Constitution to be held less sacred than those of a State law?

It had been determined, independently of the acts of Congress on that subject, that sailing under the license of an enemy is illegal. *Patton* v. *Nicholson* (3 Wheat., 204) was a suit brought in one of the courts of this district on a note given by Nicholson to Patton, both citizens of the United States, for a British license. The United States were then at war with Great Britian, but the license was procured without any intercourse with the enemy. The judgment of the Circuit Court was in favor of the defendant, and the plaintiff sued out a writ of error. The counsel for the defendant in error was stopped, the court declaring that the use of a license from the enemy being unlawful, one citizen had no right to purchase from or sell to another such

a license, to be used on board an American vessel. The consideration for which the note was given being unlawful, it followed of course that the note was void.

A majority of the court feels constrained to say that the consideration on which the note in this case was given is against the highest law of the land, and that the note itself is utterly void. In rendering judgment for the plaintiff, the court for the State of Missouri decided in favor of the validity of a law which is repugnant to the Constitution of the United States.

In the argument we have been reminded by one side of the dignity of a sovereign state; of the humiliation of her submitting herself to this tribunal; of the dangers which may result from inflicting a wound on that dignity: by the other, of the still superior dignity of the 438*] people of the United States, *who have spoken their will in terms which we cannot misunderstand.

To these admonitions we can only answer, that if the exercise of that jurisdiction which has been imposed upon us by the Constitution and laws of the United States shall be calculated to bring on those dangers which have been indicated, or if it shall be indispensable to the preservation of the Union, and consequently, of the independence and liberty of these States, these are considerations which address themselves to those departments which may with perfect propriety be influenced by them. This department can listen only to the mandates of law, and can tread only that path which is marked out by duty.

The judgment of the Supreme Court of the State of Missouri for the First Judicial District is reversed, and the cause remanded, with directions to enter judgment for the defendants.

Mr. Justice JOHNSON.

This is a case of a new impression and intrinsic difficulty, and brings up questions of the most vital importance to the interests of this Union.

The declaration is in the ordinary form, and the part of the record of the State court which raises the questions before us, is expressed in these words: "At a court, &c., came the parties, &c., and neither party requiring a jury, the cause is submitted to the court; therefore, all and singular, the matters and things, and evidences, being seen and heard by the court, it is found by them that the said defendants did assume upon themselves in the manner and form as the plaintiffs by their counsel allege; and the court also find that the consideration for which the writing declared upon and the *assumpsit* was made, was for the loan of loan-office certificates, loaned by the State at her loan-office at Chariton; which certificates were issued and the loan made in the manner pointed out by an Act of the Legislature of Missouri, approved, &c. And the court do further find that the plaintiff hath sustained damages by reason of the nonperformance of the assumptions and undertakings aforesaid, of them the said de-439*] fendants, *to the sum, &c.; and therefore it is considered that the plaintiff recover," &c.

In order to understand the case, it may be proper to premise that the territory now occupied by the State of Missouri having been subject to its Spanish government, was at the time of its cession governed by the civil law as modified by the Spanish government; that it so continued, subject to certain modifications introduced by act of Congress, until it became a State; when the people incorporated into their institutions as much of the civil law as they thought proper: and hence, their courts of justice now partake of a mixed character, perhaps combining all the advantages of the civil and common law forms. By one of the provisions of this law the trial by jury is forced upon no one; is yet open to all, and when not demanded, the court acts the double part of jury and judge.

It is obvious, therefore, that the matter certified from the record of the State court before recited is in nature of a special verdict, and the judgment of the court is upon that verdict, and in this light it shall be examined.

The purport of the finding is that the vote declared upon was given "for a loan of loan-office certificates loaned by the State under certain State acts, the caption of which is given."

Some doubts were thrown out in the argument whether we could take notice of the State laws thus found without being set out at length; but in this there can be no question: whatever laws that court would take notice of, we must of necessity receive and consider, as if fully set out.

By the acts of the State designated by the court in their finding, the officers of the treasury department of the State were authorized to create certificates of small denominations—from ten dollars down to fifty cents—bearing interest at two per centum per annum, and to loan these certificates to individuals; taking in lieu thereof promissory notes, payable not exceeding one year from the date, with not more than six per cent. interest, and redeemable by installments not exceeding ten per cent. every six months, giving mortgages of landed property for security.

*These certificates were in this form: [*440

"This certificate shall be receivable at the treasury, or any of the loan-offices of the State of Missouri, in the discharge of taxes or debts due the State, for the sum of $———, with interest for the same, at the rate of two per centum per annum from this date, the ——— day of ———, 183 ;" which form is set out in and prescribed by the act designated in the finding of the court.

This writ of error is sued out under the twenty-fifth section of the Judiciary Act, upon the supposition that the State act is in violation of that provision in the Constitution which prohibits the States from emitting bills of credit; and that the note declared on is void, as having been taken for an illegal consideration, or without consideration.

As a preliminary question, it has been argued that the case is not within the provisions of the twenty-fifth section; because it does not appear from anything on the record that this ground of defense was specially set up in the courts of the State. But this we consider no longer an open question; it has repeatedly

ADDITIONAL MEMORANDUM

At the trial on December 7,1968 John R. Elsom's Book, "LIGHTNING OVER THE TREASURY" was recieved in evidence. See included herein pages 11 thru 15 for the origin of this Bank racket. Also included is Jefferson's objection to the First Bank of the United States and his reasons and also Andrew Jackson's Veto of the Second Bank of the United States.

Whether it is Constitutional for the Gov. of the U.S. to incorporate a Bank, this Court need not pass upon, for it is immaterial to the issues here involved. Such a Corporation certainly cannot have any more rights than a natural person. The emission of Bills of Credit upon their Books, without consideration and the Issuance of Federal Reserve Notes without consideration to circulate as a legal tender for the payment of debts is not permitted, expressly or impliedly by the Constitution of the United States. Paper, whether money or not, is always illegal unless it is fully representative of some material commodity.

The issuance of a paper money without backing by the Banks is the same as if a grain warehouseman were to issue Warehouse Receipts for grain that he did not have. There must be a full representative consideration behind the paper or it is void as premised in fraud. No rights can be acquired by fraud. The law does not sanction an intentional wrong to the Citizen either in War or in Peace.

February 6,1969

Martin V. Mahoney
Justice of the Peace
Credit River Township
Scott County,Minnesota

Prior Lake, Minnesota
November 17, 1969

Mr. Hugo P. Hentges
Clerk of District Court
Scott County
Shakopee, Minnesota 55379

In re: Return on Appeal -
First National Bank of Montgomery
vs. Jerome Daly

Dear Mr. Hentges:

The District Court file in the above matter does not include the return on appeal of the Justice Court, Credit River Township, County of Scott, State of Minnesota.

The enclosed documents constitute said return and are identified as follows:

1) Real Estate Note & Mortgage (1st National Bank of Montgomery - Jerome Daly)
2) Power of Attorney
3) Notice of Pendency
4) Affidavit of Publication of Notice of Mortgage Foreclosure
5) Affidavit of Personal service of Notice of Mortgage Foreclosure Sale upon Jerome Daly
6) Sheriff's Certificate of Sale
7) Complaint (1st National v. Daly)
8) Answer and Counterclaim.
9) Amended Answer and Counterclaim
10) Reply
11) Judgment and Decree
12) Affidavit of John Mahoney
13) Order Demanding file
14) Order to Show Cause

The District Court file in the above matter contains returns on Writ of Attachment indicating the file of said Justice Court was in the possession of Jerome Daly. On October 1, 1969, this Court

demanded of Jerome Daly that he return said file to the said Justice Court. Said order was not complied with and on November 7, 1969, Jerome Daly appeared before said Justice Court to show cause why he should not be held in contempt for non-compliance with said order. He testified under oath, a transcript of which is available if deemed necessary by the District Court, that Martin V. Mahoney obtained said file from Jerome Daly a few days after service of the Writ of Attachment. At the request of plaintiff's counsel, I inquired of John Mahoney if he could locate said file. His affidavit indicates said file is unavailable.

Plaintiff's counsel has furnished me with many of the enclosed documents and I herewith make return on appeal in the above identified matter to the District Court.

Very truly yours,

John F. Casey
Justice of the Peace
Credit River Township
County of Scott
State of Minnesota

JFC:wvf
cc: Theodore R. Mellby
Jerome Daly

MORTGAGE NOTE

$14,000 00

Montgomery, Minn., May 8, 1964

Due

No.

FOR VALUE RECEIVED, the undersigned promise(s) to pay to the order of

The First National Bank of Montgomery, Minnesota

EXTENDED

To

To

The principal sum of Fourteen Thousand and no/100ths Dollars ($14,000.00) with interest from date at the rate of Six per centum (6%) per annum on the unpaid balance until paid. Principal and interest shall be payable at the office of The First National Bank of Montgomery, Minnesota in Montgomery, Minnesota, or at such other place as the holder may designate in writing, in monthly installments of One Hundred and 31/100ths Dollars ($100.31), commencing on the 8th day of June 1964, and on the 8th day of each month thereafter, until the principal and interest are fully paid, except that the final payment of the entire indebtedness evidenced hereby, shall be due and payable on the 8th day of ~~May~~ April 1984

RENEWED BY

No.

Should any of the principal or interest not be paid when due, such default shall, at the option of the legal holder hereof, cause all sums then remaining unpaid to become immediately due and payable, without notice (notice of the exercise of such option being hereby expressly waived.)

The makers, endorsers, sureties and guarantors hereof hereby severally agree to pay all costs of collection, or a reasonable attorney's fee in case payment shall not be made at maturity, and severally waive presentment for payment, notice of non-payment, protest and notice of protest and diligence in enforcing payment or bringing suit against any party hereto. The endorsers, sureties and guarantors hereof hereby severally consent that the time of payment may be extended, or this note renewed, from time to time without notice to them and without affecting their liability hereon.

Secured By First Mortgage

Jerome Daly

Address HIWAY 13 and Nicollet Ave. Burnsville, Minnesota

Address

BANK MONEY ORDER

1st National BANK Montgomery, Minnesota

269B

REMITTER Real Estate Mortgage on Springlake Property

May 8, 1964

PAY TO THE ORDER OF Jerome Daly $14,000.00

The sum of $14000 and 00 cts DOLLARS

:091 2=1680:

:0000140000:

MORTGAGE DEED. Form No. 42 F. O. Orvold, Law Blank Publisher, New Ulm, Minn.
Individual to Corporation Minnesota Uniform Conveyancing Blanks

This Indenture, *Made this* 8th *day of* May, *19* 64,

between Jerome Daly,

of the County of Scott *and State of* Minnesota, *Mortgagor*,
and The First National Bank of Montgomery, Minnesota

a corporation under the laws of the ~~State of~~ United States of America, *Mortgagee,*

Witnesseth, That the said mortgagor, *in consideration of the sum of* Fourteen Thousand and no/100ths - - - - - - - - - - - - - - - - *DOLLARS, to* him *in hand paid by the said Mortgagee, the receipt whereof is hereby acknowledged, do* es *hereby Grant, Bargain, Sell, and Convey unto the said Mortgagee, its successors and assigns, Forever, all the tract* *or parcel* *of land lying and being in the County of* Scott *and State of Minnesota, described as follows, to-wit:*

Let Nineteen (19), Fairview Beach, Scott County, Minnesota

To Have and to Hold the Same, *Together with the hereditaments and appurtenances thereto belonging, to the said mortgagee, its successors and assigns, forever. And the said mortgagor* *for* themselves, their *heirs, administrators, executors and assigns, do* *covenant with the said mortgagee, its successors and assigns, as follows: That* he is *lawfully seized of said premises and ha* s *good right to sell and convey the same; that the same are free from all incumbrances,* no exceptions;

that the mortgagee, its successors and assigns, shall quietly enjoy and possess the same; and that the mortgagor *will Warrant and Defend the title to the same against all lawful claims not hereinbefore specifically excepted.*

Provided, Nevertheless, *That if the said mortgagor*, his *heirs, administrators, executors or assigns, shall pay to the said mortgagee, its successors or assigns, the sum of* Fourteen Thousand and no/100ths - - - - *DOLLARS, according to the terms of* one *principal promissory note* *of even date herewith due and payable,* as per note

with interest thereon at the rate of 6 per cent per annum

executed by the said mortgagor, and payable to said mortgagee, at its office in Montgomery, Minnesota

and shall repay to said mortgagee, its successors or assigns, at the times and with interest as hereinafter specified, all sums advanced in protecting the lien of this mortgage, in payment of taxes on said premises, insurance premiums covering buildings thereon, principal or interest on any prior liens, expenses and attorney's fees herein provided for and sums advanced for any other purpose authorized herein, and shall keep and perform all the covenants and agreements herein contained then this deed to be null and void, and to be released at the mortgagor's expense.

AND THE MORTGAGOR, for himself, his heirs, administrators and executors, do es hereby covenant and agree with the mortgagee, its successors and assigns, to pay the principal sum of money and interest as above specified, to pay all taxes and assessments now due or that may hereafter become liens against said premises at least ten days before penalty attaches thereto; to keep any buildings on said premises insured by companies approved by the mortgagee against loss by fire for at least the sum of insurable value Dollars and against loss by windstorm for at least the sum of insurable value Dollars, and to deliver to said mortgagee the policies for such insurance with mortgage clause attached in favor of said mortgagee

or its assigns; to pay when due, both principal and interest of all prior liens or incumbrances, if any, above mentioned and to keep said premises free and clear of all other prior liens or incumbrances; to commit or permit no waste on said premises and to keep them in good repair; to complete forthwith any improvements which may hereafter be under course of construction thereon; and to pay any other expenses and attorney's fees incurred by said mortgagee, its successors or assigns, by reason of litigation with any third party for the protection of the lien of this mortgage.

In case of failure to pay said taxes and assessments, prior liens or incumbrances, expenses and attorney's fees as above specified, or to insure said buildings and deliver the policies as aforesaid, the mortgagee, its successors or assigns, may pay such taxes, assessments, prior liens, expenses and attorney's fees and interest thereon, or effect such insurance, and the sums so paid shall bear interest at the highest rate permitted by law from the date of such payment, shall be impressed as an additional lien upon said premises and be immediately due and payable from the mortgagor____, __his__ heirs or assigns, to said mortgagee, its successors or assigns, and this mortgage shall from date thereof secure the repayment of such advances with interest.

In case of default in any of the foregoing covenants, the mortgagor____ confer__ upon the mortgagee the option of declaring the unpaid balance of said principal note and the interest accrued thereon, together with all sums advanced hereunder, immediately due and payable without notice, and hereby authorize and empower said mortgagee, its successors and assigns, to foreclose this mortgage by judicial proceedings or to sell said premises at public auction and convey the same to the purchaser in fee simple in accordance with the statute, and out of the moneys arising from such sale to retain all sums secured hereby, with interest and all legal costs and charges of such foreclosure and the maximum attorney's fee permitted by law, which costs, charges and fees the mortgagor____ herein agree__ to pay.

In Testimony Whereof, The said mortgagor____ ha__ hereunto set__his__hand__ the day and year first above written.

In Presence of

John J. Daly, Jr.

Emma Zahn

Jerome Daly

State of Minnesota,
County of DAKOTA } *ss.*

On this 8th *day of* May, *19* 64, *before me, a* notary public *within and for said County, personally appeared* Jerome Daly *to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as* his *free act and deed.*

John J. Daly, Jr.

Notary Public Dakota *County, Minn.*

My commission expires February 27, 19 65

Minnesota Form No. 43

Doc. No. 113751

MORTGAGE DEED

Individual to Corporation

TO

Office of Register of Deeds,
STATE OF MINNESOTA,
County of Scott } ss.
I hereby certify that the within Mortgage was filed in this office for record on the 24th day of April, 19 64, at 4:30 o'clock P. M., and was duly recorded in Book ____ of Mortgages, page ____, Scott Abstract Number.

Register of Deeds.

By Marjorie Sinclair Deputy.

April 24, 19 64. No. 1734

Registration tax hereon of 2.10

Dollars Paid.

County Treasurer.

By ____ Deputy.

Countersigned:

County Auditor.

By ____ Deputy.

F. G. Orwald, Law Blank Publisher, New Ulm, Minn.

OFFICE OF THE REGISTER OF DEEDS

STATE OF MINNESOTA }
COUNTY OF SCOTT } SS

I hereby certify that the foregoing is a true and correct photocopy of the original record of Mortgage Deed *filed, recorded and preserved in the Office of the Register of Deeds of Scott County, Minnesota, recorded in ~~Book~~ Doc. No. 113751 on ~~page~~.*

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Scott County Register of Deeds, on this 14th *day of* November, *19* 69.

Paul W. Wermersbuchen
Register of Deeds

By .....*Deputy*

STATE OF MINNESOTA)
) ss
COUNTY OF LESUEUR)

POWER OF ATTORNEY

Know all men by these presents, that First National Bank of Montgomery, Minnesota, the mortgagee in, and present owner of, the certain mortgage given by Jerome Daly, a single person, dated on the 8th day of May, 1964, and recorded in the office of the Register of Deeds of the County of Scott in the State of Minnesota, as Document #113751, hereby authorizes Theodore R. Mellby, attorney at law, of the firm of McGuire and Mellby, First National Bank Building, Montgomery, Minnesota, 56069, to foreclose said mortgage by advertisement, to take all proceedings to that end required by law, and to act in and about said foreclosure as full to all intents and purposes as it might or could do if personally present, hereby ratifying and confirming all that said attorney shall lawfully do, or cause to be done, by virtue hereof.

In witness whereof, the said corporate mortgagee has caused these presents to be executed in its corporate name by it Executive Vice-President and its Assistant Vice-President and Cashier and its corporate seal to be hereunto affixed this 21st day of April, 1967.

IN PRESENCE OF:

FIRST NATIONAL BANK OF MONTGOMERY

BY: _____
L. V. Morgan
Its Executive Vice-President

BY: _____
Ralph G. Hendrickson
Its Assistant Vice-President
and Cashier

STATE OF MINNESOTA)
) ss
COUNTY OF LESUEUR)

On this 21st day of April, 1967, before me, a notary public within and for said County, personally appeared L. V. Morgan and Ralph G. Hendrickson to me personally known, who, being each by me duly sworn they did say that they are respectively the Executive Vice-President and the Assistant Vice-President and Cashier of the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said L. V. Morgan and Ralph G. Hendrickson acknowledged said instrument to be the free act and deed of said corporation.

Wilma V. Fortney

Wilma V. Fortney, Notary Public
LeSueur County, Minnesota
My commission expires, November 23, 197

Office of Register of Deeds }
Scott County, Minn. } ss

I hereby certify that the within instrument was filed in this office for record on the 3rd day of May A.D. 1967 at 10 o'clock A.M. and duly recorded as 113810 Document No.

Paul W. Wermerskirchen
Register of Deeds

By _____ Deputy

OFF E OF THE REGISTER OF DE S

STATE OF MINNESOTA }
COUNTY OF SCOTT } SS

I hereby certify that the foregoing is a true and correct photocopy of the original record of Power of Attorney *filed, recorded and preserved in the Office of the Register of Deeds of Scott County, Minnesota, recorded in ~~Book~~ Doc. No. 113810 on page ~~xxxxx~~.*

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Scott County Register of Deeds, on this 14 *day of* November *19* 69.

Paul W. Wernerbicher
Register of Deeds

By .....*Deputy*

STATE OF MINNESOTA)
) ss.
COUNTY OF SCOTT)

First National Bank of Montgomery, Minnesota,

Mortgagee

-vs-

Jerome Daly, a single person,

Mortgagor

NOTICE OF PENDENCY OF PROCEEDINGS TO FORECLOSE MORTGAGE UPON UNREGISTERED LAND BY ADVERTISEMENT

* *

NOTICE IS HEREBY GIVEN of the pendency of the proceedings to foreclose by advertisement that certain mortgage dated the 8th day of May, 1964, executed by Jerome Daly, a single person, as mortgagor, to First National Bank of Montgomery, Minnesota, as mortgagee, filed for record in the office of the Register of Deeds in and for the County of Scott, and State of Minnesota, on the 21st day of April, 1967, at 11:20 o'clock A.M. and recorded as Document #113751, said mortgage covering the following described tract of land, to-wit:

Lot 19, Fairview Beach, according to the recorded plat thereof on file and of record in the office of the Register of Deeds in and for said County of Scott and State of Minnesota.

Notice if further given that the object of said action is to foreclose by advertisement of the above described tract of land by judicial sale on the 26th day of June, 1967, at 11:00 o'clock A.M., at the lobby of the Scott County Sheriffs office in the Public Safety Building in the City of Shakopee in said County and State.

DATED: April 21, 1967

MCGUIRE AND MELLBY

BY: /s/ Theodore R. Mellby
Theodore R. Mellby
Attorney for Mortgagee
First National Bank of Montgomery
Montgomery, Minnesota, 56069

OFFICE OF THE REGISTER OF DEEDS

STATE OF MINNESOTA }
COUNTY OF SCOTT } SS

I hereby certify that the foregoing is a true and correct photocopy of the original record of Notice of Pendency of Proceedings etc. *filed, recorded and preserved in the Office of the Register of Deeds of Scott County, Minnesota, recorded in* ~~Book~~ Doc. No. 113840 ~~on page~~

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Scott County Register of Deeds, on this 14th *day of* November, *1969*

Paul W. Wermerskirchen
Register of Deeds

By .....*Deputy*

Affidavit of Publication

State of Minnesota }
County of Scott } ss.

...George E. Roberts..... being duly sworn, on oath says; that he is, and during all the times herein stated has been the . Co-publisher..... of the Corporation, the publisher ..... of the newspaper known as The Shakopee Valley News, and has full knowledge of the facts herein stated;

That immediately prior to the publication therein of the printed ..... Notice of Mortgage Foreclosure hereto attached, said newspaper was printed and published in the City of Shakopee, in the County of Scott, State of Minnesota on Thursday of each week: that during all said time said newspaper has been printed in the English language from its known office of publication within the City of Shakopee from which it purports to be issued as above stated in newspaper format and in column and sheet form equivalent in space to at least 450 running inches of single column, two inches wide; has been issued once each week from a known office established in said place of publication and employing skilled workmen and equipped with the necessary material for preparing and printing the same, and the presswork on that part of the newspaper devoted to local news of the community which it purports to serve, was done in its known office of publication;

That during all said time in its makeup not less than twenty-five per cent of its news columns have been devoted to local news of interest to the community it purports to serve, that during all said time it has not wholly duplicated any other publication, and has not been entirely made up of patents, plate matter and advertisements; has been circulated in and near its said place of publication to the extent of at least two hundred and forty (240) copies regularly delivered to paying subscribers and has entry as second class matter in its local postoffice; that the said newspaper was in existence but publication thereof was suspended before the completion of one full year because the editor or publisher entered active military service after December 7, 1941, and prior to December 31, 1946, under the Selective Service Act of 1940, and publication of the newspaper was resumed after honorable discharge of the editor or publisher; and that there has been on file in the office of the County Auditor of Scott County, Minnesota the affidavit of a person having knowledge of the facts, showing the name and location of said newspaper and the existence of the conditions constituting its qualifications as a legal newspaper.; and that there has been a copy of each issue, filed with the Minnesota Historical Society, St. Paul, Minnesota.

That the Notice of Mortgage Foreclosure ..... hereto attached was cut from the columns of said newspaper, and was printed and published therein in the English language, once each week, for ..Six..... successive weeks; that it was first so published on Thursday, the ..4th..... day of ..May..... 196.7..and thereafter on Thursday of each week to and including the ...8th..... day of ..June..... 196.7...; and that the following is a printed copy of the lower case alphabet from A to Z, both inclusive and is hereby acknowledged as being the size and kind of type used in the composition and publication of said notice, to-wit:

abcdefghijklmnopqrstuvwxyz

abcdefghijklmnopqrstuvwxyz

George Roberts

Subscribed and sworn to before me this ..8th.... day of ....June ..... 196.7..

James Jankiewicz

JAMES J. JANKIEWICZ
Notary Public, Scott County, Minn.
My Commission Expires Aug. 24, 1972.

Published Notice

NOTICE OF FORECLOSURE

NOTICE IS HEREBY GIVEN, that default has occurred in the conditions of that certain mortgage, dated the 8th day of May, 1964, executed by Jerome Daly, a single person, as mortgagor, to First National Bank of Montgomery, Minnesota, as mortgagee, filed for record in the Office of the Register of Deeds in and for the County of Scott, State of Minnesota on the 21st day of April, 1967, at 11:20 o'clock A.M., and recorded as Document No. 113751; that no action or proceeding has been instituted at law to recover the debt secured by said mortgage, or any part thereof, that certain installments in the amount of $476.38 remain unpaid; that pursuant to the provisions of said mortgage, said mortgagee has elected to declare the whole debt secured thereby to be now due and payable; that there is due and claimed to be due upon said mortgage including interest to date hereof, the sum of Thirteen Thousand Three Hundred Eighty Eight and 71/hundredths ($13,388.71) Dollars and pursuant to the power of sale therein contained, said mortgage will be foreclosed and the tract of land lying and being in the County of Scott, State of Minnesota, described as follows, to-wit:

Lot 19, Fairview Beach, according to the recorded Plat thereof

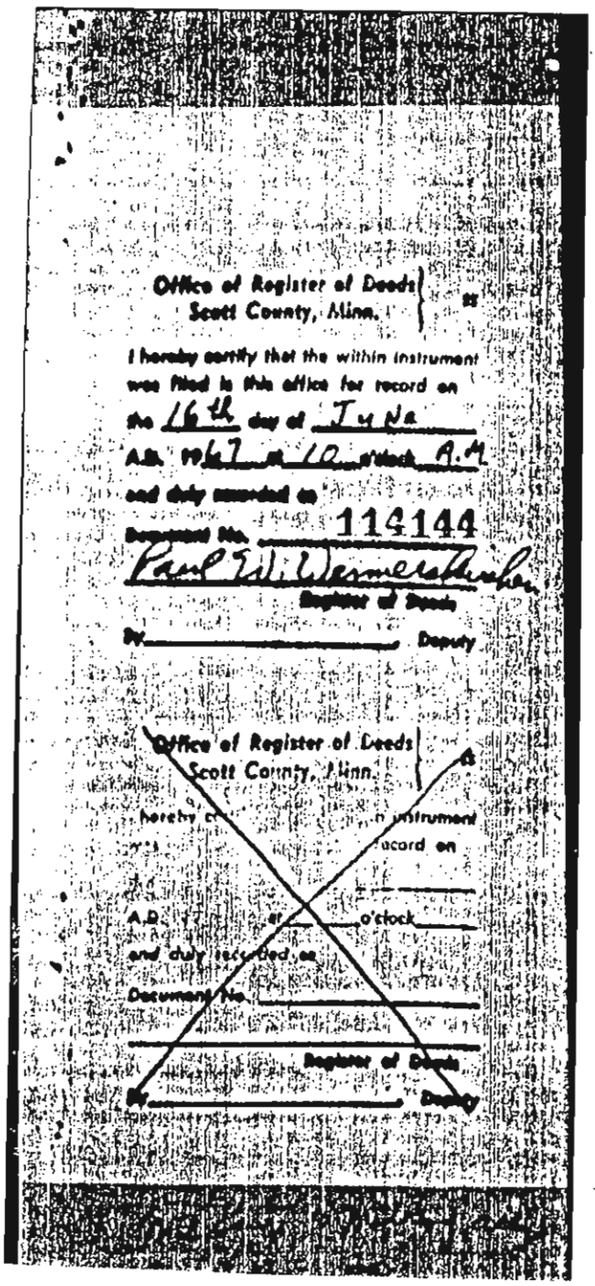
will be sold by the sheriff of said County at public auction on the 26th day of June, 1967, at 11:00 o'clock A.M., in the lobby of the Sheriff's main office located in the Public Safety Building in the City of Shakopee in said County and State, to pay the debt then secured by said mortgage and taxes, if any, on said premises and the costs and disbursements allowed by law, subject to redemption within twelve months from said date of sale.

Dated: April 21, 1967

FIRST NATIONAL BANK OF MONTGOMERY, MINNESOTA, a corporation,
MORTGAGEE

McGUIRE & MELLBY
THEODORE R. MELLBY
Attorneys for Mortgagee
First National Bank Building
Montgomery, Minnesota 56069

(Pub. in the Shakopee Valley News, May 4, 11, 18, 25, June 1, 8, 1967). (37115)



Office of Register of Deeds
Scott County, Minn. } ss

I hereby certify that the within instrument was filed in this office for record on the 16th day of June A.D. 1967 at 10 o'clock A.M. and duly recorded as Document No. 114144

Paul T. Wesmeschuler
Register of Deeds

By _____ Deputy

Office of Register of Deeds
Scott County, Minn. } ss

hereby ce... n instrument ...ecord on ____ A.D. ____ at ____ o'clock ____ and duly rec...ded as Document No. ____

Register of Deeds

By _____ Deputy

OFFICE OF THE REGISTER OF DEEDS

STATE OF MINNESOTA }
COUNTY OF SCOTT } SS

I hereby certify that the foregoing is a true and correct photocopy of the original record of

Affidavit of Publication *filed, recorded and preserved in the*

Office of the Register of Deeds of Scott County, Minnesota, recorded in ~~Book~~ Doc. No. 114144

~~Page~~

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Scott County Register of Deeds, on this 14th *day of* November, *19*69

Paul W. Wermerskirchen
Register of Deeds

By .....*Deputy*

Form No. 829—Return on Personal Service. (Revised 1954) ☆☆☆ POWNER

State of Minnesota, } ss.

County of Scott }

I hereby certify and return that on the 10th day of May 1967 at the Village of Savage in said county and state I served the attached Notice of Foreclosure upon Jerome Daly therein named personally by handing to and leaving with him a true and correct copy thereof.

Sheriff's Mileage	$ 3.00
Cop	$
Sheriff's Fees	$ 2.00
Total	$ 5.00

W. B. Schroder
Sheriff of Scott County, Minn.
By Howard Halvorsen Deputy

NOTICE IS HEREBY GIVEN, that default has occurred in the conditions of that certain mortgage, dated the 8th day of May, 1964, executed by Jerome Daly, a single person, as mortgagor, to First National Bank of Montgomery, Minnesota, as mortgagee, filed for record in the Office of the Register of Deeds in and for the County of Scott, State of Minnesota on the 21st day of April, 1967, at 11:20 o'clock A.M., and recorded as Document #113751; that no action or proceeding has been instituted at law to recover the debt secured by said mortgage, or any part thereof, that certain installments in the amount of $476.38 remain unpaid; that pursuant to the provisions of said mortgage, said mortgagee has elected to declare the whole debt secured thereby to be now due and payable; that there is due and claimed to be due upon said mortgage including interest to date hereof, the sum of Thirteen Thousand Three Hundred Eighty Eight and 71/hundredths ($13,388.71) Dollars and pursuant to the power of sale therein contained, said mortgage will be foreclosed and the tract of land lying and being in the County of Scott, State of Minnesota, described as follows; to-wit:

Lot 19, Fairview Beach, according to the recorded Plat thereof

will be sold by the sheriff of said County at public auction on the 26th day of June, 1967, at 11:00 o'clock A.M., in the lobby of the Sheriff's main office located in the Public Safety Building in the City of Shakopee in said County and State, to pay the debt then secured by said mortgage and taxes, if any, on said premises

and the costs and disbursements allowed by law, subject to redemption within twelve months from saiddate of sale.

Dated: April 21, 1967

FIRST NATIONAL BANK OF MONTGOMERY, MINNESOTA, a corporation,
MORTGAGEE

MCGUIRE & MELLBY

Theodore K. Mellby
Attorneys for Mortgagee
First National Bank Building
Montgomery, Minnesota 56069

Office of Register of Deeds
Scott County, Minn. } ss

I hereby certify that the within instrument was filed in this office for record on the 3rd day of May A.D. 19 67 at 10 o'clock A.M. and duly recorded as 113811

Document No. _____

Paul W. Wennes Lindau
Register of Deeds

By _____ Deputy

OFFICE OF THE REGISTER OF DEEDS

STATE OF MINNESOTA }
COUNTY OF SCOTT } SS

I hereby certify that the foregoing is a true and correct photocopy of the original record of Notice of Mortgage Foreclosure Sale *filed, recorded and preserved in the Office of the Register of Deeds of Scott County, Minnesota, recorded in* ~~Book~~ Doc. No. 113811 ~~of Mtgs.~~

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Scott County Register of Deeds, on this 14th *day of* November, *19* 69.

Paul W. Wiesner
Register of Deeds

By .....*Deputy*

Sheriff's Certificate and Foreclosure Record. FORM No. 67. OSWALD PUBLISHING CO., WEST ST. PAUL, MINN.

Under Power of Sale in Mortgage. (Minnesota Uniform Conveyancing Blanks (1931).

Containing Printer's Affidavit as per Chapter 166, G. L. 1935

I. NOTICE OF SALE

II. PRINTER'S AFFIDAVIT

State of Minnesota, } ss.
County of ..... }

....., being duly sworn, on oath says; that he now is, and during all the times herein stated has been, ...
.....
the publisher..... and printer.....of the newspaper known as.....
....., and has full knowledge of the facts herein stated.

That for more than one year immediately prior to the publication therein of the printed ..... hereto attached, said newspaper was printed and published in the English language from its known office of publication within the.....
... . of..... .....in the County of
....., State of Minnesota, on
.....of each week in column and sheet form equivalent in space to 450 running inches of single column two inches wide; has been issued from a known office established in said place of publication equipped with skilled workmen and the necessary material for preparing and printing the same;.....
.....
.....;
has had in its makeup not less than twenty-five per cent of its news columns devoted to local news of interest to said community it purports to serve, the press work of which has been done in its said known office of publication; has contained general news, comments and miscellany; has not duplicated any other publication; has not been entirely made up of patents, plate matter and advertisements; has been circulated at and near its said place of publication to the extent of 250 copies regularly delivered to paying subscribers; has been entered as second class mail matter in the local post office of its said place of publication; that there has been on file in the office of the County Auditor of said county the affidavit of a person having first hand knowledge of the facts constituting its qualification as a newspaper for publication of legal notices; and that its publishers have complied with all demands of said County Auditor for proofs of its said qualification.

That the printed..... hereto attached as a part hereof was cut from the columns of said newspaper; was published therein in the English language once each week for..... successive weeks; that it was first so published on the .....day of ....., 19.... and thereafter on ..... of each week to and including the..... day of .....19 ...; and that the following is a copy of the lower case alphabet which is acknowledged to have been the size and kind of type used in the publication of said.....
.....

a b c d e f g h i j k l m n o p q r s t u v w x y z

.....

Subscribed and sworn to before me this ..... day of ..... 19....

.....
Notary Public,..... County, Minnesota.
My commission expires .....

III. AFFIDAVIT OF SERVICE ON OCCUPANT

State of Minnesota, } ss.
County of..... }

....., being duly sworn, on oath says; that on the.....day of.....19.....
he went upon the land and premises described in the printed notice of mortgage foreclosure sale hereto attached for the purpose of serving said notice upon all persons in possession thereof; that on said date, and for.....
prior thereto,.....,
and none other, was.....in possession of said land; and that on said day he served said notice on.....said person....., by handing to and leaving with.....
.....
.....
a true and correct copy thereof.

.....

Subscribed and sworn to before me this.....day of .....19....

.....
Notary Public,.....County, Minn.
My commission expires.....19....

OR, III. AFFIDAVIT OF VACANCY

State of Minnesota, } ss.
County of _____

_____, being duly sworn, on oath says; that on the _____ day of _____, 19____, he went upon the land and premises described in the printed notice of mortgage foreclosure sale hereto attached for the purpose of serving said notice on the persons in possession thereof; and that on said date, and for _____ prior thereto, all said land was and had been wholly vacant and unoccupied.

_____

Subscribed and sworn to before me this _____ day of _____, 19____.

_____
Notary Public, _____ County, Minn.
My commission expires _____, 19____.

IV. AFFIDAVIT OF COSTS AND DISBURSEMENTS

State of Minnesota, } ss.
County of LeSueur

Theodore R. Melby,

being duly sworn, on oath says; that he is the attorney foreclosing the mortgage described in the printed notice of mortgage foreclosure sale hereto attached; that the following is a detailed bill of the costs and disbursements of said foreclosure, and that the same have been absolutely and unconditionally paid or incurred therein, to-wit:

Attorney's fees for foreclosing said mortgage	$ 225.00
Printer's fee for publishing notice of sale	$ 46.80
Notary fees for _____ affidavits	$ _____
Recording power of attorney to foreclose	$ 1.50
Fees for serving notice of sale on occupants	$ 5.00
Sheriff's fee for making foreclosure sale	$ 6.00
Fees of Register of Deeds for recording Certificate	$ 5.00
Recording Notice of Pendency & Foreclosure	$ 5.75
Recording Affidavit of Non-Military Status	$ 1.00
Total Costs and Disbursements	$ 297.05

Subscribed and sworn to before me this 29th day of September, 1967.

Theodore R. Melby

_____
Notary Public, LeSueur County, Minn.
My commission expires November 23, 1971.

V. SHERIFF'S CERTIFICATE OF SALE

State of Minnesota, } ss.
County of SCOTT

I, W. B. Schroeder, Sheriff of the County of Scott, State of Minnesota, do hereby certify; that pursuant to the printed Notice of Mortgage Foreclosure sale hereto attached and the power of sale contained in that certain mortgage therein described, to-wit: that certain mortgage, dated the 8th day of May, 19 64, executed by Jerome Daly, a single person

as mortgagor, to THE FIRST NATIONAL BANK OF MONTGOMERY, MINNESOTA, as mortgagee,

filed for record in the office of the Register of Deeds in and for said Scott County, Minnesota, on the 21st day of April, 19 67, and recorded as Document # 113751 in Mortgage Book xxx at page xxx thereof

and did strike off and sell the same to...THE FIRST NATIONAL BANK OF MONTGOMERY, MINNESOTA,

for the sum

of Thirteen Thousand Nine Hundred Twenty and 67/hundredths ($13,920.DOLLARS, said purchaser being the highest bidder and said sum being the highest and best bid offered therefor; and that said sale in all respects openly, honestly, fairly, and lawfully conducted, and said land so sold is subject to redemption at any time within twelve months from said date of said sale.

In Testimony Whereof, I have hereunto set my hand this 3rd day of July, 19 67.

In Presence of

Theodore K. Mueller

Helen V. Fortney

W. B. Schroeder

W. B. SCHROEDER
As Sheriff of SCOTT County, Minn.

By Deputy.

State of Minnesota, } ss.
County of Scott }

On this 3 day of July, 19 67, before me personally appeared W. B. Schroeder to me known to be the Sheriff of said County, and the person described in, and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed as such Sheriff.

Edward F. Smith

Notary Public Scott County, Minn.

My commission expires , 19

EDWARD F. SMITH
Notary Public, Scott County, Minn.
My Commission Expires Dec. 6, 1972

Minnesota Form No. 67.

Doc. No. 114393

Sheriff's Certificate and Foreclosure Record

Under Power of Sale in Mortgage

By Sheriff TO

Office of Register of Deeds,
STATE OF MINNESOTA,
County of Scott

I hereby certify that the within instrument was filed in this office for record on the 17th day of July, 1967, at 10 o'clock A. M., and was duly recorded in Book — of Deeds, page —.

Register of Deeds.

By Marjorie Schuetzel Deputy.

GOPHER PUBLISHING CO., NEW ULM, MINN.

Recording Fee $1.50

I did, at the time and place in said notice specified, to-wit: at the lobby of the Sheriff's main office located in the Public Safety Building

in the City *of* Shakopee *County of* ~~MX~~ Scott *, State of Minnesota, on the* 26th *day of* June *, 19* 67 *, at* 11 *o'clock* A.M., *offer for sale and sell at public auction to the highest and best bidder the tract of land lying and being in the County of* Scott *State of Minnesota, described as follows, to-wit:*

Lot 19, Fairview Beach, according to the recorded Plat thereof on file and of record in the office of the Register of Deeds of Scott County, State of Minnesota

OFF E OF THE REGISTER OF DE)S

STATE OF MINNESOTA }
COUNTY OF SCOTT } SS

I hereby certify that the foregoing is a true and correct photocopy of the original record of Sheriff's Certificate and Foreclosure Record *filed, recorded and preserved in the Office of the Register of Deeds of Scott County, Minnesota, recorded in ~~Book~~ Doc. No. 114393 ~~on page~~*

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Scott County Register of Deeds, on this 14th *day of* November, *19* 69

Paul W. Wermers Register of Deeds

By ..... *Deputy*

DSP—AFFIDAVITS, Amount Due and Costs and Disbursements (Rev. 53) [illegible]
No Answer; Identification; Non-Military Status.

State of Minnesota, } ss.
County of Scott

DISTRICT COURT
FIRST Judicial District

First National Bank of Montgomery, Minnesota,
Mortgagee
vs.
Jerome Daly, a single person,
Mortgagor
Defendant

AFFIDAVIT OF AMOUNT DUE AND COSTS AND DISBURSEMENTS

AMOUNT DUE

Principal - $.....
Interest - $.....

COSTS AND DISBURSEMENTS

Statutory Costs - $.....
..... *Affidavits* - $.....
..... *Acknowledgments* - - - - - - - - - - - - - - - - - - - $.....
Sheriff's Fees - $.....
Clerk's Fees [to be taxed] - - - - - - - - - - - - - - - - - $.....
..... $.....
..... $.....
..... $.....

Witness Fees, viz.:

Name	Residence	No. Days Attendance	Dates of Attendance	No. Miles Traveled	
.....	.....	.....	.....	.....	$.....
.....	.....	.....	.....	.....	$.....
.....	.....	.....	.....	.....	$.....
.....	.....	.....	.....	.....	$.....
.....	.....	.....	.....	.....	$.....
.....	.....	.....	.....	.....	$.....

Total Amount, $.....

....., *being first duly sworn, deposes and says that he is* ..... *the Attorney* ... *for the Plaintiff*.... *in the above entitled action; that he has read the complaint in said action and knows the contents thereof; that the principal amount specified herein is the actual principal amount due and does not exceed the principal amount demanded in the complaint; and that the foregoing is a true and correct statement of the costs and disbursements of said Plaintiff*..... *in said action, and that all the items thereof have been actually and necessarily paid or incurred therein by and on behalf of said Plaintiff*.. .

Subscribed and sworn to before me, this .....
.....*day of*.....*19*.....

.....
Notary Public.....*County, Minn.*
My Commission expires .....*19*.....

The Costs and Disbursements in the above entitled action are hereby taxed and allowed at the sum of $.....

.....
Clerk of the District Court

By.....
Deputy

State of Minnesota, } ss.
County of _____

DISTRICT COURT

_____ Judicial District

_____
_____
vs. Plaintiff,
_____
_____
Defendant.

State of Minnesota, } ss.
County of _____

AFFIDAVIT OF NO ANSWER

_____ being first duly sworn, deposes and says that he is _____ the Attorney ____ for the Plaintiff_____ in the above entitled action; that the Summons and Complaint in said action _____ was duly served upon the Defendant ___ on the _____ day of _____, 19_____ and that said Summons and Complaint together with Proof of Service thereof have been duly filed with the Clerk of District Court herein; that more than _____ days have elapsed since the service of said Summons and Complaint and that no Answer or any other pleadings have been received by or served upon said Plaintiff____ or_____ Attorney ____, nor has Defendant, or either or any of them, in any manner appeared herein, by Attorney or otherwise; and that Defendant____ in default herein; and that Plaintiff____ prays for judgment according to law.

Subscribed and sworn to before me this
_____ day of _____ 19_____

_____

Notary Public, _____ Co., Minn.
My commission expires _____

State of Minnesota } ss.
County of _____

AFFIDAVIT OF IDENTIFICATION

_____ being first duly sworn, deposes and says that he is _____ the Attorney____ for Plaintiff____, the judgment creditor herein; that to the best of affiant's information and belief the full name of the judgment debtor herein is _____; that his occupation is that of _____; his place of residence and post-office address are _____ (Insert Number and Street if any) and that his business address is _____ (Insert Number and Street if any)

Subscribed and sworn to before me, this
_____ day of _____ 19_____

_____

Notary Public _____ Co., Minn.
My Commission expires _____

State of Minnesota, } ss.
County of LE SUEUR

AFFIDAVIT OF NON-MILITARY STATUS OF DEFENDANT

Theodore R. Mellby, being first duly sworn; deposes and says he is the Attorney for Plaintiff in the above entitled action; that because of the following facts, affiant knows of his own knowledge that Jerome Daly, the defendant: as above named, is not now in the military service of the United States or any of its allies, nor has he been ordered to report for such military service:

PERSONAL FRIEND OF THE DEFENDANT

DEFENDANT'S FAMILY

, and that this affidavit is made in compliance with the Soldiers' and Sailors' Civil Relief Act of 1940 and Amendments thereto.

Theodore R. Mellby

Subscribed and sworn to before me this
27th day of June, 19 67

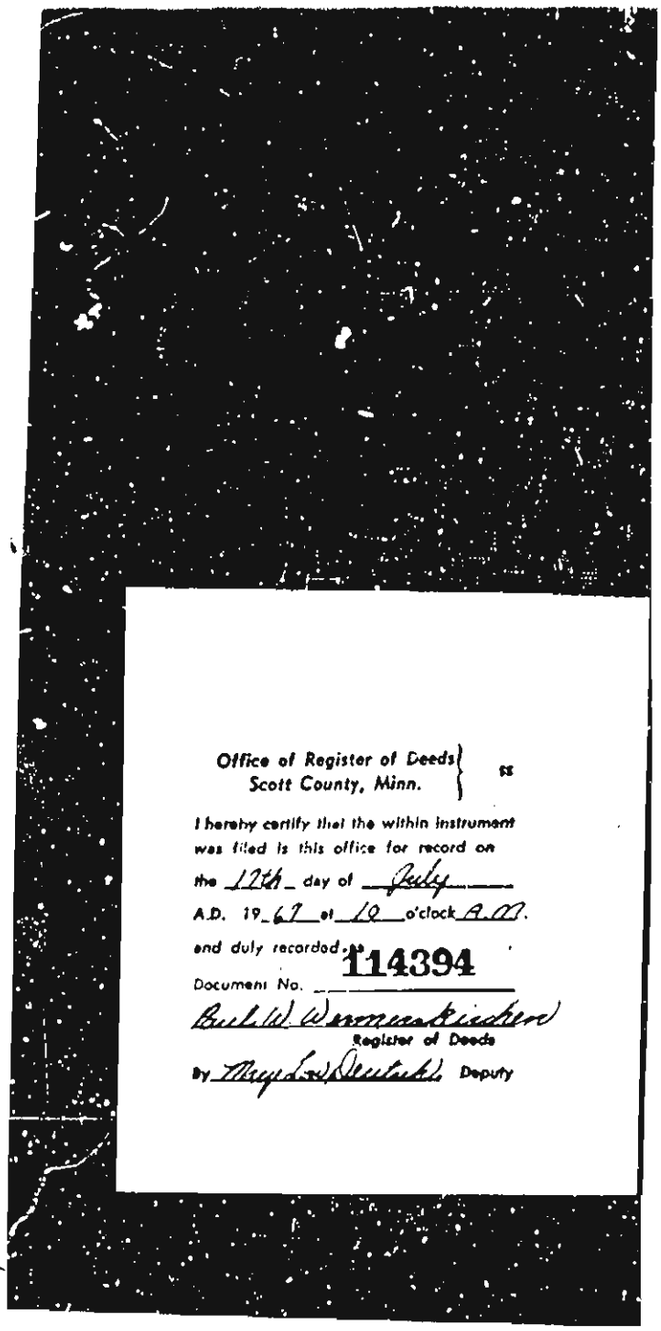
Theodore R. Mellby
Notary Public LeSueur Co., Minn.
My Commission expires November 23, 1971

State of Minnesota
County of _____

DISTRICT COURT
_____ Judicial District

AFFIDAVITS
Amount Due; Costs and Disbursements; No Answer; Identification of Judgment Debtor; Non-Military Status.

Filed this _____ day of _____ 19____
_____ Clerk
By _____ Deputy



Office of Register of Deeds
Scott County, Minn. } ss

I hereby certify that the within instrument was filed in this office for record on the 12th day of July A.D. 19 67 at 10 o'clock A.M. and duly recorded as Document No. 114394

Robert W. Wennerstrand
Register of Deeds

By Mary Lou Deutsch Deputy

STATE OF MINNESOTA
COUNTY OF SCOTT

IN DISTRICT COURT
FIRST JUDICIAL DISTRICT

First National Bank of
Montgomery, Minnesota,
Plaintiff

vs.

Jerome Daly,
Defendant

STIPULATION OF
DISMISSAL

File #19144

The above entitled action is hereby dismissed with prejudice to both parties and without costs to either party.

Dated: June 19 1970

Jerome Daly
Attorney Pro se

Theodore R. Mellby
Attorney for Defendant
First National Bank of Montgomery
400 1st Street South
Montgomery, Minnesota 56069

Tel (612) 364-7327

Clerk of District Court
Scott County, Minn.
FILED
JUN 22 1970
HUGO P. HENTGES, Clerk
Deputy

STATE OF MINNESOTA, COUNTY OF SCOTT

Certified to be a true and correct copy
of the original on file and of record
in my office
GREGORY M. ESS
Court Administrator

5-9 20 06 By Audreyk Broun
Deputy

STATE OF MINNESOTA

COUNTY OF SCOTT

IN DISTRICT COURT

FIRST JUDICIAL DISTRICT

First National Bank of Montgomery,

Plaintiff

-vs-

Jerome Daly,

Defendant

O R D E R

* *

The above entitled matter came before this Court pursuant to motions presented by both parties at a special term thereof on the 19th day of December, 1969, in the Court Room of the Court House in the City of Glencoe, McLeod County, Minnesota. Plaintiff appeared by counsel, Theodore R. Mellby of Montgomery, Minnesota. The defendant, representing himself pro se, did not appear.

The Court having heard the statement of council, having examined the files, affidavits and records in the above case, and having considered Plaintiff's motion, dated December 1, 1969, and Defendant's motions dated August 1, 1969 and December 3, 1969, now, therefore, makes its ORDER as follows:

1. Defendant's motions dated August 1, 1969, and December 3, 1969, for an Order of the above Court to dismiss Plaintiffs appeal are in each and every allegation and respect denied.

2. Plaintiff's motion to advance the above action on the trial calendar is granted.

3. The above entitled action is set down for trial, unless otherwise modified by the above Court in writing, for Monday, February 16, 1970, at 9:30 o'clock A.M., in the Courtroom of the Court House in the City of Shakopee, County of Scott, State of Minnesota.

DATED: December 19, 1969

/s/ Arlo E. Haering

Arlo E. Haering

Judge of District Court

State of Minnesota

COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT

DISTRICT COURT

File No. 19144

First National Bank of Montgomery

Plaintiff

-vs-

Jerome Daly

Defendant

McGuire and Melby

Plaintiff's Attorney

Jerome Daly

Defendant's Attorney

To: McGuire and Melby, Montgomery, Minnesota
Jerome Daly, 28 East Minnesota St., Savage, Minnesota

YOU ARE HEREBY NOTIFIED, That an ORDER

in the above entitled cause was, on the 29th day of December A. D. 1969 filed-entered in the office of the Clerk of said Distrtrict Court.

Dated 12/29/69 A. D. 196

Hugo P. Hentges

Clerk

By Frank Strunk

Deputy

STATE OF MINNESOTA

COUNTY OF SCOTT

IN DISTRICT COURT

FIRST JUDICIAL DISTRICT

First National Bank of
Montgomery, Minnesota,

Plaintiff

-vs-

Jerome Daly,

Defendant

NOTICE OF
MOTION

****

TO: Jerome Daly
Attorney at Law
28 Minnesota Street
Savage, Minnesota

Please take notice, that the undersigned will bring the above motion on for hearing before the court at a special term thereof, to be held at the court house in the City of Shakopee on the 17th day of January, 1969, at 10:00 o'clock in the A.M. or as soon thereafter as counsel can be heard.

MCGUIRE & MELLBY

BY Theodore R. Mellby

Theodore R. Mellby
Attorney for Plaintiff
Montgomery, Minnesota, 56069
Tel: (612) 364-7327

STATE OF MINNESOTA, COUNTY OF SCOTT

Certified to be a true and correct copy
of the original on file and of record
in my office
GREGORY M. ESS
Court Administrator

5-9 20 06 By Audrey K Brown
Deputy

STATE OF MINNESOTA

COUNTY OF SCOTT

IN DISTRICT COURT

FIRST JUDICIAL DISTRICT

First National Bank of
Montgomery, Minnesota,

Plaintiff

-vs-

_M_O_T_I_O_N_

Jerome Daly,

Defendant

* *

Plaintiff moves the court as follows:

1. To place the above captioned cause of action on the Special Term calendar.

2. To try the merits of the above captioned cause of action by the above identified courts at 10:00 A.M., Friday, January 17, 1969, or as soon thereafter as counsel can be heard.

MCGUIRE & MELLBY

BY: Theodore R. Mellby

Theodore R. Mellby
Attorneys for Plaintiff
Montgomery, Minnesota 56069
Tel: (612) 364-7327

STATE OF MINNESOTA, COUNTY OF SCOTT

Certified to be a true and correct copy
of the original on file and of record
in my office
GREGORY M. ESS
Court Administrator

5-9 2006 By Audrey K. Brown
Deputy

STATE OF MINNESOTA

COUNTY OF SCOTT

IN DISTRICT COURT

FIRST JUDICIAL DISTRICT

First National Bank of
Montgomery, Minnesota,

Plaintiff

-vs-

Jerome Daly,

Defendant

A F F I D A V I T

* *

STATE OF MINNESOTA)
) ss
COUNTY OF LE SUEUR)

Theodore R. Mellby, being duly sworn, on oath, deposes and states:

Plaintiff has duly appealed a jury verdict in favor of defendant in Justice Court, Credit River Township, County of Scott, Justice Martin V. Mahoney. Unlawful detainer is the nature of the civil action.

M.S.A. Section 566.12 is the exclusive statute governing the appeal of unlawful detainer actions to the District Court. The normal appellate procedures from Justice Court, contained in M.S.A. Sec. 532.37 to 532.50 are inapplicable to unlawful detainer actions as a result of M.S.A. Sec. 532.37.

The most significant reason why M.S.A. Sections 532.37 to 532.50 are inapplicable to unlawful detainer actions is that speedy relief must be afforded in an unlawful detainer action. If the appeal of an unlawful detainer action could not be heard until "the next general term of the District Court occurring more than twenty (20) days after the filing of such notice of appeal " (M.S.A. 532.38) the intent to afford that speedy relief which is necessary in proceedings of this character would be frustrated. Hoffman V. Parsons. 27 MINN 236,238 (1880) 6 N.W. 797.

Theodore R. Mellby

Subscribed and sworn to
before me this 20th day
of December, 1968

Wilma V. Fortney

Wilma V. Fortney - Notary Public
Le Sueur County, Minnesota
My Commission expires, November 23, 1971

STATE OF MINNESOTA, COUNTY OF SCOTT

Certified to be a true and correct copy
of the original on file and of record
in my office
GREGORY M. ESS
Court Administrator

5-9 2006 By Audrey K Brown
Deputy

State of Minnesota, } ss.
County of SCOTT

DISTRICT COURT

FIRST Judicial District

First National Bank of Montgomery, Minnesota,

Plaintiff

-vs-

Jerome Daly,

Defendant

Affidavit of Service by Mail

State of Minnesota, } ss.
County of Le Sueur

Wilma V. Fortney of the City of Montgomery

County of Le Sueur in the State of Minnesota, being duly sworn, says that on the

30th day of December, 1968 s, he served the annexed

Notice of Motion, Motion and Affidavit in Support of Motion

on Nerome Daly

the Attorney in this action, by mailing to

him a copy thereof, inclosed in an envelope, postage prepaid, and directed to said

Jerome Daly at Attorney at law
28 E. Minnesota, Savage, Minnesota 55378

Wilma V. Fortney

Subscribed and sworn to before me, this 30th day of December, 1968

Theodore R. Mellby, Notary Public
Le Sueur County, Minnesota
My commission expires November 30, 1071

No. 72—Affidavit of Surety to be Attached to Bond, Recognizance, or Undertaking in Civil Action

State of Minnesota, } ss.
County of SCOTT

IN DISTRICT COURT
FIRST JUDICIAL DISTRICT

FIRST NATIONAL BANK OF MONTGOMERY, MINNESOTA
Plaintiff

vs.

JEROME DALY
Defendant

State of Minnesota, } ss.
County of Le Sueur

Frank Dolejs, *being duly sworn, on oath says: That he is one of the sureties on the* ..... *hereto attached:*

That his full name, residence, and Post Office address, are as follows:

Frank Dolejs, Montgomery, Minnesota

That he is not a surety on any other bond, recognizance, or undertaking, in any other civil or criminal case, except as follows:

(If so, give name of each principal, amount of each obligation, and the court in which given)

(see reverse side)

That the following is the legal description of each tract of real property owned by him, its fair market value, all liens and encumbrances thereon, and whether or not the same is a homestead or otherwise exempt from execution, to-wit:

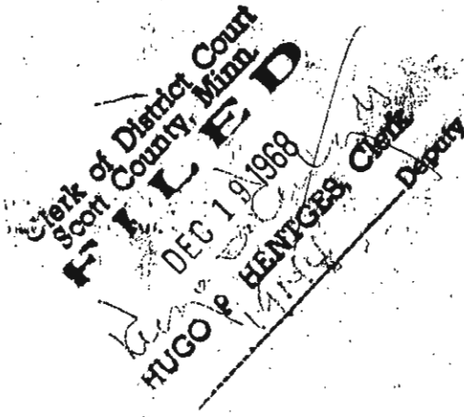
STATE OF MINNESOTA, COUNTY OF SCOTT

Certified to be a true and correct copy
of the original on file and of record
in my office
GREGORY M. ESS
Court Administrator

5-9 2006 By Audrey K. Brooks
Deputy

That the following is a true statement and description of all personal property owned by him, its fair market value, all liens and encumbrances thereon, and whether or not the same is exempt from execution:

50% of outstanding capital stock of Montgomery Oil, Inc.



Subscribed and Sworn to before me this

19th *day of* December *19* 68

Theodore R. Mellby

Theodore R. Mellby

Notary Public Le Sueur *County, Minnesota.*

My commission expires, November 30, 1971

Frank V. Dolejs

State of Minnesota, }
County of }

Plaintiff

vs.

Defendant

AFFIDAVIT OF SURETY

Filed this _____ *day of* _____, 19__

_____ *Clerk*

By _____ *Deputy.*

No. 736—5-22-14

State of Minnesota, } ss.
County of SCOTT

IN DISTRICT COURT
FIRST JUDICIAL DISTRICT

FIRST NATIONAL BANK OF MONTGOMBRY, MINNESOTA
Plaintiff

vs.

JEROME DALY
Defendant

State of Minnesota, } ss.
County of LE SUEUR

ELROY MLADEK, *being duly sworn, on oath says: That he is one of the sureties on the* ..... *hereto attached:*

That his full name, residence, and Post Office address, are as follows:

ELROY MLADEK, Montgomery, Minnesota

That he is not a surety on any other bond, recognizance, or undertaking, in any other civil or criminal case, except as follows:

(If so, give name of each principal, amount of each obligation, and the court in which given)

That the following is the legal description of each tract of real property owned by him, its fair market value, all liens and encumbrances thereon, and whether or not the same is a homestead or otherwise exempt from execution, to-wit:

(see reverse side)

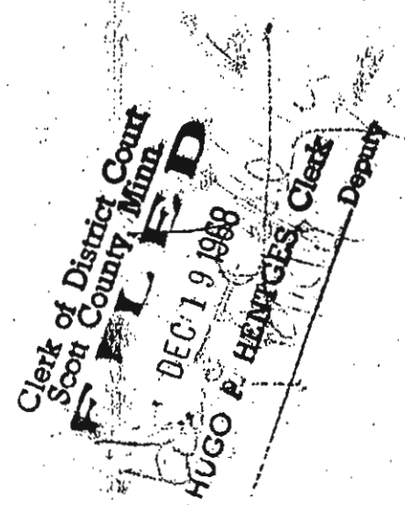
STATE OF MINNESOTA, COUNTY OF SCOTT

Certified to be a true and correct copy
of the original on file and of record
in my office
GREGORY M. ESS
Court Administrator

5-9 2006 By Audreyk Brown
Deputy

That the following is a true statement and description of all personal property owned by him, its fair market value, all liens and encumbrances thereon, and whether or not the same is exempt from execution:

797 shares of common stock of Mladek's, Inc.



Subscribed and Sworn to before me this

19th *day of* December *19* 68

Theodore R. Mellby

Theodore R. Mellby

Notary Public Le Sueur *County, Minnesota.*

My commission expires, November 30, 1971

State of Minnesota, }
County of _____

Plaintiff

vs.

Defendant

AFFIDAVIT OF SURETY

Filed this _____ *day of* _____ *19*___

Clerk

By _____ *Deputy.*

No. 736—3-38-½

STATE OF MINNESOTA

COUNTY OF SCOTT

IN DISTRICT COURT

FIRST JUDICIAL DISTRICT

First National Bank of Montgomery,

Plaintiff

-vs-

Jerome Daly,

Defendant

_O_R_D_E_R_

* *

The above entitled matter came before this Court pursuant to motions presented by both parties at a special term thereof on the 19th day of December, 1969, in the Court Room of the Court House in the City of Glencoe, McLeod County, Minnesota. Plaintiff appeared by counsel, Theodore R. Mellby of Montgomery, Minnesota. The defendant, representing himself pro se, did not appear.

The Court having heard the statement of council, having examined the files, affidavits and records in the above case, and having considered Plaintiff's motion, dated December 1, 1969, and Defendant's motions dated August 1, 1969 and December 3, 1969, now, therefore, makes its ORDER as follows:

1. Defendant's motions dated August 1, 1969, and December 3, 1969, for an Order of the above Court to dismiss Plaintiffs appeal are in each and every allegation and respect denied.

2. Plaintiff's motion to advance the above action on the trial calendar is granted.

3. The above entitled action is set down for trial, unless otherwise modified by the above Court in writing, for Monday, February 16, 1970, at 9:30 o'clock A.M., in the Courtroom of the Court House in the City of Shakopee, County of Scott, State of Minnesota.

DATED: December 19, 1969

/s/ Arlo E. Haering

Arlo E. Haering
Judge of District Court

STATE OF MINNESOTA, COUNTY OF SCOTT

Certified to be a true and correct copy
of the original on file and of record
in my office
GREGORY M. ESS
Court Administrator

5-9 2006 By Audrey K. Brown
Deputy

State of Minnesota, } ss.
County of SCOTT

JUSTICE COURT

MARTIN V. MAHONEY, JUSTICE
TOWNSHIP OF CREDIT RIVER

FIRST NATIONAL BANK OF MONTGOMERY, MINNESOTA,
Plaintiff

-vs-

JEROME DALY,
Defendant

To JEROME DALY and JEROME DALY his attorney

Please Take Notice, That the above named FIRST NATIONAL BANK OF MONTGOMERY, MINNESOTA appeal S to the District Court in and for said County, from the Judgment rendered by said Justice of the Peace, in the above entitled cause, on the ~~9th~~ 9th day of December A. D. 19 68 in favor of said JEROME DALY and against said FIRST NATIONAL BANK OF MONTGOMERY, MINESOTA

therein, for the sum of possession of real estate, costs & disbursements Dollars; and that the said appeal is taken upon questions of LAW AND FACT

Dated at Montgomery this 10th day of December 19 68

/s/ Theodore R. Melby

Theodore R. Melby
Attorney for Plaintiff
Montgomery, Minnesota 56069
Tel: (612) 364-7327

STATE OF MINNESOTA, COUNTY OF SCOTT

Certified to be a true and correct copy
of the original on file and of record
in my office
GREGORY M. ESS
Court Administrator

5-9 2006 By Audrey K. Brom
Deputy

State of Minnesota, } ss.
County of SCOTT

DISTRICT COURT

FIRST Judicial District

FIRST NATIONAL BANK OF MONTGOMERY, MINNESOTA

Plaintiff

-vs-

Jerome Daly,

Defendant

Affidavit of Service by Mail

State of Minnesota, } ss.
County of Le Sueur

Wilma V. Fortney of the City of Montgomery County of Le Sueur in the State of Minnesota, being duly sworn, says that on the 11th day of December, 19 68, she served the annexed NOTICE OF APPEAL on Hugo P. Hentges the Clerk of District Court in this action, by mailing to him a copy thereof, inclosed in an envelope, postage prepaid, and directed to said Hugo P. Hentges at Shakopee, Minnesota 55379

Wilma V. Fortney

Subscribed and sworn to before me, this 11th day of December, 19 68

Theodore R. Melby, Notary Public
Le Sueur County, Minnesota
My commission expires November 30, 1971

State of Minnesota, } ss.
County of SCOTT

DISTRICT COURT

FIRST Judicial District

First National Bank of Montgomery, Minnesota,

Plaintiff

-vs-

Jerome Daly,

Defendant

Affidavit of Service by Mail

State of Minnesota, } ss.
County of Le Sueur

Wilma V. Fortney of the City of Montgomery County of Le Sueur in the State of Minnesota, being duly sworn, says that on the 11th day of December, 1968 she served the annexed NOTICE OF APPEAL on Jerome Daly the Defendant & attorney in this action, by mailing to him a copy thereof, inclosed in an envelope, postage prepaid, and directed to said Jerome Daly-Attorney at Law at 28 E. Minnesota Street, Savage, Minnesota 55378

Wilma V. Fortney

Subscribed and sworn to before me, this 11th day of December, 1968

Theodore R. Mellby

Theodore R. Mellby, Notary Public
Le Sueur County, Minnesota
My commission expires-November 30, 1971

State of Minneso , ss.

County of SCOTT } Leigh D. Lundberg being duly sworn on oath, says: that on the 17th day of December 1968, he served the attached

NOTICE OF APPEAL

upon JEROME DALY the defendent

therein named, personally, at 28 E MINNESOTA ST., SAVAGE the house of his usual abode, in the County of SCOTT State of Minnesota, by handing to and leaving with

JEROME DALY

a person of suitable age and discretion, then resident therein, a true and correct copy thereof.

Subscribed and sworn to before me this 17th day of December 1968.

Notary Public, _____ County, Minnesota.

Betty J. Nasstrom

My Commission expires _____

BETTY J. NASSTROM
Notary Public, Scott County, Minnesota
My Commission Expires Nov 28 1970

Leigh D. Lundberg

D114—AFFIDAVIT OF PERSONAL SERVICE BY INDIVIDUAL — OSWALD PUBLISHING CO., NEW ULM, MINN.

State of Minnesota,

County of Le Sueur } ss.

Theodore R. Mellby

being duly sworn, on oath says that at the office of

Jerome Daly in said County and State, on the 17th day of December

19 68 he served the attached Notice of Appeal

upon Jerome Daly

the defendant therein named, personally, by then and there handing to and leaving with him a

true and correct copy of said Notice of Appeal

Theodore R. Mellby

Subscribed and sworn to before me this 17th day

of December, 19 68

Wilma V. Fortney

Wilma V. Fortney

Notary Public, Le Sueur County, Minn.

My commission expires November 23, 1971

State of Minnesota,
County of SCOTT

DISTRICT COURT,
FIRST Judicial District

FIRST NATIONAL BANK OF MONTGOMERY, MINNESOTA, Plaintiff

vs.

JEROME DALY Defendant

State of Minnesota,
County of LE SUEUR } ss.

L. V. Morgan, plaintiff's President, being duly sworn, on oath says; that he has appealed to the District Court above named from a certain judgment rendered by (jury) Martin V. Mahoney as Justice of the Peace in an action before him pending wherein Theodore R. Mellby represented (x) plaintiff and Jerome Daly represented defendant in favor of said Jerome Daly and against said First National Bank of Montgomery; and that said appeal is made in good faith, and not for the purpose of delay.

Theodore R. Mellby

Subscribed and sworn to before me this 11th day of December, 19 68

Wilma V. Fortney

Wilma V. Fortney
Notary Public Le Sueur County, Minn.

My commission expires November 23, 1971

Filed ... Clerk ... Deputy

State of Minnesota, } DISTRICT COURT,

County of SCOTT } FIRST Judicial District

FIRST NATIONAL BANK OF MONTGOMERY, MINNESOTA,

Plaintiff

-vs-

JEROME DALY,

Defendant

Know All Men by These Presents, That we FIRST NATIONAL BANK OF MONTGOMERY, MINNESOTA, by L. V. Morgan, its President, and Ralph G. Hendrickson, its executive vice-president and cashier as principal, and ~~Thomas A. Kelm and Robert A. Lebens~~ Elroy Mladek and Frank Dolejs as sureties are held and firmly bound unto JEROME DALY in the sum of Two Hundred Fifty and no/hundredths ($250.00) ---- Dollars, lawful money of the United States, to be paid unto the said JEROME DALY, his heirs, executors, administrators, or assigns, for which payment well and truly to be made, we jointly and severally bind ourselves and each of our heirs, executors and administrators, firmly by these presents.

The condition of this obligation is such, that whereas the said First National Bank of Montgomery, Minnesota appeal to the District Court above named, from a judgment rendered by (jury) Martin V. Mahoney as Justice of the Peace in said cause, on the 9th day of December, 19 68, in favor of said Jerome Daly and against said First National Bank of Montgomery for the sum of possession, costs and disbursements - DOLLARS.

NOW, THEREFORE, If the said Appellant shall prosecute his appeal with effect, and abide the order of the Court therein, then this obligation shall be void; otherwise to remain in full force and effect.

IN TESTIMONY WHEREOF, We have hereunto set our hands and seals this 11th day of December, A. D. 19 68

Signed, Sealed and Delivered in Presence of

Wilma V. Fortney

Theodore R. Meuer

FIRST NATIONAL BANK OF MONTGOMERY, MINNESOTA (SEAL)

BY: L. V. Morgan (SEAL)

BY: Ralph Hendrickson (SEAL)

BY: ~~Thomas A. Kelm~~ Elroy Mladek (SEAL)

BY: ~~Robert A. Lebens~~ Frank Dolejs

State of Minnesota, } ss.

County of Le Sueur }

On this 11th day of December, A. D. 19 68, before me, personally appeared ~~Thomas A. Kelm and Robert A. Lebens~~ Elroy Mladek and Frank Dolejs to me known to be the person s described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Wilma V. Fortney

Wilma V. Fortney

Notary Public Le Sueur County, Minnesota

My commission expires November 23, 1971

STATE OF MINNESOTA, COUNTY OF SCOTT

Certified to be a true and correct copy of the original on file and of record in my office

GREGORY M ESS

Court Administrator

5-9 2006 By Audrey K Brom

Deputy

JUSTIFICATION

State of Minnesota, } ss.
County of LE SUEUR

First National Bank of Montgomery, Minnesota by L. V. Morgan, its president and Ralph Hendrickson, its executive vice-president and cashier, ~~Thomas A. Kelm and Robert A. Lebens~~ Elroy Mladek and Frank Dolejs being duly sworn, each for himself, on oath says; that he is a resident and freeholder of the State of Minnesota; that he justifies on the foregoing bond as follows:

said First National Bank of Montgomery in the sum of $250.00 Dollars
said ~~Thomas A. Kelm~~ Elroy Mladek in the sum of $250.00 Dollars
said ~~Robert A. Lebens~~ Frank Dolejs in the sum of $250.00 Dollars
said ____ in the sum of ____ Dollars

and that each respectively is worth the sum in which he so justifies above his debts and liabilities and exclusive of his property exempt from execution.

Subscribed and sworn to before me, this 11th day of December, 19 68

Wilma V. Fortney
Wilma V. Fortney
Notary Public, Le Sueur County, Minnesota.

My commission expires November 23, 1971

FIRST NATIONAL BANK OF MONTGOMERY, MINNESOTA

BY: L. V. Morgan
L. V. Morgan its president

BY: Ralph Hendrickson
Ralph Hendrickson, its exec. V.Pres.& Cashier

BY: Elroy Mladek
~~Thomas A. Kelm~~ Elroy Mladek

BY: Frank Dolejs
~~Robert A. Lebens~~ Frank Dolejs

STATE OF MINNESOTA)
) ss
COUNTY OF LE SUEUR)

On this 11th day of December, 1968, before me, a Notary Public within and for said County, personally appeared L. V. Morgan and Ralph Hendrickson to me personally known, who, being each by me duly sworn did say that they are respectively the President and the executive vice-president and cashier of the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said L. V. Morgan and Ralph Hendrickson acknowledged said instrument to be the free act and deed of said corporation.

Wilma V. Fortney
Wilma V. Fortney - Notary Public
LeSueur County, Minnesota
My commission expires 11-23-71

Clerk of District Court
Sibley County, Minn.
FILED
DEC 13 1968
HUGO P. HEINRICH, Clerk
By [illegible] Deputy

State of Minnesota,
County of

DISTRICT COURT

APPEAL BOND
FROM JUSTICE COURT

The within Bond and the sureties thereon are hereby approved and same filed this 13th day of Dec, 1968

Clerk of District Court

Miller-Davis Co., Minneapolis

STATE OF MINNESOTA

COUNTY OF SCOTT

IN DISTRICT COURT

FIRST JUDICIAL DISTRICT

First National Bank of Montgomery,

Plaintiff

-vs-

MOTION

Jerome Daly,

Defendant

* *

The plaintiff moves the court as follows:

1. To advance the above action on the trial calendar because of the delay experienced by plaintiff to this date.

2. For such further relief as the court deems fair and equitable.

MCGUIRE & MELLBY

BY: /s Theodore R. Mellby
Theodore R. Mellby
Attorney for Plaintiff
400 First Street South
Montgomery, Minnesota 56069
Tel: (612) 364-7327

NOTICE OF MOTION

TO: Jerome Daly,
Attorney Pro Se

Please take notice, that the undersigned will bring the above Motion on for hearing before the court at a special term thereof, to be held at the courthouse in the City of Glencoe on the 12th day of December, 1969, at 10:00 co'clock in the forenoon or as soon thereafter as counsel can be heard.

MCGUIRE & MELLBY

BY: /s Theodore R. Mellby
Theodore R. Mellby
Attorney for Plaintiff
400 First Street South
Montgomery, Minnesota 56069
Tel: (612) 364-7327

STATE OF MINNESOTA, COUNTY OF SCOTT

Certified to be a true and correct copy
of the original on file and of record
in my office
GREGORY M. ESS
Court Administrator

5-9 20 06 By Audrey K. Brown
Deputy

STATE OF MINNESOTA | IN DISTRICT COURT
COUNTY OF SCOTT | FIRST JUDICIAL DISTRICT

First National Bank of Montgomery,

Plaintiff

-vs- AFFIDAVIT

Jerome Daly,

Defendant

* *

Theodore R. Mellby being duly sworn, on oath, deposes and states:

Several affidavits in support of plaintiff's unlawful detainer cause of action are in the above courts file. These affidavits are dated 12-30-68, 6-24-69, 7-17-69, 8-28-69, 10-9-69, and 11-4-69. These affidavits set forth the events indicating the defendant has used every possible legal maneuver designed to delay the trial de novo of this matter in District Court.

As a supplement to said affidavits the following information is added:

On July 22, 1969, the Scott County Sheriff served a writ of attachment on Jerome Daly in order to obtain possession of the Justice Court file in the above matter. Daly "refused to talk about the matter".

On October 1, 1969, John F. Casey was officially appointed Justice of the Peace, Credit River Township, Scott County, Minnesota. On the same date said court demanded Daly to return its file in the above matter. On November 4, 1969, a similar order was obtained from the District Court.

A contempt hearing against Jerome Daly was held on November 7, 1969, and at that time he testified he returned said file to former Justice Mahoney a few days after service of the Writ of Attachment upon Daly on July 22, 1969.

On November 10, 1969, John Mahoney, son of former Justice of Peace, Martin V. Mahoney, signed an affidavit indicating the courts file was not among the personal effects of his father. He resides at the home occupied by his deceased father. John Mahoney indicated all the Justice Court records which his father had mysteriously disappeared from the truck where he kept them shortly after his father's death.

On November 12, 1969, I requested the Scott County Register of Deeds to forward to my office certified copies of plaintiff's foreclosure record. Said copies were forwarded to Justice Casey on November 18, 1969. On November 20, 1969, Justice Casey made his return to the Clerk of the above Court.

Plaintiff has been entitled to possession of the real estate involved in this matter since June 8, 1968. The conduct of the defendant and former Justice Martin V. Mahoney has unnecessarily delayed and deprived plaintiff of its legal right to possession thereof. Further delay in the disposition of this case would cause plaintiff additional loss of use of real property to which it is legally entitled. "Justice delayed is justice denied". BLACKSTONE.

DATED: December 1, 1969.

MCGUIRE & MELLBY

BY: Theodore R. Mellby

Theodore R. Mellby
Attorney for Plaintiff
400 First Street South
Montgomery, Minnesota 56069

Tel: (612) 364-7327

Subscribed and sworn to
before me this 1st day of
December, 1969

Wilma V. Fortney

Wilma V. Fortney, Notary Public
Le Sueur County, Minnesota
My commission expires November 23, 1971

D770 AFFIDAVIT OF SERVICE BY MAIL. — OBV .LD PUBLISHING CO., NEW ULM, MINN.

State of Minnesota, } ss.
County of Scott

DISTRICT COURT

FIRST Judicial District

First National Bank of Montgomery,
Plaintiff

-vs-

Jerome Daly,
Defendant

Affidavit of Service by Mail

State of Minnesota, } ss.
County of Le Sueur

Wilma V. Fortney of the City of Montgomery County of Le Sueur in the State of Minnesota, being duly sworn, says that on the 1st day of December, 1969, she served the annexed MOTION NOTICE OF MOTION AND AFFIDAVIT on Jerome Daly the Attorney Pro Se in this action, by mailing to him a copy thereof, inclosed in an envelope, postage prepaid, and directed to said Jerome Daly at Savage, Minnesota 55378

Wilma V. Fortney

Subscribed and sworn to before me, this 1st day of December, 1969

Theodore R. Melby

Theodore R. Melby, Notary Public
LeSueur County, Minnesota
My commission expires November 30, 1971

STATE OF MINNESOTA — IN JUSTICE COURT

COUNTY OF SCOTT — TOWNSHIP OF CREDIT RIVER
JOHN F. CASEY, JUSTICE

FIRST NATIONAL BANK OF MONTGOMERY,

Plaintiff,

-vs-

JEROME DALY,

Defendant.

AFFIDAVIT

STATE OF MINNESOTA)
: ss
COUNTY OF SCOTT)

JOHN MAHONEY, being first duly sworn on oath, deposes and states:

I am the son of the late Martin V. Mahoney, former Justice of the Peace of the above Court.

On request of Theodore R. Mellby and John F. Casey, Justice of the above Court, I have made a thorough and diligent search of the property, both real and personal, of Martin V. Mahoney. Said search was conducted on this date. Said search revealed no records whatsoever pertaining to the above-captioned matter. To the best of my information and belief, all records pertaining to the above-captioned matter are not in my possession or in the possession of any of the immediate family of Martin V. Mahoney.

Further affiant saith not.

John Mahoney

Subscribed and sworn to before me
this 10th day of November, 1969.

Theodore R. Mellby
Notary Public, McLeod County, Minnesota,
My Commission expires November 30, 1971.

STATE OF MINNESOTA

COUNTY OF SCOTT

IN DISTRICT COURT

FIRST JUDICIAL DISTRICT

First National Bank of
Montgomery, Minnesota,

Plaintiff

-vs-

Jerome Daly,

Defendant

_A F F I D A V I T_

* *

STATE OF MINNESOTA)
) ss
COUNTY OF LE SUEUR)

Theodore R. Mellby, being duly sworn, on oath, deposes and states:

An application for an Order demanding Jerome V. Daly to deliver to the Honorable Judge John F. Casey, Justice of the Peace, Credit River Township, County of Scott, State of Minnesota, at Rural Route, Prior Lake, Minnesota, the file in the case of First National Bank of Montgomery, Plaintiff, vs. Jerome Daly, defendant, consisting of the transcripts and all process and other papers in said action within five (5) days of the service of a copy of said Order upon Jerome V. Daly, personally, was made to the above Justice Court.

Said Justice Court issued the appropriate Order demanding said file of Jerome V. Daly on October 1, 1969. Said Order was personally served upon Jerome Daly on October 1, 1969. Jerome V. Daly did not comply with said Order demanding said file and on October 9, 1969, said Justice court issued an Order compelling Jerome V. Daly to show cause on October 31, 1969, why he should not be held in contempt of the Order of said Justice court, dated October 1, 196.

Said contempt hearing has been continued to 2 o'clock P.M., Friday, November 7, 1969, Village Hall, Village of Prior Lake, County of Scott, State of Minnesota. As of this date, Jerome V. Daly has not complied with the Order of said Justice Court dated October 1, 1969.

Further affiant sayeth not.

Theodore R. Meeks

DATED: November 4, 1969

Subscribed and sworn to before
me this 4th day of November,
1969.

Wilma V. Fortney

Wilma V. Fortney - Notary Public
Le Sueur County, Minnesota
My commission expires November 23, 1971

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF SCOTT — FIRST JUDICIAL DISTRICT

First National Bank of Montgomery, Minnesota, Plaintiff, -vs- Jerome Daly, Defendant.	ORDER DIRECTING RETURN OF FILE

Upon an oral application having been made by the Plaintiff through its respective counsel for an order requiring the Defendant above named to make return of certain files and records now held in his possession and which are a part of an action in Justice Court in and for Scott County, Minnesota, all based upon the files and records herein and it appearing to the Court as follows:

That a notice of appeal was duly served and filed herein on December 17, 1968, by the Plaintiff above named from a decision or judgment in the Justice of the Peace Court which was presided over by the late Martin V. Mahoney in an action entitled First National Bank of Montgomery, Minnesota versus Jerome Daly.

That the required deposit of two dollars was made with the Clerk of the District Court above named to be delivered to the Justice of the Peace upon his return being made;

That no return was forthcoming from said Justice of the Peace although directed to do so by this Court;

That upon the Defendant's objection to the order requiring the return and Defendant's contention that such return could only be obtained by a writ of attachment, such a writ of attachment was duly issued and served upon the Justice of the Peace and the Defendant;

That a return was duly made upon said writ by the Sheriff's office of Scott County, Minnesota, containing the statement that the Justice of the Peace no longer had any of the file and that the Defendant, Jerome Daly, had the same. That said return also certified as to its service upon the Defendant and stating that upon demand for the file the Defendant, "refused to talk about the matter";

That to date no return has been made and the file of the Justice Court has not been returned to this Court;

That more than ten months have elapsed since the appeal was served and filed.

NOW, THEREFORE, Upon consideration of the foregoing, the disobedience heretofore displayed and the unreasonable delay in making the return on appeal, all of which was brought about by the conduct and actions of Jerome Daly, the Defendant, who is also a member of the Bar of this State and an officer of the Court,

IT IS ORDERED that the Defendant Jerome Daly forthwith deliver and deposit the entire file of the Justice of the Peace Court formerly presided over by the late Martin V. Mahoney in the action entitled First National Bank of Montgomery, Minnesota, versus Jerome Daly, with the Clerk of the District Court in and for Scott County, Minnesota, there to be retained by the Clerk of said Court until the further order of this Court.

Dated November 4, 1969.

Arlo E. Haering
Judge of District Court

Form No. 1740—Return for Personal Service, Exhibition Judge's Signature. (Rev. 1969)

State of Minnesota,
County of Scott } ss.

I Hereby Certify and Return, That at the Village of Savage in County and State aforesaid, on the 6th day of November 1969 I served the hereunto attached Order Directing Return of File upon the within named Jerome Daly personally by then and there handing to and leaving with him a true and correct copy thereof, and at the same time and place exhibiting to him so that he could see and read the same, the original signature of Honorable Arlo F. Haering, Judge of the District Court of Scott County, Minnesota, to said original.

Dated this 6th day of November 19 69

Sheriff Fees—Service, $4.00
Travel, $3.00
Total, $7.00

W. B. Schroeder
Sheriff of Scott County, Minn.
By Cyril W. Magel Deputy Sheriff

FORM C

State of Minnesota

FIRST JUDICIAL DISTRICT

COUNTY OF SCOTT

DISTRICT COURT

File No. 19144

First National Bank of Montgomery,Minn

Plaintiff

-vs-

Jerome Daly

Defendant

McGuire and Mellby

Plaintiff's Attorney

Defendant'sAttorney

To : McGuire and Mellby - Montgomery, Minnesota 56069
Jerome Daly - Savage, Minnesota 55378

YOU ARE HEREBY NOTIFIED, That a Order directing return of file.

in the above entitled cause was, on the 14th day of November A. D. 1969 filed-entered in the office of the Clerk of said Distrtrict Court.

Dated 11/14/ A. D. 1969

Hugo P. Hentges

Clerk

By

Deputy

STATE OF MINNESOTA

COUNTY OF SCOTT

IN JUSTICE COURT

TOWNSHIP OF CREDIT RIVER
JOHN F. CASEY, JUSTICE

First National Bank of Montgomery,

Plaintiff

-vs-

ORDER TO SHOW CAUSE

Jerome Daly,

Defendant

* *

On reading the Motion, Notice of Motion and Affidavit of Theodore R. Mellby, attorney for plaintiff,

IT IS HEREBY ORDERED that Jerome Daly, attorney at law, 28 E. Minnesota Street, Savage, Minnesota, appear in person before the above Court at 2 o'clock P.M., Friday, October ~~27~~ 31, 1969, at a Special Term of Court to be held in the Village Hall, Village of Prior Lake, County of Scott, State of Minnesota, or as soon thereafter as Counsel can be heard to show cause why he should not be held in contempt of the order of this Court dated October 1, 1969, or for the additional reason stated in Plaintiff's moving papers, and why the relief requested in Plaintiff's Motion for an Order should not be granted.

LET THIS ORDER, MOTION, NOTICE OF MOTION, and AFFIDAVIT, all heretofore attached be served on Jerome Daly by leaving with him copies of the same and exhibiting the original ORDER with the signature of the Justice of the Peace hereto affixed, service to be ~~mailed~~ made forthwith.

BY THE COURT

DATED at Credit River Township, Minnesota
this 9th day of October, 1969.

John F. Casey
Justice of the Peace

STATE OF MINNESOTA, COUNTY OF SCOTT

Certified to be a true and correct copy
of the original on file and of record
in my office
GREGORY M. ESS
Court Administrator

5-9 2006 By Audrey K Brown
Deputy

Form No. 1749—Return for Personal Service, Exhibition & Acknowledgment. (Rev. 1959.) POLICHER

State of Minnesota,

County of Scott } ss.

I Hereby Certify and Return, That at the Village of Savage in County and State aforesaid, on the 16th day of October 1969 I served the hereunto attached Order to Show Cause, Motion, Notice of Motion & Affidavit upon the within named Jerome Daly personally by then and there handing to and leaving with Jerome Daly a true and correct copy thereof, and at the same time and place exhibiting to Jerome Daly so that he could see and read the same, the original signature of Honorable John F. Casey, Judge of the ~~District~~ Justice Court of Credit River Township Scott County, Minnesota, to said original.

Dated this 16th day of October 1969

Sheriff Fees—Service, $ 2.00

Travel, $ 3.00

Total, $ 5.00

W. B. Schroeder

Sheriff of Scott County, Minn.

By Cyril A. Wagal Deputy Sheriff

STATE OF MINNESOTA

COUNTY OF SCOTT

IN JUSTICE COURT

TOWNSHIP OF CREDIT RIVER
JOHN F. CASEY, JUSTICE

First National Bank of Montgomery,

Plaintiff

-vs-

NOTICE OF MOTION

Jerome Daly,

Defendant

* *

TO: Jerome Daly
Attorney Pro Se
28 East Minnesota Street
Savage, Minnesota 55378

Please take notice that the undersigned will bring the above Motion on for hearing before the Court at a Special Term thereof, to be held at the Village Hall in the Village of Prior Lake on the 17th day of October, 1969, at 2 o'clock in the afternoon or as soon thereafter as counsel can be heard.

MCGUIRE & MELLBY

BY: Theodore R. Mellby

Theodore R. Mellby
Attorney for Plaintiff
400 First Street South
Montgomery, Minnesota 56069

Tel: (612) 364-7327

STATE OF MINNESOTA

COUNTY OF SCOTT

IN JUSTICE COURT

TOWNSHIP OF CREDIT RIVER
John F. Casey, Justice

FIRST NATIONAL BANK OF MONTGOMERY,

Plaintiff

-vs-

M O T I O N

Jerome Daley,

Defendant

* *

The Plaintiff moves the Court as follows:

I.

To adjudge you in contempt for violation of your duty as an attorney an officer of the above Court in refusing to deliver to the Honorable John F. Casey, Justice of the Peace, Credit River Township, County of Scott, State of Minnesota, at Rural Route, Prior Lake, Minnesota, the file consisting of the transcripts and all process and other papers in the above entitled action as demanded by said Court on October 1, 1969.

II.

For an Order adjudging you in contempt of the Order of the above identified Court dated, October 1, 1969.

III.

For an Order adjudging the Defendant in contempt for deceit or abuse of the proceedings of the Court by party to the action.

IV.

For such other and further relief the Court may deem just and proper

MCGUIRE & MELLBY

BY: [signature]
Theodore R. Mellby
Attorney for Plaintiff
400 First Street South
Montgomery, Minnesota 56069

Tel: (612) 364-7327

STATE OF MINNESOTA

COUNTY OF SCOTT

IN JUSTICE COURT

TOWNSHIP OF CREDIT RIVER
JOHN F. CASEY, JUSTICE

First National Bank of Montgomery,

Plaintiff

-vs-

A F F I D A V I T

Jerome Daly,

Defendant

* *

Theodore R. Mellby being duly sworn, on oath, deposes and states:

On October 1, 1969, the above identified Court demanded Jerome Daly to deliver to the said Court the file consisting of the transcripts and all process and other papers in the above entitled action within five (5) days of the service of a copy of said demand and order. Said order was personally served upon Jerome Daly by the Deputy Sheriff of Scott County on October 1, 1969. Affiant contacted the above identified Court on Thursday, October 9, 1969, and was informed that Jerome Daly had not complied with said demand.

The file in the above identified matter is in the possession of Jerome Daly. Returns to the Writ of Attachment issued by Arlo E. Haering, Judge of District Court, First Judicial District, reveal that said file is in the possession of Jerome Daly. When the Deputy Sheriff of Scott County demanded of Jerome Daly that he relinquish possession of said file, Jerome Daly "refused to talk about the matter".

Jerome Daly has disobeyed the lawful order of the above Court dated October 1, 1969, which was personally served upon him on the same date.

These and other actions taken by Jerome Daly constitute a deliberate and willful intent to frustrate the proceedings of the above Court and thereby deny Plaintiff its civil remedies.

Theodore R. Mellby

Subscribed and sworn to
before me this 9th day of
October, 1969

Wilma V. Fortney

Wilma V. Fortney, Notary Public
Le Sueur County, Minnesota
My commission expires November 23, 1971

STATE OF MINNESOTA, COUNTY OF SCOTT

Certified to be a true and correct copy
of the original on file and of record
in my office
GREGORY M. ESS
Court Administrator
5-9 2006 By Andrejk Brown
Deputy

STATE OF MINNESOTA

COUNTY OF SCOTT

IN JUSTICE COURT

TOWNSHIP OF CREDIT RIVER
John F. Casey, Justice

First National Bank of Montgomery,

Plaintiff

-vs-

ORDER

Jerome Daly,

Defendant

* *

WHEREAS, the above Court relinquished possession of its file in the above identified matter to Jerome V. Daly, Attorney at Law, 28 East Minnesota Street, Savage, Minnesota.

IT IS HEREBY ORDERED by the above Court, of its own initiative, that you, Jerome V. Daly, defendant in the above entitled action, and an officer of the above Court, deliver to the Honorable John F. Casey, Justice of the Peace, Credit River Township, County of Scott, State of Minnesota, at Rural Route, Prior Lake, Minnesota, said file consisting of the transcripts and all process and other papers in the above entitled action within five (5) days of the service of a copy of this Order upon you personally.

DATED: Oct 1, 1969

John F. Casey
John F. Casey
Justice of the Peace
Credit River Township

RECEIVED
W. B. SCHROEDER
SHERIFF SCOTT COUNTY
SHAKOPEE, MINN.
Oct 1 1969
AM 7,8,9,10,11,12,1,2,3,4,5,6 PM

STATE OF MINNESOTA, COUNTY OF SCOTT

Certified to be a true and correct copy of the original on file and of record in my office
GREGORY M. ESS
Court Administrator

5-9 2006 By Audrey K. Brown
Deputy

Form No. 1749—Return for Personal Service Exhibition Judge's Signature. (Rev. 1960.) ☆☆☆ BLANK POUCHER

State of Minnesota,

County of Scott } ss. **I Hereby Certify and Return,** That at the Village of Savage in County and State aforesaid, on the 1st day of October 19 69 I served the hereunto attached Order upon the within named Jerome Daly personally by then and there handing to and leaving with him a true and correct copy thereof, and at the same time and place exhibiting to him so that he could see and read the same, the original signature of Honorable John F. Casey, Judge of the ~~District~~ Court of Credit River Township County, Minnesota, to said original.

Dated this 1st day of October 19 69

Sheriff Fees—Service, $ 2.00

Travel, $ 3.00

Total, $ 5.00

W. R. Schroeder
Sheriff of Scott County, Minn.
By [signature] Deputy Sheriff

No. Sp. Supreme Court Per Curiam

In re Jerome Daly.

42174

Endorsed
Filed September 5, 1969
John McCarthy, Clerk
Minnesota Supreme Court

O P I N I O N

PER CURIAM.

On July 11, 1969, Mr. Justice C. Donald Peterson, acting for the Minnesota Supreme Court, directed Martin V. Mahoney, Justice of the Peace of Credit River Township, Scott County, Minnesota, and Jerome Daly, counsel for plaintiff in an action brought by one Leo Zurn against one Roger D. Derrick and the Northwestern National Bank of Minneapolis, to show cause why they should not be permanently restrained from further proceedings in the justice court. In addition, Justice Peterson ordered a stay of all further proceedings before the justice of the peace pending final determination of the questions raised by Northwestern National Bank's petition for writ of prohibition.

Although the stay order of Justice Peterson was served on the justice of the peace and Mr. Daly on July 11, 1969, they intentionally and deliberately disregarded it in this way: On July 14, 1969, the justice of the peace, upon motion of Mr. Daly, entered findings of fact, conclusions of law, and an order for judgment in favor of Zurn. In response to our order of August 12, 1969, directing the justice of the peace and Mr. Daly to show cause why they should not be held in constructive contempt of the Supreme Court of Minnesota for this conduct, Mr. Daly appeared personally in his own behalf before this court on August 21. He advised the court that he had

been authorized to represent the justice of the peace in the proceedings. After noting that he was making a special appearance, Mr. Daly, an attorney at law admitted to practice in this state, acknowledged that both he and the justice of the peace intentionally violated the order of Justice Peterson because in their opinion neither this court nor Justice Peterson had jurisdiction to issue it.

Although the death of the justice of the peace on August 22, 1969, has rendered the proceedings as against him moot, it is our judgment that the conduct of Jerome Daly was contumacious. It is the order of this court that he be temporarily suspended from the practice of law in the courts of this state effective October 1, 1969.

We reserve jurisdiction of this matter to permit further proceedings, the object of which will be to determine whether this contumacious conduct of Jerome Daly is or is not an isolated instance of impropriety. Final determination of the disciplinary measures to be invoked will be made after such hearing has been conducted. Reasonable notice of any charges of misconduct and a full opportunity to be heard shall be afforded in these contemplated hearings.

The rationale of our determination is as follows:

(1) The Supreme Court of the State of Minnesota by the terms of our Constitution has power to issue writs of prohibition restraining a court of limited jurisdiction from exceeding its power. Minn. Const. art. 6, § 2, provides that the Supreme Court "shall have original jurisdiction in such remedial cases as may be prescribed by law." By the terms of Minn. St. 480.04, the legislature has provided:

> "The court shall have power to issue to all courts of inferior jurisdiction and to all corporations and individuals, writs of error, certiorari, mandamus, prohibition, quo warranto and all other writs and processes, whether especially provided for by statute or not, that are necessary to the execution of the laws and the furtherance of justice. It shall be always open for the issuance and return of such writs and

> processes and for the hearing and determination of all matters involved therein and for the entry in its minutes of such orders as may from time to time be necessary to carry out the power and authority conferred upon it by law, subject to such regulations as it may prescribe. Any justice of the court, either in vacation or in term, may order the writ or process to issue and prescribe as to its service and return."

(2) In Minnesota, the justice of the peace court is a court of inferior jurisdiction.[1] Since the constitutional amendment of the judicial article in 1956 justice of the peace courts exist in this state only to the extent permitted by the legislature. Minn. Const. art. 6, §§ 1, 8, and Schedule. The legislature has fixed narrow limits to the jurisdiction which may be exercised by justices of the peace in this state. (Minn. St. 530.01, 530.05, 530.06, 531.03, 531.04, 532.37.) Acts in excess thereof by such justices of the peace are a nullity and subject to control by a writ of prohibition. Smith v. Tuman, 262 Minn. 149, 114 N. W. (2d) 73.

(3) The power to prohibit an improper exercise of jurisdiction embraces the power to issue ex parte an order designed to maintain the status quo pending a hearing upon an application for a writ of prohibition. See, Minn. St. 480.04. In the case of In re Lord, 255 Minn. 370, 378, 97 N. W. (2d) 287, 292, under similar circumstances, we stated that--

> "* * * this court had full authority to issue a preliminary order to show cause why such peremptory writ should not issue, and, in order to maintain the status quo until both sides of the controversy could be heard, to issue a restraining order to prevent any further action from being taken, either affirmatively or by inaction such as we have here."

See, also, 21 C. J. S., Courts, § 88, p. 136, and cases cited in footnote 13.

(4) The order executed by Justice Peterson, acting in the name of this court, was a proper exercise of the court's authority. Any justice of the supreme court, either in vacation or in term, may

---

[1] For a definition of the term "inferior courts" see 21 C. J. S., Courts, § 7, p. 21.

execute orders in behalf of the court pursuant to § 480.04. See, 48 C. J. S., Judges, § 48, and particularly cases cited in footnote 94; 30A Am. Jur., Judges, § 35.

We find no essential requirement that such orders be issued by or through the office of the clerk of this court. To impose such a requirement would unnecessarily curtail the capacity of this court to respond in emergency situations. It would be unreasonable to make the performance of a clerical act a necessary condition to the exercise of judicial authority which must be asserted promptly to be effective. The signature of a justice of this court is adequate assurance of the authenticity of any order to which such signature is affixed.

Although the verification of statements of fact submitted to this court in ex parte matters is to be preferred, there is no jurisdictional requirement that a petition for temporary relief or for a writ of prohibition be verified. See, Dean v. First Nat. Bank, 217 Ore. 340, 341 P. (2d) 512; 73 C. J. S., Prohibition, § 26. In the matter before us it was evident from an examination of the summons and complaint in the proceedings sought to be restrained that Justice of the Peace Mahoney was undertaking to act in a matter with respect to which he had no jurisdiction. The representation of an attorney at law authorized to practice before this court that a copy of this summons and complaint attached to the petition seeking the writ of prohibition was a true and correct copy of the process served on his client formed in itself an adequate factual basis for the issuance of the temporary order directed to Justice of the Peace Mahoney and Jerome Daly.

(5) The refusal of the justice of the peace to respect the July 11 order of this court was not justified. The justice of the peace would be bound to obey our intermediary order regardless of whether the actions restrained by our order were in excess of his

jurisdiction. In re Lord, supra. Apart from this principle, it is clear that the proceedings restrained were beyond the limits of the jurisdiction of the justice of the peace in a number of respects, including these:

(a) The summons, being returnable at 7 p. m. rather than between the hours of 9 a. m. and 5 p. m. as specified by Minn. St. 531.03, was a nullity.

(b) The summons did not contain a statement of the amount claimed by plaintiff as required by § 531.03.

(c) Contrary to the provisions of § 531.04, the summons was personally served upon Northwestern National Bank of Minneapolis in the city of Minneapolis, a city having a population in excess of 200,000.

(d) This service was performed outside of the county of issuance, Scott County, in violation of the provision of § 531.04 that such service must satisfy the requirements of Minn. St. 532.29. One of the requirements of Minn. St. 532.29 is a continuance of proceedings for a period not exceeding 20 days, and no such continuance was provided in this case.

(e) The amount in controversy exceeded the $100 jurisdictional limitation of the justice of the peace courts under § 530.05.

(f) The relief sought, a declaratory judgment, was not within the granted powers of a justice of the peace. See, § 530.05. It has been the law ever since the 1861 case of Fowler v. Atkinson, 6 Minn. 350 (503), that a justice of the peace has no jurisdiction over equitable proceedings. See, Smith v. Tuman supra.

(6) We are satisfied from the record that the justice of the peace acted upon the advice and at the instance of attorney Jerome Daly. Mr. Mahoney was not admitted to practice as a lawyer. An attorney who intentionally and deliberately advises and encourages a justice of the peace or any other person to disregard an order of the Minnesota Supreme Court is guilty of contempt. See, Minn. St. 588.01, subd. 3(1, 2, 3, 7); In re Lord, supra; State v. Leftwich, 41 Minn. 42, 42 N. W. 598; In re Green, 172 Ohio St. 269, 175 N. E. (2d) 59. The fact that such advice is prompted by fanciful notions that justice of the peace courts have a constitutional status giving them immunity from the jurisdiction of the supreme court of this state cannot excuse or justify this conduct. This is especially

the case in the present situation where the jurisdiction of this court to prohibit acts beyond the jurisdiction of a justice of the peace was clearly delineated by our decision in Smith v. Tuman, supra, published in 1962. See, also, State ex rel. Meister v. Stanway, 174 Minn. 608, 219 N. W. 452.

(7) The supreme court has inherent power to discipline an attorney guilty of contempt. In re Cary, 165 Minn. 203, 206 N. W. 402. In exercising this authority no attempt is made to impose the sanctions of the criminal law. A principal purpose of the exercise of disciplinary authority is to assure respect for the orders of this court by attorneys, who, as much as judges, are responsible for the orderly administration of justice in this state. In disciplinary proceedings the formal requisites of criminal procedure, including the right to a jury trial, have no application. In re Williams, 221 Minn. 554, 23 N. W. (2d) 5; In re Rerat, 232 Minn. 1, 44 N. W. (2d) 273; In re Joyce, 242 Minn. 427, 65 N. W. (2d) 581, certiorari denied, 348 U. S. 883, 75 S. Ct. 124, 99 L. ed 694; In re Discipline of Tracy, 197 Minn. 35, 266 N. W. 88, 267 N. W. 142.

DISPOSITION

Jerome Daly is adjudged to be guilty of contempt of this court. We are not prepared to determine with finality at this time the appropriate form of discipline to be prescribed. Final resolution of the matter must depend on whether the acts of this attorney are a part of a persistent and continuing effort to defy the authority of the courts and in part on whether there is any disposition to amend the contumacious behavior demonstrated.

Rule 1 of the Rules of the Supreme Court for Discipline and Reinstatement of Attorneys, adopted November 14, 1961, (27B M. S. A. p. 21) which prescribes the procedure to be followed in cases where unproved complaints involving alleged unprofessional conduct are

leveled against an attorney, was not intended to apply to situations where an attorney has been found in contempt of this court and an inquiry is needed to aid us in determining the kind of discipline to be imposed. To meet the problem posed by this case, we herewith refer further proceedings in this matter to the Honorable E. R. Selnes, Judge of the District Court of the State of Minnesota, who will act as a referee of the Minnesota Supreme Court in order to consider such evidence as may be presented to him bearing on the fitness and competence of Jerome Daly to serve as a practicing attorney in the courts of this state. The State Board of Law Examiners (see, In re McDonald, 204 Minn. 61, 282 N. W. 677, 284 N. W. 888) is hereby assigned the duty and responsibility of conducting a thorough investigation of the fitness and competency of Jerome Daly to continue as a member of the bar of this state. So far as applicable, proceedings shall be in conformity with the rules of this court promulgated November 14, 1961. Due notice of such charges of unfitness and incompetence as may be warranted by the evidence secured, together with due and proper notice of the time and place of such hearings as may be held with respect to such charges as may be filed, shall be afforded the said Jerome Daly. The Practice of Law Committee of the Minnesota State Bar Association is authorized to intervene and become a party to these proceedings if it so elects. Upon the evidence presented and received, together with such evidence as may be presented by the said Jerome Daly in his own behalf, the Honorable E. R. Selnes in his capacity as a referee of this court shall make findings of fact and conclusions and recommendations for disposition of this matter as shall be justified by the evidence. Such determination shall be conclusive subject to the right of any party aggrieved to secure a review of the referee's determination in the manner outlined in said rules of November 14, 1961.

Because of the deliberate and aggravated nature of the

contumacious conduct on the part of the said Jerome Daly and his failure or refusal to present any reasonable justification for his effort to frustrate the processes of the Minnesota Supreme Court, his privilege to practice law in the courts of this state is suspended effective October 1, 1969; provided, however, that this court will consider such application as the said Jerome Daly may make prior to October 1, 1969, for such limited exceptions to this order of temporary suspension as may be proved necessary in order to protect the interests of clients now represented by the said Jerome Daly and involved in litigation pending in the courts of this state.

This matter is herewith referred to the Honorable E. R. Selnes, designated as referee herein, for further proceedings consistent with this opinion, which proceedings shall be entitled "In re Jerome Daly."

STATE OF MINNESOTA

COUNTY OD SCOTT

IN DISTRICT COURT

FIRST JUDICIAL DISTRICT

First National Bank of Montgomery, Minnesota,

Plaintiff

-vs-

Jerome Daly,

Defendant

SUPPLEMENTAL RETURN TO WRIT OF ATTACHMENT

*** ***** ********** *********** ** **********

STATE OF MINNESOTA)
) ss
COUNTY OF SCOTT)

Cyril W. Maxa, being duly sworn, on oath, deposes and states:

That I am a Scott 6ounty Deputy Sheriff. That on or about July 22, 1969, I personally served Writ of Attachment in the above identified matter upon Justice of the Peace, Martin V. Mahoney and Jerome Daly. The following is a summary of the events concerning said service:

The Writ of Attachment was served upon Mr. Jerome Daly at his office in the Village of Savage, Minnesota, on 22 July, 1969. At this time he questioned the posting of the bond and the legality of the paper. He then said he wanted to study the writ for a day and would contact me later on it. He was advised that he would not have the time and that demand for the property was being made now. At this time he told me to advise those concerned that "he refused to talk about the matter."

I then went out to Justice of the Peace Martin V. Mahoneys farm in Credit River Township and made service upon him in the same matter. He advised me that he did not have any of the papers involved in this matter and that Mr. Jerome Daly of Savage had all the papers in the matter.

This affidavit is prepared as a supplement to my return of Writ of Attachment dated July 22, 1969, in the above identified matter.

FURTHER AFFIANT SAYETH NOT

Subscribed and sworn to before me this 29th day of August, 1969.

EDWARD F. SMITH
Notary Public, Scott County, Minn.
My Commission Expires Dec. 6, 1973

Edward F. Smith

Cyril W. Maxa

Cyril W. Maxa - Deputy Sheriff
Scott County, Minnesota

STATE OF MINNESOTA, COUNTY OF SCOTT

Certified to be a true and correct copy
of the original on file and of record
in my office
GREGORY M. ESS
Court Administrator

5-9 2006 By Audrey K. Braun
Deputy

Scott County Sheriff's Office

PUBLIC SAFETY BUILDING

Shakopee, Minnesota-55379

W. B. SCHROEDER
SHERIFF

23 July, 1969

McGuire & Melby
Attorneys at Law
Montgomery, Minn.

Mr. Mellby:

Regarding the service of Writ of Attachment concerning First National Bank of Montgomery vs Jerome Daly. The following is a summary of the events concerning the above service.

The Writ of Attachment was served upon Mr. Jerome Daly at his office in the Village of Savage, Minnesota on 22 July, 1969. At this time he questioned the posting of the bond and the legality of the paper. He then said he wanted to study the writ for a day and would contact me later on it. He was advised that he would not have the time and that demand for the property was being made now. At this time he told me to advise those concerned that "he refused to talk about the matter."

I then went out to Justice of the Peace Martin V. Mahoneys farm in Credit River township and made service upon him in the same matter. He advised me that he did not have any of the papers involved in this matter and that Mr. Jerome Daly of Savage had all the papers in the matter.

Yours Truly

Cyril W. Maxa

Cyril W. Maxa
Deputy Sheriff

STATE OF MINNESOTA

COUNTY OF SCOTT

IN DISTRICT COURT

FIRST JUDICIAL DISTRICT

First National Bank of Montgomery,

Plaintiff

-vs-

Jerome Daly,

Defendant

COUNTER-AFFIDAVIT

* *

Theodore R. Mellby, being duly sworn, on oath, deposes and states:

I.

Judgment for Defendant was entered in Justice Court on December 9, 1968. On December 12, 1968, Plaintiff complied with Minnesota Statutes Chapter 566, by depositing the necessary funds with the Clerk of District Court, Scott County, Minnesota. Copies of Plaintiff's correspondence and cancelled check are attached hereto.

II.

A Justice Court does not have jurisdiction to determine the validity of Federal Reserve Notes. Such a determination involves a question of constitutional law which is outside the subject matter jurisdiction of a Justice Court. The subject matter jurisdiction of the Justice Court is established by the Legislature. In Minnesota Statutes Sec. 530.05, the Legislature has provided that Justice Courts have jurisdiction in only six (6) specific cases, none of which encompass constitutional law subject matter.

III, IV, V, VII.

Plaintiff has duly appealed the decision of the lower Court to the District Court for trial de novo. Defendant, with the assistance of the Justice of the Lower Court, has unreasonably denied Plaintiff's legal right. Through this motion, Defendant now seeks to adjudicate his position before the District Court without allowing Plaintiff to proceed with the trial de novo. Defendant should be

denied the right to a hearing on his motion until such time as the Lower Court makes its return on appeal.

The position asserted by Defendant that Federal Reserve Notes do not constitute legal tender is without any merit whatsoever. For the Court's information, the Plaintiff submits the following authority to substantiate its position that Federal Reserve Notes constitute legal tender:

MONITORY DECISIONS OF THE SUPREME COURT, Gerald T. Dunne, Rutgers University Press (1960). A synopsis of cases appears on pages 104-108 thereof. The following appear therein:

MIXED MONEYS, THE CASE OF THE (1604), 80 Eng. Rept. 507 ("law" French); Sir John Davies Irish Reports 48 (English). Suit to recover standard English sterling promised in contract made prior to royal enactment setting coin of lower bullion value for Ireland. Judgment for debtor on ground that royal preprogatives over coinage supersede contrary provisions for payment in pre-existing private contracts.

MCCULOUCH v. MARYLAND (1819), 17 U.S. (4 Wheaton), 316. Suit for state bank note taxes. Judgment for taxpayer on ground that the Bank of the United States was a legitimate exercise of the implied powers of Congress and that such institution and its notes were exempt from state taxes.

KNOX v. LEE and PARKER v. DAVIS (1871), Legal Tender II, 79 U.S. (12 Wall), 457. Suit demanding coin payment of debts contracted both before and after the Civil War currency acts. Judgment for debtors, reversing HEPBURN v. GRISWOLD, on the ground that Congress has constitutional power to issue paper currency and make it legal tender for debts contracted before and after such issuance.

JULLIARD v. GREENMAN (1884), Legal Tender III, 110 U.S. 421. Suit demanding coin payment on a note and rejecting previously tendered greenbacks therefor. Judgment for debtor on ground that Congress could constitutionally make paper money a legal tender for payment of debt in time of both peace and war.

LING SU FAN v. UNITED STATES (1910), 218 U.S. 302. Prosecution for unlawful export of coin from Philippine Islands. Judgment for the government on the ground that prohibitory statute did not deprive the coin-holder of property rights without due process of law.

PERRY v. UNITED STATES (1935), 294 U.S. 330. Suit on stipulated gold coin interest payment of Liberty Bond and involving rejection of devalued paper currency. Judgment for government on ground that no damage in terms of domestic purchasing power had been shown and Court of Claims had no jurisdiction for any other type of recovery.

NORMAN v. BALTIMORE & O. R. Co. (1935), 294 U.S. 240. Suit to recover value of stipulated gold coin payment of bond interest after Congress devalued gold content of dollar and made paper money standard for all debt payments. Judgment for debtor railroad on ground that congressional power over money superseded private contracts concerning methods of payment.

NORTZ v. UNITED STATES (1935), 294 U.S. 317. Suit to recover bullion value of gold coin previously deposited with Treasury and rejecting post-devaluation paper money settlement. Judgment for government on grounds that no damages in terms of deomestic purchasing power had been shown to result from Treasury's failure to surrender gold coin.

HOLYOKE WATER POWER COMPANY v. AMERICAN WRITING PAPER COMPANY (1937), 300 U.S. 324. Suit for rent which was fixed at the number of dollars required currently to buy gold worth $1,500 of U.S. Coinage of 1894. Judgment for tenant on grounds that both direct and indirect gold clauses had been outlawed by Congress and that rent could be paid by $1,500 in paper currency.

VEAZIE BANK v. FENNO (1869), 75 U.S. (8 Wall), 533. Suit to collect a federal tax on state bank notes. Judgment for government on ground that notwithstanding discriminatory effect of tax, the power of Congress to establish national currency included power to prohibit competitive media.

The Veazie Bank case contains the following quotation: "... it is settled ... that Congress may constitutionally authorize the emission of bills of credit ... there can be no question of the power of the government to emit them ... to make them a currency, uniform in value and description, and convenient and useful

for circulation. These powers, until recently, were only partially and occasionally exercised. Lately, however, they have been called into full activity, and Congress has undertaken to supply a currency for the whole country.

Having thus, in the exercise of its undisputed constitutional powers, undertaken to provide a currency for the whole country, it cannot be questioned that Congress may, constitutionally, secure the benefit of it to the people .... To (this) end, Congress may restrain, by suitable enactments, the circulation as money of any notes not issued under its own authority. Without this power, indeed, its attempts to secure a sound and uniform currency for the country must be futile." VEAZIE BANK v. FENNO (1869), 75 U.S. (8 Wall), 533, 548-549.

VI. & VIII

On January 8, 1969, Honorable Harold E. Flynn, Judge of District Court, Scott County, Minnesota, issued an Order requiring Justice Martin V. Mahoney to Show Cause before his Court on January 17, 1969, why he should not make a return on appeal.

On January 15, 1969, Defendant filed an affidavit of prejudice against the Honorable Harold E. Flynn with the Clerk of District Court, Scott County, Minnesota. On January 16, 1969, Honorable Harold E. Flynn issued ORDER TRANSFERRING TRIAL to the Honorable Arlo E. Haering, the Chief Judge of the First Judicial District. Hearing on the Order to Show Cause was noticed for January 24, 1969.

On January 20, 1969, Defendant obtained an ex-parte order from Justice Martin V. Mahoney ordering Plaintiff to appear before said Justice on January 22, 1969, to show cause why the Justice Courts notice of refusal to allow appeal therein should not be made absolute. Plaintiff did not appear for the reason that said Court had no jurisdiction to pass on a constitutional question.

Hearing on the District Court order to show cause was duly held on January 24, 1969. On January 30, 1969, Honorable Arloe E. Haering, Judge of District Court, McLeod County, ordered Martin V. Mahoney, Justice of the Peace, Credit River Township, County of Scott, State of Minnesota, to make return on the appeal to the Clerk of District Court in and for the County of Scott, State of Minnesota.

On February 25, 1969, Defendant appealed to the Minnesota Supreme Court. Defendant did not comply with Rule 107 Civil Appellate Procedure. On March 26, 1969, Plaintiff made application to the Minnesota Supreme Court for an Order dismissing Defendant's appeal.

On April 15, 1969, the Minnesota Supreme Court dismissed Defendant's appeal.

On May 5, 1969, the Honorable Arlo E. Haering ordered that Martin V. Mahoney appear in person before his Court on May 9, 1969, to show cause why he should not be held in contempt of the Order of said Court dated, January 30, 1969. Defendant contacted the Court by telephone on May 9, 1969, and indicated that the Order dated, January 30, 1969, had not been personally served upon Justice Martin V. Mahoney. On May 14, 1969, said Order to make return on appeal dated January 30, 1969, was personally served upon Justice Martin V. Mahoney.

On June 24, 1969, Honorable Arlo E. Haering ordered that Martin V. Mahoney appear on June 27, 1969, to show cause why he should not be held in contempt of the Order of said Court, dated, Jan. 30, 1969. Justice Martin V. Mahoney did not appear on said date. Jerome Daly appeared as counsel for Martin V. Mahoney. Said Court has the matter under advisement at the present time.

On July 22, 1969, the Honorable Arloe E. Haering ordered that a Writ of Attachment issue against Jerome Daly, Martin V. Mahoney, and Wm. E. Drexler, for the transcript of all entries made in the docket of the Justice Court, Credit River Township, Scott County, Minnesota, together with all process and other papers relating to the above action and filed in said Justice Court.

The Sheriff's returns therein indicate that the file of said Justice Court is in the possession of Jerome Daly. A letter accompanying the return of the Sheriff of Scott County is attached hereto.

Affiant is presently informed by the Honorable Arlo E. Haering that said Court, on its own initiative, will issue and Order in the very near future.

These events are set forth in order to indicate that the Defendant has used every possible legal maneuver designed to delay the trial de novo of this matter

in District Court.

Further Affiant Sayeth Not

Theodore R. Mellby

Subscribed and sworn to
before me this 28th day of
August, 1969.

Wilma V. Fortney, Notary Public
Le Sueur County, Minnesota
My Commission Expires November 23, 1971

D290 AFFIDAVIT OF SERVICE BY MAIL. [illegible] PUBLISHING CO., NEW ULM, MINN.

State of Minnesota, } ss.
County of Le Sueur

DISTRICT COURT

First Judicial District

First National Bank of Montgomery,
Plaintiff

-vs-

Jerome Daly,
Defendant

Affidavit of Service by Mail

State of Minnesota, } ss.
County of LeSueur

Wilma V. Fortney of the City of Montgomery County of LeSueur in the State of Minnesota, being duly sworn, says that on the 29th day of August, 19 69, she served the annexed COUNTER-AFFIDAVIT on Jerome Daly the Defendant in this action, by mailing to Him a copy thereof, inclosed in an envelope, postage prepaid, and directed to said Jerome Daly at 28 E. Minnesota Street, Savage, Minnesota 55378

Wilma V. Fortney

Subscribed and sworn to before me, this 29th day of August, 19 69

Ralph O. Hendrickson

RALPH O. HENDRICKSON
Notary Public, Le Sueur County, Minn.
My Commission Expires December 13, 1974

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF SCOTT FIRST JUDICIAL DISTRICT

First National Bank of Montgomery, Plaintiff,

vs. MOTION AND NOTICE OF MOTION

Jerome Daly, Defendant.

To the Plaintiff above named and to its Attorney Theodore R. Melby.

Sirs:

You will please take Notice that Defendant, Jerome Daly will move the Court at the Court House in the City of Shakopee, Minnesota on September 5,1969 at 9:30 A.M. or as soon thereafter as Counsel can be heard, or at such other time and place as the Court may direct by Order, for an Order dismissing the appeal herein upon the following grounds:

1. That M.S.A. 532.38 requiring that $2.00 in lawful money of the United States was not deposited with the Clerk of the District Court within 10 days to be tendered by the Clerk of the District Court for the use of Justice Martin V. Mahoney, the Justice before whom the cause was tried.

2. That no application was made at any time by Plaintiff before the said Justice of the Peace nor was any appearance made before the Justice of the Peace at the hearing set by him to determine the validity of the two Federal Reserve Notes deposited and tendered.

3. That the plaintiff is in complete violation of the following constitutional provisions to Wit: US Const art 1 Sect 10

(A) No State shall make any THING but Gold and Silver Coin a Tender in payment of Debts, etc, nor shall any State pass any Law impairing the obligation of Contract.

(B) Article 9 Section 13, paragraph 1 "Banks and Banking", Minnesota Const.

" The legislature may by a two thinds vote pass a general banking law with the following restrictions and requirements, viz: First- The legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments by any person, association or corporation issuing bank notes of any description."

4. That Plaintiff is in outright violation of Title 31, Section 458 defining the Standard Silver Dollar as "a legal Tender"

5. That the Justice of the Peace has properly denied the appeal herein.

6. That after denial of the appeal herein Plaintiff has taken no steps by Attachment against the Justice of the Peace in the manner prescribed by law to compel the Justice to allow the Appeal and make his return; not within 30 days, not within 60 days, not within 90 days, not within a reasonable time and not at all.

7. That the action was correctly determined in the Justice Court as to his refusal to allow an appeal.

8. That plaintiff is guilty of laches and not timely taking and perfecting its appeal.

Jerome Daly

Jerome Daly
Pro Se
28 East Minnesota Stareet
Savage,Minnesota

August 1,1969

AFFIDAVIT OF MAILING

STATE OF MINNESOTA

COUNTY OF SCOTT

Ester Lodermeier, being first sworn, deposes and states that on behalf of Jerome Daly on aug 1 he served the annexed Motion and Notice of Motion on all other parties hereto in this action by mailing to them or their respective attorneys a copy thereof, inclosed in an envelope, postage prepaid, by depositing the same in the post office at Savage, Minnesota, directed to them or their attorneys at their last known address as follows:

Theo. P Mally
Lawyer
Montgomery, Minn

Ester Lodermeier

Subscribed and sworn to
before me this Aug 1, 1969

Jerome Daly

Jerome Daly, Notary Public
Dakota County, Minn.
My Commission expires January 15, 1973

State of Minnesota,
County of SCOTT

DISTRICT COURT,
FIRST *Judicial District.*

FIRST NATIONAL BANK OF MONTGOMERY, MINNESOTA
Plaintiff

vs.

JEROME DALY
Defendant

THE STATE OF MINNESOTA, TO THE SHERIFF OF RAMSEY COUNTY

COUNTY, MINNESOTA:

You are hereby required and commanded to attach and safely keep all the ~~property of~~ transcript of all entries made in the docket of the Justice Court, Credit River Township, Scott County, Minnesota, together with all process and other papers relating to the above action and filed with the said Justice Court. Said transcript, process and other papers are in the possession of Wm. E. Drexler, 1602 Selby, St. Paul, Minnesota,

~~the defendant above named, not exempt from execution~~ *within your county,* ~~or so much thereof as shall be sufficient~~ *to satisfy the amount claimed by the plaintiff in the action above entitled, which is the sum of* possession of the following described tract of land, to-wit: ~~Dollars,~~ ~~with expenses and costs.~~

Lot 19, Fairview Beach, according to the recorded Plat thereof on file and of record in the office of the Register of Deeds in and for the County of Scott and State of Minnesota, with expenses and costs.

WITNESS the Honorable Arlo E. Haering,
Judge of the court above named and the seal thereof this 22nd *day of* July 19 69.

Clerk of District Court.

By
Deputy.

STATE OF MINNESOTA, COUNTY OF SCOTT

Certified to be a true and correct copy of the original on file and of record in my office
GREGORY M. ESS
Court Administrator

5-9 20 06 By Audrey K. Brown
Deputy

State of Minnesota, }ss.
County of .....

I hereby certify and return that by virtue of the within writ of attachment I have on the .....day of ....., 19....., attached all the right, title and interest of the ~~judgment debtor~~ defendant .....in said writ named in and to the real property lying in the County of ....., State of Minnesota, described as follows:

.....
Sheriff of .....County, Minn.
By .....
Deputy.

State of Minnesota, }ss.
County of .....

I hereby certify and return that by virtue of the within writ of attachment I have on the .....day of ....., 19....., attached all the right, title and interest of the ~~judgment debtor~~ defendant .....in said writ named in and to all of the personal property of which the following is a true description and inventory, to-wit; .....

by .....
(State how as case may be under Sec. 9428-9432 Gen. Stat. 1923)

Clerk of District Court
Scott County, Minn.
FILED
AUG 1 1969
HUGO P. HENTGES, Clerk
Deputy

.....
Sheriff of .....County, Minn.
By .....
Deputy.

State of Minnesota, }ss
County of .....

I hereby certify that I have compared the within copy of _____ and my inventory of levy thereon as above, with the original in my possession, and that the same are true and correct copies therefrom and the whole thereof.

Witness my hand this _____ day of _____ 19____

.....
Sheriff of _____ County, Minn.
By _____, Deputy.

State of Minnesota,
County of ..... DISTRICT COURT

RECEIVED
JUL 24 3 36 PM '69
SHERIFF RAMSEY COUNTY
PERMIT HEDMAN
DEPUTY

Writ of Attachment

OFFICE OF REGISTER OF DEEDS .....County, Minn.

I hereby certify that the within certified copy of writ of attachment and of the return of the sheriff of .....County, Minnesota, thereon were filed in this office for record on the .....day of .....,
19....., at .....o'clock.....M., and recorded in Book "....." of .....page.....

Register of Deeds.

MILLER-DAVIS CO., MINNEAPOLIS

STATE OF MINNESOTA
County of Ramsey ss.

I hereby certify and return, that at Ramsey County and State aforesaid, on the 25th day of July A.D. 19 69 I served the

Writ of Attachment

hereto attached upon the within named Wm. E. Drexler

personally, by handing to and leaving with him

a true and correct copy thereof and at which time I demanded the within described property from him, which he stated is in the hands of Justice Mahoney,
Dated this 25th day of July A.D. 19 69 Credit River Township.

Taking Property	$
Approving Bond	
Sheriff's Fee Service	2.00
Levy	
Copy	
Travel	.90
Total	$ 2.90

KERMIT HEDMAN,
Sheriff of Ramsey County, Minn.

By R Henderson
Deputy

State of Minnesota,
County of SCOTT

DISTRICT COURT,
FIRST *Judicial District.*

FIRST NATIONAL BANK OF MONTGOMERY, MINNESOTA
Plaintiff

vs.

JEROME DALY
Defendant

THE STATE OF MINNESOTA, TO THE SHERIFF OF SCOTT COUNTY *COUNTY, MINNESOTA:*

You are hereby required and commanded to attach and safely keep ~~the property of~~ transcript of all entries made in the docket of the Justice Court, Credit River Township, Scott County, Minnesota, together with all process and other papers relating to the above action and filed with the said Justice Court. Said transcript, process and other papers are in the possession of either Martin V. Mahoney, Justice of the Peace, Credit River Township, Scott County, Minnesota, or Jerome Daly, Savage, Minnesota,

~~the defendant above named;~~ *not exempt from execution, within your county,* ~~so much thereof as shall be sufficient~~ *to satisfy the amount claimed by the plaintiff in the action above entitled, which is the sum of* possession of the following described tract of land, to-wit: ~~Dollars, and your fees and costs.~~ Lot 19, Fairview Beach, According to the recorded Plat thereof on file and of record in the office of the Register of Deeds in and for the County of Scott and State of Minnesota, with expenses and costs.

WITNESS the Honorable Arlo E. Haering *Judge of the court above named and the seal thereof this* 22nd *day of* July 19 69

Elmer D. Keith
Clerk of District Court.

By *Deputy.*

STATE OF MINNESOTA, COUNTY OF SCOTT
Certified to be a true and correct copy of the original on file and of record in my office
GREGORY M. ESS
Court Administrator
5-9 20 06 By: Audrey K. Brown
Deputy

State of Minnesota, }ss.
County of .....

I hereby certify and return that by virtue of the within writ of attachment I have on the .....day of ....., 19....., attached all the right, title and interest of the ~~judgment debtor~~ defendant .....in said writ named in and to the real property lying in the County of ....., State of Minnesota, described as follows:

.....

Sheriff of.....County, Minn.
By .....
Deputy.

State of Minnesota, }ss.
County of .....

I hereby certify and return that by virtue of the within writ of attachment I have on the .....day of ....., 19....., attached all the right, title and interest of the ~~judgment debtor~~ defendant .....in said writ named in and to all of the personal property of which the following is a true description and inventory, to-wit: .....

by .....
(State how as case may be under Sec. 9423-9432 Gen. Stat. 1923)

.....

Sheriff of.....County, Minn.
By .....
Deputy.

State of Minnesota, }ss
County of Scott

I hereby certify that I have compared the within copy of Writ of Attachment and my inventory of levy thereon as above, with the original in my possession, and that the same are true and correct copies therefrom and the whole thereof.

Witness my hand this 22nd day of July 1969

W. B. Schroeder
Sheriff of Scott County, Minn.
By Cyril W. Maxa, Deputy.

State of Minnesota,
County of ..... DISTRICT COURT

vs.

Writ of Attachment

OFFICE OF REGISTER OF DEEDS
.....County, Minn.

I hereby certify that the within certified copy of writ of attachment and of the return of the sheriff of .....County, Minnesota, thereon were filed in this office for record on the ..... day of ..... 19..... at ..... o'clock ..... M., and recorded in Book ..... of ..... page .....

Register of Deeds.

MILLER-DAVIS CO., MINNEAPOLIS

Form No. 829—Return on Personal Service. (Revised 1954)

☆☆☆ BLANK FOURNIER

State of Minnesota, } ss.

County of Scott

I hereby certify and return that on the 22nd day of July 19 69 at the Village of Savage in said county and state I served the attached Writ of Attachment upon Jerome Daly therein named personally by handing to and leaving with him a true and correct copy thereof.

Mileage - - -	$	W. B. Schroeder
Cop - - -	$	Sheriff of Scott County, Minn.
Fees - - - -	$ 2.00	
Total - - -	$ 2.00	By Ogrid W. Masal Deputy

Form No. 829—Return on Personal Service. (Revised 1954)

☆☆☆ BLANK FOURNIER

State of Minnesota, } ss.

County of Scott

I hereby certify and return that on the 22nd day of July 19 69 at the Township of Credit River in said county and state I served the attached Writ of Attachment upon Martin V. Mahoney, Justice of the Peace, Credit River Township, Scott County, Minnesota therein named personally by handing to and leaving with him a true and correct copy thereof.

Mileage - - -	$ 6.00	W. B. Schroeder
Cop - - -	$	Sheriff of Scott County, Minn.
Fees - - - -	$ 2.00	
Total - - -	$ 8.00	By Ogrid W. Masal Deputy

Scott County Sheriff's Office
PUBLIC SAFETY BUILDING
Shakopee, Minnesota-55379

W. B. SCHROEDER
SHERIFF

23 July, 1969

McGuire & Melby
Attorneys at Law
Montgomery, Minn.

Mr. Mellby:

Regarding the service of Writ of Attachment concerning First National Bank of Montgomery vs Jerome Daly. The following is a summary of the events concerning the above service.

The Writ of Attachment was served upon Mr. Jerome Daly at his office in the Village of Savage, Minnesota on 22 July, 1969. At this time he questioned the posting of the bond and the legality of the paper. He then said he wanted to study the writ for a day and would contact me later on it. He was advised that he would not have the time and that demand for the property was being made now. At this time he told me to advise those concerned that "he refused to talk about the matter."

I then went out to Justice of the Peace Martin V. Mahoneys farm in Credit River township and made service upon him in the same matter. He advised me that he did not have any of the papers involved in this matter and that Mr. Jerome Daly of Savage had all the papers in the matter.

Yours Truly
Cyril W. Maxa
Cyril W. Maxa
Deputy Sheriff

STATE OF MINNESOTA — IN DISTRICT COURT

COUNTY OF SCOTT — FIRST JUDICIAL DISTRICT

First National Bank of Montgomery, Minnesota,

Plaintiff

-vs-

AFFIDAVIT FOR ATTACHMENT

Jerome Daly,

Defendant

* *

STATE OF MINNESOTA)
) ss
COUNTY OF LE SUEUR)

Theodore R. Mellby, being duly sworn, on oath says; that he is the attorney for the plaintiff in the action above entitled; that a cause of action for unlawful detainer exists against said defendant in favor of said plaintiff; that the amount of the claim of plaintiff in said action is possession of the following described tract of land, to-wit:

> Lot 19, Fairview Beach, according to the recorded Plat thereof on file andof record in the office of the Register of Deeds in and for the County of Scott, State of Minnesota;

that the ground of said claim and the nature and basis thereof is as follows, to-wit:

> Complaint in the above entitled action is made a part hereof as Exhibit "A".

That judgment for defendant was entered in Justice Court, Credit River Township, County of Scott, State of Minnesota, on December 9, 1968. Plaintiff duly appealed therefrom to the above Court. The Justices of the Peace who heard said cause of action wrongfully refused to make return on appeal to the above Court. Authority for attachment proceedings is found in M.S.A. 566.14.

Further affiant saith not, save that he prays that a writ of attachment issue against the transcript of all entries made in the docket

of the Justice Court, Credit River Township, Scott County, Minnesota, together with all process and other papers relating to the above action and filed with the said Justice Court. Said transcript, process and other papers, are in the possession of either Wm. E. Drexler, 1602 Selby, St. Paul, Minnesota, or Martin V. Mahoney, Credit River Township, Scott County, Minnesota, or both, or Jerome Daly, Savage, Minnesota.

Theodore R. Mills

Subscribed and Sworn to Before
Me this 17th day of July, 1969.

Wilma V. Fortney

Wilma V. Fortney, Notary Public
Le Sueur County, Minnesota
My Commission expires November 23, 1971

TO THE CLERK OF SAID COURT:

On filing the within affidavit and a Bond approved by me in the within entitled cause, it is hereby ordered that Writ of Attachment issue as prayed for in the within affidavit

Dated: July 22, 1969

Otto C. Haering

Judge of said Court.

STATE OF MINNESOTA

COUNTY OF SCOTT

IN JUSTICE COURT

TOWNSHIP OF EAGLE CREEK

First National Bank of Montgomery,
Minnesota,

Plaintiff

-vs-

COMPLAINT

Jerome Daly,

Defendant

* *

I.

That the defendant is in possession of Lot 19, Fairview Beach, according to the recorded Plat thereof on file and of record in the office of the Register of Deeds in and for the County of Scott and State of Minnesota, and was the owner in fee thereof at the time of the execution of the mortgage hereinafter mentioned.

II.

That on May 6, 1964, defendant made and delivered to plaintiff a mortgage of said premises to secure the payment of a promissory note for Fourteen Thousand and no/hundredths ($14,000.00) Dollars, then made and delivered by defendant to plaintiff; that on April 21, 1967, said mortgage was recorded in the office of the Register of Deeds for said County as document #113731.

III.

That thereafter, default having been made in the payment of the principal and interest of said note and mortgage, plaintiff duly foreclosed said mortgage by advertisement under a power therein, and duly caused the same to be sold by the Sheriff of said County at public auction on June 24, 1967, in conformity with the Statute in such case made and provided; that at said sale plaintiff was the purchaser of said premises and said Sheriff duly made and delivered his official certificate of said sale as provided by Minnesota Statutes 580.12; that on July 7, 1967, said certificate was

recorded in the office of the Register of Deeds for said County as documents #114393 and #114394.

IV.

That more than one (1) year has elapsed since that date and no redemption has been made therefrom and the time for redemption therefrom has expired.

V.

That by reason thereof and of the Statute in such case made and provided, plaintiff is the owner in fee and entitled to the immediate possession of said premises.

VI.

That defendant withholds possession thereof from plaintiff.

WHEREFORE, plaintiff demands judgment for the restitution of said premises and costs and disbursements.

MCGUIRE & MELLBY

/s/ Theodore R. Mellby
Theodore R. Mellby
Attorney for Plaintiff
Montgomery, Minnesota 56069
Tele: 364-7327

AFFIDAVIT OF SURETY

STATE OF MINNESOTA — IN DISTRICT COURT

COUNTY OF LE SUEUR — FIRST JUDICIAL DISTRICT

* * * * * * * * * * * * *

FIRST NATIONAL BANK OF MONTGOMERY,

Plaintiff

-vs-

JEROME DALY,

Defendant

* *

STATE OF MINNESOTA)
) ss
COUNTY OF LE SUEUR)

Frank Dolejs, being duly sworn, on oath says: That he is one of the sureties on the hereto attached:

That his full name, residence, and Post Office address, are as follows:

FRANCIS DOLEJS, Montgomery, Minnesota.

That he is not a surety on any other bond, recognizance, or undertaking, in any other civil or criminal case, except as follows: NONE

That the following is the legal description of each tract of real property owned by him, its fair market value, all liens and encumbrances thereon, and whether or not the same is a homestead or otherwise exempt from execution, to-wit:

(SEE BELOW)

The the following is a true statement and description of all personal property owned by him, its fair market value, all liens and encumbrances thereon, and whether or not the same is exempt from execution:

50% of outstanding capital stock of Montgomery Oil Company, Inc.

Francis Dolejs

Subscribed and sworn to before me this 18th day of July, 1969.

Wilma V. Fortney

Wilma V. Fortney, Notary Public
LeSueur County, Minnesota
My commission expires, November 23, 1971

AFFIDAVIT OF SURETY

STATE OF MINNESOTA — IN DISTRICT COURT

COUNTY OF LE SUEUR — FIRST JUDICIAL DISTRICT

FIRST NATIONAL BANK OF MONTGOMERY,

Plaintiff

-vs-

Jerome Daly,

Defendant

* *

State of Minnesota)
) ss
County of Le Sueur)

Elroy Mladek, being duly sworn, on oath says: That he is one of the sureties on the hereto attached:

That his full name, resident and Post Office address, are as follows:

ELROY MLADEK, Montgomery, Minnesota

That he is not a surety on any other bond, recognizance, or undertaking, in any other civil or criminal case, except as follows: NONE

That the following is the legal description of each tract of real property owned by him, its fair market value, all liens and encumbrances thereon, and whether or not the same is a homestead or otherwise exempt from execution, to-wit:

(SEE BELOW)

That the following is atrue statement and dexcription of all personal property owned by him, its fair market value, all liens and encumbrances thereon, and whether or not the same is exempt from execution:

797 Shares of common stock of Mladek's, Inc.

Elroy Mladek

Subscribed and sworn to
before me this 18th day of
July, 1969.

Wilma V. Fortney

Wilma V. Fortney, Notary Public
Le Sueur County, Minnesota
My commission expires November 23, 1971

STATE OF MINNESOTA

COUNTY OF SCOTT

IN DISTRICT COURT

FIRST JUDICIAL DISTRICT

First National Bank of Montgomery, Plaintiff,

vs.

Affidavit of Jerome DAly

Jerome Daly Defendant.

STATE OF MINNESOTA
SS
COUNTY OF SCOTT

Jerome Daly, being first duly sworn deposes and states that he is Defendant in the above entitled action.

That I was not served with, nor was the application for an Order nor were the Order to Show cause served upon Justice Mahoney dated June 24,1969 served upon me. I therefore make a special appearance in the above entitled action and object to the Jurisdiction of the Court to proceed in any way, shape or manner in the proceedings set down for June 27,1969 at Glenco, Minnesota.

That attached hereto are issues of Myer's Finance Review of May 27, June 4 and June 9,1969. That this is only an example of the World Wide publicity given the Credit River decision by this International Publication and numerous other International PUblications seen by me.

That the decision has recieved World wide approval by correct thinking people every where. The only exigency that exists now is that the mob bungled; they have now set the scene for a World wide depression so that they(the Bankers) can steal the property of the people with a Banker caused depression by 8 1/2 to 15 % interest rates and tight money, but the Credit River Decisinn, now known as "JUDGMENT AT CREDIT RIVER", has ripped a hole in their hull that they can never repair. Mahoney should be cited for bravery and not for conteempt.

Jerome Daly

JErome Daly
Defendant
28 East Minnesota Street
Savage,Minnesota.

Subscribed and sworn to before me
this 26th day of June,1969

Martin V. Mahoney

Martin V. Mahoney
Justice of the Peace
Credit River Township
Scott County; Innesota

STATE OF MINNESOTA, COUNTY OF SCOTT

Certified to be a true and correct copy
of the original on file and of record
in my office
GREGORY M. ESS
Court Administrator

5-9 20 06 By Audrey K. Brown
Deputy

$ MYERS' REVIEW $
1940 1969

903 LANCASTER BLDG., CALGARY 2, ALBERTA, CANADA TELEPHONE (403) 269-1103

No. 67 LET THE TRUTH BE TOLD May 27, 1969

This letter goes to all U.S. Senators and House of Reps; and all members of the Canadian House of Commons -- compliments of MFR. I consider this to be the biggest scoop I have ever had, or even seen in a lifetime of journalism. Lay you a silver dollar it will not be published by the W.S.J. or the N.Y.T.

THE MINNESOTA BOMBSHELL

U.S. COURT RULES

FEDERAL RESERVE NOTES ARE NOT MONEY

Under a TRIAL BY JURY a Federal Reserve Bank has foreclosed on a mortgage, but was unable to obtain possession of the property. The mortgage is null and void.

RESULT -- All mortgage paper held as a result of the creation of credit (money) by Federal Reserve banks are void. Bonds arbitrarily created by bookkeeping entries also are without legal consideration -- also null and void. As this works its way back up the system the results are beyond comprehension.

A U.S. court has refused to accept Federal Reserve notes as payment for fees for an appeal by a Federal Reserve Bank -- Declared the notes NOT MONEY under the constitution. Appeal denied.

RESULT -- The Federal Reserve Act #432 is unconstitutional -- null and void -- and U.S. paper currency is void.

Unless the Minnesota court is forced to break precedent and reopen the case, the reverberations will be interesting.

* * *

THE STORY

The story -- like all great stories -- is simple. On May of 1964 Jerome Daly, an attorney in Savage, Minnesota received $14,000, gave the bank a note, and secured the note with a mortgage on real property in Scott County, Minnesota. In Spring 1967 the mortgagee being in arrears $476, the bank foreclosed by advertisement and bought the property in at a sheriff's sale June 26, 1967. The mortgagee did not pay within the alloted 12 month period following the sale and so the bank brought action for the possession of the property.

> A confrontation exists between the Constitution of the United States and the Federal Reserve System. The confrontation crystallized when all gold and silver backing was withdrawn from U.S. money. The constitution forbids the settling of debts with fiat money. Continuation of fiat money nullifies the constitution of the United States of America.

Two justices were disqualified by affidavit of prejudice; the first by the mortgagee, the second by the bank. A third justice refused to have anything to do with the case. So it went to trial by jury before Martin V. Mahoney, Justice of the Peace, Credit River Township, Scott County, Minnesota.

On December 7th, 1968 the jury found both the note and the mortgage to be void for lack of a lawful consideration given by the bank. And the U.S. constitution plainly states that there must be a lawful consideration.

The bank applied for appeal to the big court -- the DISTRICT Court of Minnesota, and offered two $1 bills which the State of Minnesota turned over to Justice Mahoney as the required fee for the appeal. Justice Mahoney refused to accept the bills because they could not be converted as required under the U.S. constitution. Mahoney invited the bank to a hearing to "show cause" how they could consider the $1 bills as being money. The bank did not appear at this hearing. The appeal was denied. The time expired. Under the laws of the United States the case is closed.

THE JUDGMENT

The judgment was as straightforward as the story. Like all great judgments it was simple. In part it reads as follows:

"The issues tried to the jury were whether there was a lawful consideration... Mr. Morgan (president of the bank) admitted that all the money or credit which was used as a consideration was created upon their books, that this was standard banking

In the U.S. the constitution is SUPREME. The judiciary, the executive, and the Congress itself hold office only by virtue of and through the constitution. The first thing a new president swears is to UPHOLD THE CONSTITUTION -- not to change it, subvert it, evade it -- but to be the CHAMPION of the constitution. The Federal Reserve says that the fiat Federal Reserve notes must be accepted in settlement of debt. The constitution says "NO".

practice exercised by their bank in combination with the Federal Reserve Bank of Minneapolis...Further he (Mr. Morgan) knew of no United States Statute or Law that gave the plaintiff (the bank) the authority to do this.

"At 12:15 on December 7, 1968 the jury returned its unanimous verdict for the defendant.

"It is hereby ordered, adjudged and decreed:

(1) The plaintiff (the bank) is not entitled to recover possession of Lot 19 Fairview Beach...

(2) That because of failure of a lawful consideration the note and mortgage dated May 8, 1964 are null and void.

(3) The sheriff's sale of the above described premises held on June 26, 1967 is null and void, of no effect.

(4) That the plaintiff has no right, title or interest in said premises or lien thereon, as is above described."

The judgment was written on December 9, 1968 by Justice Martin V. Mahoney and followed by a memorandum:

"The bank admitted... that it did create the entire $14,000 in money or credit upon its own books by bookkeeping entry. That this was the consideration for the mortgage. The money and credit first came into existence when they created it. Mr. Morgan admitted that no United States Law or Statute existed which gave him the right to do this.

"Plaintiff's act of creating credit is not authorized by the constitution and laws of the United States, is unconstitutional and void, and is not a lawful consideration in the eyes of the law to support anything or upon which any lawful rights can be built.

"No complaint was made by plaintiff that plaintiff did not receive a fair trial. From the admissions made by Mr. Morgan the path of duty was made direct and clear by the jury. Their verdict could not have reasonably been otherwise. Justice was rendered completely and without denial, promptly and without delay, freely and without purchase, comfortable to the laws in this court on December 7, 1968."

"Note: It has never been doubted that a Note given on a consideration which is prohibited by law is void."

THE APPEAL

The bank then appealed the case to the District Court and offered two $1 Federal Reserve notes. Justice Mahoney wrote:

"Subdivision 4 thereof requires that $2.00 shall be paid within ten days to the Clerk of the District Court for the use of the Justice before whom the cause was tried.

"U.S. Constitution Article 1 Section 10 provides 'No state shall make anything but gold and silver coin a tender in payment of debts.'

"These Federal Reserve notes are not lawful money within the contemplation of the constitution of the United States and are null and void. Further, the notes on their face are not redeemable in gold or silver coin nor is there a fund set aside anywhere for the redemption of said notes. The notes were without any lawful consideration and therefore void."

The court offered the plaintiff a full and complete hearing to present evidence why it considered that the Federal Reserve notes were lawful money. The defendant did not show up.

* * *

The defendant appealed to the District Court in the State of Minnesota, and the District Court ordered Justice Mahoney to appear to show cause why he should not file in the District Court a transcript of all the entries, etc. -- which he had refused to do.

In order to show cause Mahoney upon motion of Daly ordered a hearing for the purpose of making Findings of Fact and Conclusions of Law.

Citing the constitution of the United States Mahoney concluded 'This creation of money or credit upon the books of the bank constitutes the creation of fiat money by bookkeeping entry. The first time that money comes into existence is when they create it on their bank books. The banks create it out of nothing."

The Federal Reserve Bank of Minneapolis obtains Federal Reserve notes (your paper currency)... for the cost of printing of each note, which is less than 1¢. The Federal Reserve Bank must deposit with the Treasurer of the U.S. a like amount of bonds for the notes it receives. But the bonds are without lawful consideration too, as the Federal Reserve Bank created the money and credit upon their books by which they acquired the bond. With their bookkeeping creating credit National banks obtain these notes from the Federal Reserve Banks.

"The net effect of the entire transaction is that the Federal Reserve Bank... obtains Federal Reserve notes (your paper money) for the cost of printing only.

"The Federal Reserve notes in question are unlawful and void on the following grounds:

"(a) Said notes are fiat money...There is no mode provided for the enforcement of the payment of the notes in anything of value.

(b) "The notes are obviously not gold or silver coin.

(c) "The sole consideration paid for the notes is in the neighbourhood of 9/10ths of 1¢, and therefore, there is no lawful consideration behind said notes.

(d) ..."Title 31USC Section 462 which attempts to make Federal Reserve notes... a legal tender for all debts, public and private, is unconstitutional and void in contrary to Article 1 Section 10 of the constitution."

THE CONSTITUTION

Some other pertinent observations by Justice Mahoney were as follows:

Justice Mahoney claimed that the Federal Reserve money, even if backed by an Act of Congress is in violation. He says:

"An Act of Congress in violation of the constitution confers no rights or privileges. See 16AM JUR 2D 'Constitutional Law' Sections 177 through 179."

Also he cites 36AMER JUR on money. Section 9 ..."When the inability of a bank to redeem its notes is openly avowed they instantly lose their character as money and their circulation as currency ceases."

* * *

Of the activities of the Federal Reserve banks Justice Mahoney states:

"No state can make these notes a legal tender. Congress is incompetent to authorize a state to make these notes a legal tender.

"The constitution is the supreme law of the land. Section 432 (requiring creditors to accept paper money as lawful payment) is unconstitutional and void and I so hold.

'The two Federal Reserve notes are not a valid deposit of $2.00 with the Clerk of the District Court for the purpose of effecting an appeal from this court to the District Court.

"The common law requires a lawful consideration

for any contract or note."

The Justice contended that whenever there is not a lawful consideration -- that is someone gave up something to make a contract -- there is no contract. Since the Federal Reserve Bank gave up nothing in creating $14,000, it had no contract. He says:

"The Federal Reserves notes are acquired through the use of unconstitutional statutes and fraud."

Justice Mahoney also branded as illegal the silver sandwich coins quoting the constitution to state that only Congress has the authority to coin money, regulate the value thereof, and fix the standard of weights and measures. The last time the Congress did this was on February 28, 1878 when it fixed the silver $ at 412.5 grains troy weight of silver. "The Congress cannot abdicate or delegate these legislative powers."

Usurpation by the executive or his agents is void. Thus the silver clad coins are a debasing of the coin when once the standard has been fixed. They also are not a legal tender and are unconstitutional and void.

Justice Mahoney says that the question whether the U.S. government has the power to incorporate a bank is immaterial to the issue in any case.

"Such a corporation certainly cannot have any more rights than a natural person. The emission of bills of credit upon their books, without consideration and the issuance of Federal Reserve notes without consideration, to circulate as a legal tender for the payment of debts is not permitted, expressly or implied by the constitution of the United States."

THE MEANING

Regardless of what pro and con arguments there may be about jury theory, we have here a precedent of fact. A bank has a mortgage. The person who borrowed the money has not paid it back. The bank is not able to get it back. The bank is not able to seize the property. Why?

* * *

Because the bank gave up nothing in the first place except some ink. And this is against the constitution. And there is no law anywhere in the United States which gives the bank the right to make money out of nothing and then to seize a man's property because he does not pay that money back.

Can this be changed? Only by an ammendment to the constitution. This can be done as follows:

The ammendment which would allow fiat money and which would allow people to take over rights without giving up anything is in its face ridiculous. But even if it were not, it would have to pass both Houses of Congress by a two-thirds majority. After that it would have to receive the approval of the legislatures of three-quarters of the states of the United States of America.

Meanwhile the constitution of the United States is in direct conflict with Federal Reserve Law.

If you have a rule book, and if someone can break a rule in the rule book for the convenience and what seems to be common sense, then you must conclude that any other rule in the rule book can be broken -- and that you must throw the whole rule book away -- because there is not one rule which you can depend upon.

If this part of the constitution can be negated by the judiciary, by the executive, or by anyone, then any part of the constitution of the United States can be broken when deemed advisable by the judiciary or the executive.

If this part of the constitution can be breached there is no constitution in the United States of America. All is lip service. Guaranteed rights, privileges, and freedoms are a forgotten dream.

Mr. Nixon and the judiciary have sworn to UPHOLD the constitution. Let's see if they will.

DISTRIBUTION

Besides the legislators already mentioned, this letter is going out to the following:

IN CANADA -- Prime Minister Trudeau, Foreign Min. Sharpe, Fin. Min. Benson -- to the financial editors of the Calgary Albertan, Toronto Globe and Mail, Financial Post, Toronto Star, Montreal Gazette, Ottawa Citizen, Winnipeg Free Press, Vancouver Sun, and others.

IN THE U.S. -- Financial editors of the Wall Street Journal, New York Times, Time Magazine, U.S. News & World Report, Newsweek, Readers Digest, Business Week, Los Angeles Times, San Francisco Chronicle, Seattle Post, Denver Post, Washington Post, Houston Chronicle, Chicago Tribune. Secretary Kennedy, McChesney Martin, Jr.

ABROAD -- It goes to Rt. Hon. Harold Wilson, Edward Heath, Enoch Powell, and the finance ministers Strauss of Germany, Belgium, Netherlands, Italy, France. To Blessing of the Bundesbank and to the presidents of the Swiss Big Three -- Swiss Credit, Union and Swiss Bank Corp. It goes to S.A. Finance Minister Diederichs and to the financial editors of London Financial Times, La Monde and N.Y. Herald Tribune in Paris.

* * *

For a full reproduction of the judgment, Findings of Fact, Precedent, etc. these are contained in a publication called The Daly Eagle, Savage,Minnesota, at $2.00 per copy. This information is offered without either approval or disapproval by the Daly Eagle.

THE BIG PICTURE

If the banks cannot collect real property on their mortgages, their mortgage paper becomes worthless. However, their obligations to their depositors remain the same. What happens to your cash money deposited with these banks?

The question is too big for me and I leave it as an exercise for your imagination.

If you don't have to accept Federal Reserve notes in payment of debt -- and the constitution says you don't -- and if you demand gold or silver, how many debts will be paid? Can you demand real property?

I don't know any of these answers. But I know that the Federal Reserve law came into confrontation with the constitution when Johnson and Fowler persuaded Congress to take all backing from behind the American $ so that gold could be paid out to foreigners.

THAT MADE U.S. MONEY ILLEGAL AND THAT IS WHY JEROME DALY STILL HAS HIS PROPERTY IN MINNESOTA AND THE BANK CANNOT COLLECT IT.

Does this mean you don't have to pay your mortgage? Again, I don't know. One man didn't.

The thing for you to recognize is that the U.S. money system is in DEEP, DEEP trouble.

SILVER-Going-Going-GONE

In 1941 the U.S. Treasury had 3000 mm oz.

In 1961 the U.S. Treasury had 1900 mm oz.

In 1969 the U.S. Treasury has 1 mm oz? NO. One-sixth of 1 mm oz.

Last year U.S. industry used 145 mm oz. U.S.

produced 35 mm oz. Did that mean imports of 110 mm oz? It did not. The U.S. was a net exporter.

The U.S. exported the entire 35 mm oz. it produced. It exported 20 mm oz. besides that; and the entire 145 mm oz. used by industry came out of the shrinking Treasury storehouse.

Today with approximately NOTHING left the sales go on. Indeed they are accelerating. Because now coinage can be melted into bars and shipped out of the country.

In 1968 net silver export was about equal to the net export of the previous three years combined. Now the Treasury has thrown open its meagre resources for the world to bid on.

YET the U.S. Navy must be rebuilt as a nuclear fleet which means strategic use of a small mountain of silver.

The world uses 200 mm oz. more each year than it produces. There is NO storehouse of silver anywhere.

THE SILVER PRICE

Handy & Harman last week estimated publicly that the break even point for coinage holders -- considering transporation, refining, etc. -- would be $1.65 to $1.75 per oz. Recognizing the source as the greatest of all silver bears it seems reasonable to accept this price range as an absolute FLOOR. One might quite reasonably call $1.75 the absolute floor.

This confirms my opinion expressed in the last month or so that we are at the bottom of the silver market and that there is really no foreseeable circumstances under which we can decline from the $1.70 to the $1.80 range. People don't sell to break even.

THEREFORE it seems to me that the downside risk on silver from here on is nil and the upside potential is unknown, unlimited, and in the wide blue yonder.

If the confidence is to hold out or even if the question of the legality of paper money increases -- the scramble for silver and gold will be unimaginable. There are only a few ounces left of silver for each of the people of the U.S., and there is no gold.

When fiat money once comes into serious and widespread doubt we are at the end of the end. The doubt at this time is serious but as yet is not widespread.

HERE WE STAND

In the first issue of MFR on March 3, 1967 I said: "The monetary systems of the world are directly over a time bomb -- which is at this moment ticking in Washington." I recommended heavy purchases of silver and predicted the Treasury would be forced to surrender the silver price of $1.29 per oz. It did surrender on May 17th.

In November of 1967 I stated "It is now time to buy gold and gold stocks." In March of 1968 the world gold pool fell apart.

This is the ONLY letter which has consistently recommended 100% investment in gold and silver and gold and silver stocks. Not 10%; not 20%; not 30% -- BUT 100%.

I am at a considerable loss of patience with those letters which continually point out the weakness of the monetary system, the strength of gold and the strength of silver, and predict a stock market debacle -- and at the same time recommend 20% investment in gold and silver.

Why should we take an 80% risk?

All of the silver stocks and all of the gold stocks combined come nowhere near total capital of one big company on the New York board -- IBM or GM. Imagine then the indescribable scramble for silver and gold if paper currency crumbles.

But 99% of the public still crowd the board rooms, still talk of a great new bull market, still see no danger in the paper money system. That is the reason why no big move has until this time developed in silver, gold or the stock market.

Your full appreciation of this letter will only arrive when the stampede begins. And you must imagine this stampede yourself because I am not going to try to envision it for you.

This letter has stood and still stands on this simple dictum: 100% investment in gold and silver and gold and silver stocks -- out of the stock market completely -- bonds may be good but may be worthless. A debt moratorium enters the picture for the first time as a possibility.

CASH

Until now I felt that the next best thing to gold and silver was cash. This case in Minnesota casts grave doubts. I do not know if cash will lose its value but I KNOW that gold and silver and gold and silver stocks will not.

You are privileged to be ahead of the big stampede To avoid it you have to be early.

THE CURRENCIES

The U.S. suffered its greatest quarterly loss since 1950. France on May 14th suffered its second greatest weekly loss since the big strike in May 1968. The Lb. has seen no revival -- no remedy is in sight. Germany took in between $4 and $5 billion, and $3 billion has stayed tight.

The June 1st French election is near. Keisinger of Germany visited Japan last week. Strauss, economic minister, visited Harold Wilson.

S. Africa has disposed of nearly $150 million in gold -- whether on the free market or to monetary authorities we do not know.

The currencies are vulnerable to tidal events which will come in a series. If the upcoming tide in June does not sweep them away, the next one will.

This is enough for you to know. You can't expect to pinpoint timing of this historical development to the day or the week, and you can't expect an $80 a year letter to tell you which day you should buy silver so it will go up the next. Or an $8000 letter either.

I have told you to buy silver and gold. When you look back in a year or two whether you bought on the high or the low will be of little consequence. Whether you sold out of the stock market at D.J. 890 or 950 will be of little consequence.

What will count is that this was a matter of financial life or death. The big thing will be that you did it.

RECOMMENDATIONS

If you have not done so, by all means go and do it now.

OFFER

Resulting from new doubts about paper money MFR makes this offer -- 50% of the subscription price for any term if delivered in U.S. silver coinage.

C. V. Myers, Editor.

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903 LANCASTER BLDG., CALGARY 2, ALBERTA, CANADA TELEPHONE (403) 269-1103

No. 68 LET THE TRUTH BE TOLD June 4, 1969

This letter goes to all U.S. Senators and House of Representatives -- compliments of MFR.

MINNESOTA CONSTITUTION -- ARTICLE 9 SECTION 13.
THE LEGISLATURE HAS (1) "NO POWER TO PASS ANY LAW SANCTIONING IN ANY MANNER, DIRECTLY OR INDIRECTLY, SUSPENDING 'SPECIE' PAYMENTS BY ANY PERSON, ASSOCIATION, OR CORPORATION ISSUING BANK NOTES OF ANY DESCRIPTION."

In the English language this means the Minnesota legislature shall have no power to pass any law sanctioning Federal Reserve notes.

This means that if you receive a $1000 cheque in payment of debt and you take it to a state bank in Minnesota you can demand silver coinage. If they refuse to give you silver coinage they forfeit their charter under the laws of the state of Minnesota.

I do not know how many other states have this same provision. It does not matter. Big money can come into the state of Minnesota and demand millions of $'s in silver coinage. If the banks do not comply they would have to close their doors under the laws of Minnesota. The state banks are all tied up with the Federal Reserve system.

Such a move might put out the fire under the melting pots in a hurry.

THE WORLD'S GREATEST DOCUMENT

GUARANTEES GOLD AND SILVER IF DEMANDED

U.S. CONSTITUTION UNASSAILABLE

The U.S. constitution is unassailable. This is the first thing to remember.

"This constitution and the laws of the United States which shall be made in persuance thereof... shall be the supreme law of the land, and judges in each state shall be bound thereby.... All executive and judicial officers... shall be bound by oath or affirmation to support this constitution." -- Article VI.

* * *

The meaning is clear -- laws enacted by Congress must be pursuant to the constitution -- 16AM JUR 20 #177 -- "The construction of a statute which brings it in conflict with the constitution will nullify it... an unconstitutional statute though having the form and name of a law is in reality no law, but is wholly void..

"Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted."

THEREFORE -- if the Federal Reserve Act (now that it has been ammended in fact with fiat money) contravenes the constitution, then according to the same AM JUR reference "it imposes no duties, confers no rights... bestows no power or authority on anyone, affords no protection and justifies no acts performed under it. Insofar as a statute runs counter to the fundamental law of the land it is superseded thereby."

* * *

Your money (Federal Reserve notes) issued under the Federal Reserve legislation contends on the face of the money "This note is legal tender for all debts, public and private."

The constitution says (Article I Section 10) "No state shall make anything but gold and silver coin a tender in payment of debts."

* * *

An argument arises that while the states don't have the right to make anything but gold and silver legal tender, that the Federal government does.

But nowhere does the constitution give the federal government this right. Indeed Article X plainly states "The powers not delegated to the United States ... are reserved to the states respectively or to the people."

Thus the constitution clearly in effect restrains the federal government from making fiat money compulsory legal tender.

* * *

Earlier Federal Reserve notes had promised to pay off in silver, and the $ was defined as 1/35th of an ounce of gold. Current Federal Reserve notes don't promise to pay anything -- a $1 note today does not even promise to pay $1.

But even if the note did promise to pay, the constitution plainly forbids that it be forced on anyone as payment. WHOEVER demands gold and silver may

under the constitution so collect.

Precedents in court are plentiful. AM JUR 2D #8 says "the term dollar means money. Since it is the unit of the money of the country... it cannot mean promissory notes or other evidences of debt.

"Bank notes... are a good tender as money unless specifically objected to.

"Money includes only such bank notes... in actual and general circulation at par with coin as a substitute for coin, interchangeable with coin."

"Bank notes circulate as such only by general consent and usage.. consent and usage is based on the convertibility of such notes into coin at the pleasure of the holder upon presentation to the bank for redemption. But... upon the failure... or inability of the bank to redeem its bills they instantly lose their character as money... the notes become the mere dishonoured and depreciated evidences of debt."

Under Article 1 Section 10 the several states are prohibited from coining money, emitting bills of credit, or making anything but gold and silver coin a tender in payment of debt.

YOU AND THE CONSTITUTION

If you sell 1000 shares of General Motors through Merrill Lynch in Minneapolis for $80,000 -- Merrill Lynch owes you $80,000. They will offer you a cheque. You will take this to a state bank and demand $80,000 in silver coinage of face value. The bank either pays or loses its charter, and closes its doors.

The next day you may buy 1000 shares of General Motors and issue a cheque. Nothing prevents anyone from accepting paper money. Bankers and brokers love paper money and credit. Give it to them. Accept your stock.

The next day you may sell your new General Motors and again demand gold and silver -- under the constitution.

This gives you silver at $1.29 per oz. on face value of coin and gold at $35 per oz. on the standards set earlier by the Congress. Of course they would have the right to pay in either silver or gold since both are legal tender.

If many do this of course, Merrill Lynch will go crazy. Soon Merrill Lynch would refuse to buy any stocks unless paid in gold and silver.

The result is the INTERNAL COLLAPSE OF THE AMERICAN PAPER $.

* * *

If you have money on deposit in the bank you can demand the bank pay you in gold and silver. It seems to me this is true, under your inalienable rights under the United States constitution.

CAN A JUDGE STOP IT?

Will your court judges nevertheless deny you these rights? Here is a precedent.

L. O. Cooke V. Samuel G. Iverson -- 108 Minnesota Report.

"When the language of the constitution is positive and free from all ambiquity, all courts are not at liberty by a resort to the refinement of legal learning to restrict its obvious meaning and to avoid the hardships of particular cases. We must accept the constitution as it reads when its language is unambiquous for it is the mandate of the sovereign power."

Well, it reads 'No state shall make anything but gold and silver coin a tender in payment of debt."

The constitution Article VI -- "The Senate and Representatives.. all executive and judicial officers, both of the United States and the several states shall be bound by oath or affirmation to support the constitution.

CONCLUSION -- No judge or group of judges under his oath can logically rule against Article I Section 10 of the constitution and it is not his business in any way to consider the consequences which may result from his sworn duty to rule for the constitution.

The Edwards V. Kearzey -- Supreme Court of the United States -- "Policy and humanity are dangerous guides in the discussion of a legal proposition. He who follows them far is apt to bring back the means of error and delusion. The prohibition (here) contains no qualifications and we have no judicial authority to interpolate any. Our duty is simply to execute it."

* * *

Likewise it is clear that Article I Section 10 of the constitution contains no qualification, and no judge has any right to interpolate any. His duty is simply to execute it.

The Supreme Court reference above also says this: "Anything that is forbidden by the constitution is void."

I believe it is quite clear and it is my interpretation that the Henry Fowler paper money is strictly and specifically forbidden -- and must therefore be void according to the U.S. constitution and precedent in law.

* * *

16AM JUR 2D #219 -- "When a court is created the judicial power is conferred by the constitution."

The only power the court has is therefore to affirm the constitution.

F.D.R. AND GOLD

From the constitution it becomes crystal clear that Franklin Delano Roosevelt never did have the authority to prohibit U.S. citizens from owning gold. It was and remains their fundamental right under their constitution.

16AM JUR 2D #212 -- "No arbitrary and unlimited power is vested in any department; such power is regarded as a condition subversive to the constitution, and the chief character and evil of tyrannical and despotic forms of government."

Justice Mahoney -- "There is no such thing as the idea of a compact between the people on one side and the government on the other. The compact is that of the people with each other to produce and constitute a government.

"The only instance in which a compact can take place between the people and those who exercise the government, is that the people shall pay them, while they choose to employ them."

USURPATION

Franklin Delano Roosevelt forgot that he was an employee. He usurped the power of the U.S. constitution, defied it and abolished the fundamental guarantee. The U.S. constitution, Article V, says that no person shall be "deprived of... property, without due process of law...."

Roosevelt could legally have deprived people of their gold only by AMMENDING the constitution. He would have had to secure two-thirds majority in both houses and the approval of three-quarters of the legislatures of the various states. Of course, he never could have succeeded, so he circumvented the constitution and took and assumed the power of a despot.

The usurpation of this authority, and the despotism continued for 35 years, and still exists in defiance of

the constitution under Mr. Nixon, the newest presidential servant of the constitution of the United States. By continuing to allow this usurpation Mr. Nixon condones and becomes a party to it.

I refer you to your historical DECLARATION OF INDEPENDENCE.

"When a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them (the people) under absolute despotism, it is their right, it is their duty to throw off such government and to provide new guards for their future security."

The usurpations were as follows:

Your paper money first lost its gold convertibility.

Your paper money next lost its 100% gold backing -- reduced to 40%.

Your paper money next lost gold backing -- reduced to 25% gold cover.

Your paper money next lost its silver convertibility.

Your paper money which promised to pay the sum of one dollar lost even that promise and is now simply entitled "one dollar".

All this amounts to, and qualifies as a "long train of usurpations."

Of course, your guaranteed authoritative right exists in the constitution. It is already there and should not have to be fought for. The wonder of it is that 200 million Americans would stand still like docile sheep in a slaughterhouse.

THE CONGRESS

The case in Minnesota (MFR #67) where Justice Mahoney refused to accept Federal Reserve notes as lawful money, and where he thereby denied an appeal by a Federal Reserve Bank is a breakthrough back to the constitution. Like the ghost of the murdered king, it will continue to haunt Macbeth (the money managers) -- unless someone can reverse Mahoney.

The fact that Jerome Daly of Savage, Minnesota defied a Federal Reserve Bank -- refused to pay his mortgage -- and has rendered the bank impotent to recover real property with unconvertible credit is a ghost that will not rest -- unless someone can take Daly's land away.

Now the U.S. Congress all know about it, and each one knows that the other one knows. I know they know, and you know they know, because I have told them. And I also KNOW that a considerable readership of this letter exists in Washington.

The BIG PRESS has withheld from you the truth about your money which your servants have squandered.

But now the press knows about the Minnesota case -- and they know that each other knows.

Since the Minnesota story is hard news of COMPLETE FACT (not opinion) they have no excuse not to publish this news.

Failure to tell you that a U.S. court* has rejected U.S. currency as money, and made the rejection stick, would amount to strong evidence of press censorship, if not complicity with the BIG money interests.

Now the Congress knows. What are they going to do to support their solemn oath of office to UPHOLD their constitution and yours?

* It has been objected that a Justice of the Peace Court is not a court of record. It IS a court of record in Minnesota -- indeed the oldest court.

WHAT CONGRESS CAN DO

Gold and silver must back the U.S. $. This is inherent in the constitution. Congress must set the measure -- say how much. Congress has not said how much since 1878. Now there isn't enough silver and gold to support the previous standards set by Congress. Article I of the constitution says Congress is to "coin money... and fix a standard of weights and measures." Making a new set of standards for the amount of gold and silver in a United States $ is mandatory. Whatever that amount is set at, will be the new convertible AMERICAN $. Unless Congress does this -- there is no constitution in the United States -- AND YOUR COUNTRY HAS BEEN DESTROYED!

WHAT YOU CAN DO TO PRESERVE THE U.S.A.

Write Congressmen and Senators.

Claim your right under the constitution and choose a decision by jury. If you have a G.I. insurance policy which you intend to cash in, DEMAND gold and silver coin and show them Article I Section 10 of the constitution.

If you do not claim, indeed DEMAND the rights granted you in your constitution, there will be no United States of America for your children.

THE SILVER PRICE

Now it is plain to see why U.S. authorities were so desperate to hold the price of silver; to sell off hundreds of millions of oz. -- all of its stockpile -- and then the melted coins besides.

BECAUSE of the inseparable siamese attachment "gold and silver specie" in the constitution. The silver price of $3 for example, in the light of the developments shown in this letter, would have been capable of bringing down the whole $ structure in short order. People could demand silver specie in payment of debt at $1.29 and sell later at $3.

Even at current prices the paper $ is in peril.

Last spring MFR made the accusation that the U. S. Treasury was selling silver short on the New York Commodity Exchange, and this came from a source in the N.Y.C.E. The Treasury denied this. That does not preclude the probable cooperation of the Treasury with Engelhard Industries and perhaps others to suppress the silver price on the N.Y.C.E. Engelhard obtained half of the dumped Treasury silver and was in a position to sell short on the commodity exchange.

This suppression of the silver futures market in conjunction with the superfluous sales of silver each week successfully kept the price under control, and even at a depressed level.

BUT TODAY YOU CAN GO TO THE MINNESOTA BANKS AND DEMAND SILVER COINAGE AND CLOSE ALL THE STATE BANKS OF MINNESOTA IN A MATTER OF DAYS. This probably exists in other states as well. It may not happen. But it CAN.

GET RID OF SILVER

It seems to be the plan to get all of the silver out of the country as soon as possible. The criminal export of strategic silver from the U.S.A. last year, the complete depletion of Treasury reserves at low prices, and now the encouragement of the export of melted coinage would seem to indicate a plan to rid the country of silver. Under such circumstances the constitution obviously could not be enforced for very real reasons of non-existent silver.

The U.S. executive branch too has mortgaged all

the gold belonging to the citizens under the constitution and refuses to give the citizens an account of the public financial condition. It is your money. It does not belong to Mr. Nixon or to Mr. Kennedy, but they will not tell you the TRUTH on how much is pledged to the I.M.F., Canada and Germany in Roosabonds.

YOUR LOYALTY

Your only loyalty is to the constitution of the U.S. For since when does the owner enthrone the servant? It is your duty to claim and assert your rights under the constitution and to demand from your servants that they honour and obey your constitution. They have no right to ask for your cooperation which in any way helps them to carry out acts contrary to the provisions of the constitution.

The executive branch have usurped the power of the people on money. They are imposters in contradiction of your rights. Their despotic powers have deprived you and your country of all the gold and silver which your constitution says is the only real money. By the usurpation of authority these despots under the cloak of philanthropy have ruined your nation and denuded it of all real money.

When they asked you not to hoard silver they were asking you to turn loose of it so they could melt it, thus deny the banks, and thus sabotage the specie payment section of your constitution. When they ask you not to own gold, they ask you to become an accomplice in subverting your own rights.

If a thief enters your house, can he ask your loyalty? Your help in stealing your own goods?

When your executive branch sells off your Treasury silver coins hot out of the melting pot but keeps them out of the banks they thwart the constitution which tells you that silver is your real money. When they say that gold is no good they sneer at your constitution.

For 35 years they have worked toward the monetary destruction of this great country, admired by all the world -- the U.S.A. Surreptitiously in the night they have bored holes in the monetary foundation.

History tells us no great empire has ever yet survived the implementation of fiat money.

* * *

That is why the founding fathers in their wisdom made gold and silver the basis for all U.S. money forever.

THE STORY

The trigger story to repeat briefly is this:

The case was in Justice Court, Township of Credit River; Martin V. Mahoney, Justice. In the State of Minnesota, County of Scott; plaintiff First National Bank of Montgomery, and defendant Jerome Daly. The bank had loaned $14,000 to Jerome Daly, which had not been paid, and it moved to secure possession of the property in a trial by jury. The jury unanimously rejected the plaintiff on the grounds that it admitted it had created the money out of nothing, and that it knew of no law that allowed it to create money. Therefore there was no consideration. The mortgage was declared null and void - Dec. 9, 1968.

The bank went to appeal in the DISTRICT Court and offered two paper dollars as the standard fee to the Justice of the Peace to transfer the case. Justice Mahoney refused the two dollar bills on the grounds they were not money and he was not required under the State of Minnesota to accept them. However, he invited the bank to a hearing to show cause how they could claim the two paper dollars was money under the law. The bank didn't show up.

The strongest point of this case is that the bank would rather give up $14,000 then be required to prove that Federal Reserve notes are money. They dropped the case, undoubtedly hoping the news would go no further. Appeal was denied Feb. 4, 1969. The story was further brought to light by MFR #67 last week. It is no secret now.

They may claim the Justice of the Peace Court is a low court and carries no precedent in law. But here we have the greatest PRECEDENT IN FACT. Jerome Daly has defied the Federal Reserve system of the U.S. to claim real property on a mortgage. They have not been able to claim it. Justice Mahoney has defied the Federal Reserve system to force him to accept Federal Reserve notes as money under the constitution of the U.S. and they have abdicated and run away from this challenge.

THE CREDIT

The credit for this goes to two patriotic Americans, Jerome Daly and Justice Mahoney, who have the courage to stand up for the constitution. For whatever may be the immediate hardship, these men recognize that if the constitution is gone, the whole country is gone. If you don't protect and claim your rights, eventually they disappear, and your liberties die from lack of use. Your liberties are very sick.

PERMISSION

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THE GOLD PRICE

The gold price has been dropping rather dramatically the last few days. No apparent reason. Obviously there is a concerted move afoot to depress gold. It would not be surprising to find that certain monetary authorities are themselves dumping gold on the free market to push down the dangerous price level contrary to their own Washington agreement of 1968. It has been fully established that the world monetary authorities are not to be trusted. Clandestine and secret agreements are rampant. They can be recognized only by their results. Despite all the manipulations, the situation continually worsens.

* * *

It is surprising how people purposefully disregard solid evidence served up for them on a platter.

For the most part they shrug it off or laugh. The Harry Schultz Letter hits this pretty good when it says: "They laughed at Noah every day it didn't rain."

RECOMMENDATIONS

1. Demand silver whenever possible.
2. Buy silver coinage - all you can get. At 10% to 20% premium, it's a steal. Buy silver bullion in Switz. or buy near month futures - TAKE DELIVERY.
3. Hold silver and gold shares; buy S.A. golds.
4. For those brave enough to withstand the onslaught of the Internal Revenue Service, test constitutionality of FDR's dictatorial removal of your right to own gold.

Note: Nearly all Americans fear the Internal Revenue Dept. They regard it as the POLICE arm of a despotic government.

C. V. Myers, Editor.

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$ MYERS' REVIEW $
1940 1969

903 LANCASTER BLDG., CALGARY 2, ALBERTA, CANADA TELEPHONE (403) 269-1103

No. 68-X LET THE TRUTH BE TOLD June 9, 1969

This letter goes to all U.S. Senators and House of Representatives.

This letter is written as a special service and is not charged against your subscription. It is not within the power of a newsman to give any greater GIFT to his readers than the TRUTH. For that reason I want this short letter to stand out as my GIFT to my subscribers. It is the greatest and most NEEDED truth that I will ever be privileged to publish.

Not only can you own gold, you can go to the bank and DEMAND gold COIN at face value for paper money.

Not Mr. Nixon, not Mr. Kennedy, not Mr. McChesney Martin -- not all of these combined -- have the power to deny you this right -- for they are the servants of the constitution, not its master.

You are agreed, the government is agreed, all of the judges are agreed, and all are universally AGREED that the constitution is supreme. Let them read this and shiver.

YOUR CONSTITUTION SAYS

THAT IF YOU CAN'T OWN GOLD,
NEW YORK STATE CAN CREATE NOBILITY
AND TEXAS CAN JOIN MEXICO

ARTICLE I SECTION 10 -- "No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts or grant any Title of Nobility."

Remember the constitution was made for PEOPLE. Not for Chief Justices, not for bankers, not for politicians, presidents or Treasury secretaries. It was made for 200 million people who are born and live out their lives and die in the country that is called the United States of America. It was made to guarantee unalterably their freedom, and their rights.

It was made because of the oppression that the forefathers had suffered under despotic regimes. It was the banner of FREEDOM. It is epitomized in the Statue of Liberty outside of New York.

THE CONSTITUTION OF THE UNITED STATES IS THE UNITED STATES. It has been the hope of free men all over the world. It is the monumental document of mankind. If it is trampled, if any of its cornerstones can be arbitrarily removed -- these hopes of mankind must perish.

Its language is clear and simple. It was made for the workers, the farmers, the businessmen, the bulk of all the people to understand and read. It's language is so plain that legal learning is not needed in the interpretation of most of its articles and sections.

Please refer back to Article I Section 10: Notice that the founding fathers capitalized certain words for emphasis. In the section "make any Thing but gold and silver Coin a Tender in Payment of Debts" they didn't use the word 'anything'! They said any "Thing". This is the most positive statement possible that no "Thing" whatsoever shall be substituted for gold and silver coin. Not bullion silver, not bullion gold, not paper dollars -- but absolutely and irrefutably coin. Now coin is marked with a face value.

And so this says you can go to the bank and collect the face value marked on gold and silver coin.

* * *

Now please examine this whole section. All items are of equal importance. If a state can make any Thing but gold and silver Coin a Tender in Payment of Debts then it follows as night follows day that Illinois can make a treaty with Canada, Texas can enter into confederation with Mexico, and New York state can create nobility.

CONVERSELY if New York State cannot create nobility and if Texas cannot join Mexico, then every bank in the United States of America is obligated and must pay you gold and silver coin on face value.

ANY JUDGE THAT RULES AGAINST GOLD AND SILVER COIN AS THE FINAL SETTLEMENT OF DEBT RULES FOR THE DESTRUCTION OF THE CONSTITUTION OF THE UNITED STATES AND RULES FOR THE PERMISSION OF STATES TO SEPARATE AND TO CREATE FOREIGN TREATIES.

NO FEDERAL POWER

The federal government has no power whatsoever to decide what is or what is not money.

ARTICLE X -- "The powers not delegated to the United States by the Constitution, nor prohibited by

it to the States, are reserved to the States respectively or to the people."

Now please follow me closely and think hard:

Article X says that the powers that have not been given to the federal government are to be reserved to the States respectively, or to the people. The meaning of reserved is "to be kept back".

THEREFORE each and every power not specifically granted to the federal government is KEPT BACK from the federal government.

Your constitution declares and ordains that YOUR FEDERAL GOVERNMENT HASN'T GOT A LEG TO STAND ON IF IT TRIES TO FORCE YOU TO ACCEPT FEDERAL RESERVE NOTES AS LEGAL PAYMENT FOR DEBTS. It cannot force you to accept platinum, diamonds, feathers, shells, or anything whatsoever.

THE RESULT

IF YOU ARE OWED A DEBT -- IF SOMEONE WRITES YOU A CHEQUE FOR $100 -- AND IF YOU TAKE THIS TO THE BANK, THE BANK MUST GIVE YOU GOLD AND SILVER COIN. If they refuse you, the judiciary must enforce payment, or must seize the bank and its premises and offer for sale.

GOLD EQUALLY WITH SILVER

Now you will notice that the constitution says gold AND silver coin. It does not say gold or silver coin.

The result is that you can demand both gold and silver coin. And your case to demand gold is on an absolutely equal status with silver. The "And" makes the one to the other, no less or more important than the other -- or the one or the other, no less your right than the other.

The truth is that the constitution of the United States unquestionably and in complete ultimacy gives you the right not only to own gold coin but to demand gold coin in payment when you collect, and at face value.

* * *

They will tell you that there are laws to prevent this -- but if there are laws to prevent it, such laws conflict with the constitution. Since this part of the constitution has not been ammended it is the supreme law -- regardless of any other law of Congress. See 16AM JUR 2d #177 -- "The construction of a statute which brings it in conflict with the constitution will nullify it."

* * *

NEWSPAPERS will soon be forced to pick up this story because it is spreading underneath. When they do you will face complications that stagger the mind. For instance, you are required to file income tax returns if you make 600 DOLLARS. But money as defined by your ultimate law must be convertible to gold and silver coin. Therefore your currency is not money. How can a judge rule that you have made money if the constitution says "NO"?

Earle Guy was arraigned on a counterfeit charge on $20 bills in Credit River, Minn; defended by Jerome Daly. Justice Mahoney ruled: "It is not possible to make, counterfeit, forge and pass what is commonly known as Federal Reserve notes as they are already a forgery, are counterfeit, unconstitutional and void, and are in contemplation of law the same as if they never existed." Earle Guy was released.

The ramifications of the forbidden fiat money are devastating.

Yet any judge who rules against mandatory gold and silver convertibility, rules for the disintegration of the U.S.A. by ruling against Article I Section 10 which binds the states together.

With interest rates up 1% again today and Euro-$ interest at 12% the GALLOP has started.

As I see it we will be faced very soon with an emergency meeting of Congress to pass a new standard of weights and measures redefining the dollar.

Since the Treasury has got rid of most of the silver it would appear that the remaining 150 mm oz. would have to be valued at somewhere between $6 and $10 per oz., and gold (if they have $5 billion left at about $200 an oz.

Silver will have to come back into the coinage. No other coinage material is allowed by the U.S. constitution. An ammendment to the constitution -- 2/3 of both Houses, and 3/4 of all states -- would take months in order to kick out silver. Meanwhile current coinage is unsupported in law.

As soon as the newspapers pick up these facts -- as soon as the public becomes informed -- we will be faced with a paper currency crisis greater than the MISSISSIPPI BUBBLE.

Lawyers and judges studying these matters this week are unable to come up with comforting answers

* * *

JEROME DALY SAYS: The Congress can only legislate. The executive can only execute laws. The judiciary can only referee the law. When these three powers are vested in one branch, that is the definitic of a dictatorship.

* * *

CAN YOU OWN GOLD BULLION? The Roosevelt law prohibiting the ownership of gold COIN is obviously not worth the ink it took to write it. Does this mean you can own gold bullion? Logically, the answer seems to be YES, because gold is the raw material of coins. If you are allowed to have bread, can wheat be prohibited; if you are allowed to own a car, can steel be forbidden; if allowed to wear a dress, can you be denied cotton?

THE KERNEL

FIAT MONEY IS FORBIDDEN IN THE U.S.A. IF IT SURVIVES THE U.S.A. DOES NOT.

FOREIGNERS BEWARE

Foreign governments should beware of U.S. Treasury negotiators on money. You face a danger that the grandiose scheme for $10 billion of paper gold could blow right out from under you within domestic America. Don't underestimate the American PEOPLE if they get their dander up.

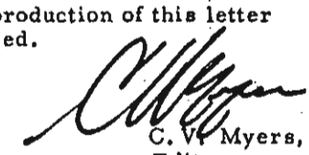
If they ever start to assert rights, which they already have, you face two grave developments.

(1) The American Treasury will be forced to stop sending foreigners any more gold or silver.

(2) A drastic revaluation of the American domestic $ commensurate with the amount of gold and silver left.

DISTRIBUTION

This letter follows MFR No. 68 in going to all cabinet members of Canada, Japan, Mexico, England Germany, France, Netherlands, Belgium, Italy, Israel, Saudi Arabia and South Africa in addition to news media. Unlimited reproduction of this letter (with credit) hereby permitted.



C. V. Myers,
Editor.

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STATE OF MINNESOTA

COUNTY OF SCOTT

IN DISTRICT COURT

FIRST JUDICIAL DISTRICT

First National Bank of Montgomery, Plaintiff,

vs.

RETURN TO ORDER TO SHOW CAUSE

Jerome Daly, Defendant.

Martin V. Mahoney, Justice of the Peace, Credit River Township, Scott County,Minnesota hereby appears specially and not generally and objects to the Jurisdiction of this Court over the subject matter herein and over his person and makes the following return to the Application of An Order and to the Order to Show cause upon the following grounds:

1. That the hearing is not held in the proper County.

2. That I am not a party to the above entitled action and never have been; that the Court has no Jurisdiction over me personally; that the Order of January 30,1969 is not a proper Order and is made without Jurisdiction and does not conform to the proper procedure to perfect an appeal to the District Court.

3. That I did not allow the Appeal because M.S.A. 532.38 was not complied with requiring a deposit of $2.00 within 10 days with the Clerk of the District Court; that thereafter the First National Bank of Montgomery, Minnesota did not proceed against me by Attachment according to M.S.A. 532.43 and 532.44; therefore the Jurisdiction of the District Court on Appeal is not invoked according to Law and the District Court has acquired no jurisdiction over me personally or over the subject matter to compell the allowance of an appeal by attachment or certorari.

4. That it appears that no notice was given to Jerome Daly of these proceedings.

5. That the Plaintiff "Bank" did not appear at the hearing set by me to consider the legal basis for their claim that the paper fiat Federal Reserve Notes are a legal tender.

I certify the above as my return to the Order to SHow cause, together with a copy of this Court's decision of Feb. 6,1969. Martin V. Mahoney

Martin V. Mahoney
Justice of the Peace
Credit River Township
Scott County,Minnesota
USA

June 26,1969

STATE OF MINNESOTA

COUNTY OF SCOTT

IN DISTRICT COURT

FIRST JUDICIAL DISTRICT

First National Bank of Montgomery,

Plaintiff

-vs-

APPLICATION FOR AN ORDER

Jerome Daly,

Defendant

* *

TO: Martin V. Mahoney
Justice of the Peace
Credit River Township,
Scott County, Minnesota

You will please take notice that a Special Term of the above named Court to be held in the Courthouse in the City of Glencoe, McLeod County, State of Minnesota, on the 27th day of June, 1969, at 10 o'clock A.M., or as soon there after as counsel can be heard, the plaintiff will move the Court as follows, to-wit:

1. For an order adjudging Martin V. Mahoney in contempt of the order of the above Court dated January 30, 1969.
2. For an order directing Martin V. Mahoney to comply with the order of the above Court on or before July 3, 1969, or at such later date set by the above Court.
3. If Martin V. Mahoney does not so comply, for an order entering judgment for plaintiff and issuance of writ of restitution in favor of plaintiff.
4. For such other relief as the Court may determine fair and just.

MCGUIRE & MELLBY

BY: Theodore R. Mellby

Theodore R. Mellby
Attorney for Plaintiff
Montgomery, Minnesota 56068
Tel (612) 364-7327

STATE OF MINNESOTA

COUNTY OF SCOTT

IN DISTRICT COURT

FIRST JUDICIAL DISTRICT

First National Bank of Montgomery,

Plaintiff

-vs-

ORDER TO SHOW CAUSE

Jerome Daly,

Defendant

* *

On reading the application for an order attached hereto, and on motion and affidavit of Theodore R. Mellby, attorney for Plaintiff, due showing having been made that an exigency exists. IT IS HEREBY ORDERED that Martin V. Mahoney, Justice of Peace, Credit River Township, County of Scott, State of Minnesota, appear in person before the above Court at 10 o'clock A.M., Friday, June 27, 1969, at a Special Term of Court to be held in the Courthouse, City of Glencoe, County of McLeod, State of Minnesota, or as soon thereafter as counsel can be heard to show cause why he should not be held in contempt of the order of this Court dated January 30, 1969, and why the relief requested in Plaintiff's application for an order should not be granted.

LET THIS ORDER, APPLICATION FOR ORDER, AND AFFIDAVIT, all heretofore attached be served on Martin V. Mahoney by leaving with him copies of the same and exhibiting the original Order with the signature of the Judge of District Court hereto fixed, service to be made forthwith.

BY THE COURT:

Arlo E. Haering
Judge of District Court

DATED AT Le Center, Minnesota this 23rd day of June, 1969.

STATE OF MINNESOTA, COUNTY OF SCOTT

Certified to be a true and correct copy
of the original on file and of record
in my office
GREGORY M. ESS
Court Administrator

5-9 2006 By Audrey K. Brown
Deputy

STATE OF MINNESOTA — IN DISTRICT COURT

COUNTY OF SCOTT — FIRST JUDICIAL DISTRICT

First National Bank of Montgomery,

Plaintiff

-vs-

A F F I D A V I T

Jerome Daly,

Defendant

* *

Theodore R. Mellby, being duly sworn, on oath, deposes and states:

I am the attorney for plaintiff in the above entitled action.

The procedure followed in this action is important to a thorough understanding of the deliberate attempt on the part of Martin V. Mahoney and Jerome Daly to harass bank officials, lawyers and the Court by disregarding the Order of the above Court dated January 30, 1969.

On June 26, 1967, the First National Bank of Montgomery, Minnesota, (hereinafter referred to as Bank) foreclosed its mortgage on real estate owned by Jerome Daly. The mortgage is dated the 8th day of May, 1964, and recorded in the office of the Register of Deeds for the County of Scott, State of Minnesota, as document #113751. The redemption period expired on June 26, 1968, and Jerome Daly refused to peaceably relinquish possession of said real estate.

On August 28, 1968, the Bank commenced an unlawful detainer action against Jerome Daly. Service was not effected at least three (3) days prior to date of hearing.

The unlawful detainer action was refiled with Justice Vern Mabee on 9-9-68 and 9-26-68 but service could not be effected at least three (3) days prior to the date of hearing.

On October 10, 1968, the unlawful detainer action was refiled with Justice Vern Mabee and Jerome Daly was duly served. Jerome Daly served an affidavit of prejudice against Justice Mabee and the file was transferred to Justice Ben Morlock. On October 14, 1968, I filed an affidavit of prejudice against Justice

Morlock. The file was transferred to Justice Martin V. Mahoney.

The unlawful detainer action was tried before Justice Martin V. Mahoney, Credit River Township, Scott County, Minnesota, by a jury of Twelve (12) on December 7, 1968. The Court also included Justice William E. Drexler, 1602 Selby, St. Paul, Minnesota, who informed he was an attorney.

The trial began promptly at 10 o'clock A.M. The defendant, in open Court, requested a jury of twelve (12). This was the first time defendant knew the matter was to be tried to a jury. A jury of twelve (12) was impaneled. I requested to see the list of jurors required by M.S.A. 531.34. The court was unable to furnish me with a list of petit jurors or explain the manner in which these perspective jurors were selected. Because of noncompliance with M.S.A. 531.33, 531.34, and 531.35, I challenged the jury panel and my challenge was denied. At this point Justice Drexler admonished me "Get Going, because he wasn't going to spend all day trying this case". Justice Drexler asked the jury panel several introductory questions and permitted the respective parties to conduct the voir dire. I was personally aware of the fact that William Wildinger, a member of the jury panel, was a handy man in the defendants law office. I asked several questions calling for answers intending to indicate this juror could not be fair and impartial. I moved to strike William Wildinger for cause and Justice Mahoney granted the challenge. Next, I asked Mr. Daly if had represented any of the jury panel in the capacity of an attorney. Ray Warren, a juror, indicated that Mr. Daly had represented him and that his case had been settled on Friday, December 6, 1968. I moved to strike Mr. Warren for cause and Justice Drexler informed me that motions to strike for cause were not allowed in Justice Court. I protested very strongly and was informed by Justice Drexler that the voir dire could not be conducted on an individual jury basis and I would be permitted to ask only questions directed to the entire jury panel. Justice Drexler again announced that he wanted to "get going with this trial so it didn't last all day". With respect to my motion to strike jurors for cause in Justice Court, see M.S.A. 531.41.

At the conclusion of the voir dire the jury panel was down to eleven (11) members. Three talesmen were called making a panel of fourteen (14) jurors. The defendant waived his pre-emptory challenges but I did not. I informed the court that if I exercised all pre-emptory challenges the jury panel would be less than

the twelve (12) requested by the defendant. Justice Drexler informed me that Justice Mahoney's brother was in the back of the Courtroom and that he would be called as a perspective juror if I insisted on using all of my pre-emptories. I objected, my objection was overruled. I struck Mr. Warren and Eric Alstrand and waived my remaining pre-emptory challenges.

Prior to the submission of my evidence I sighted M.S.A. 530.03 and requested to the Court to convene the trial in a more suitable quarters. The Courtroom was connected to a saloon by two inside doors. The saloon and the Courtroom was divided by an area where groceries were on shelves. My motion was denied.

At the conclusion of the trial the defendant submitted requested questions to the jury. I objected, sighting M.S.A. 530.04 which indicates that no Justice of the Peace shall charge the jury. Justice Drexler sustained the objection. Justice Drexler indicated, however, he would allow the defendants requested instructions as an exhibit. I objected and my objection was overruled. The exhibits were numerous and included several books offer by defendant. Plaintiffs exhibits included the banks foreclosure record. The jury deliberated ten minutes.

On march 28, 1969, I was informed that Jerome Daly represented William E. Drexler, William Wildinger, and Leo Zurn in the recnet past. The legal issue raised by Jerome Daly in representing these people, all of whom were involved in the unlawful detainer action before Justice Mahoney, was the unlawful creation of money and credit. I am attaching documents to substantiate this fact. I am also enclosing a list of the jurors I prepared at the time of the unlawful detainer action trial.

The sole argument used by Jerome Daly at the time of trial of the unlawful detainer action was that Federal Reserve Notes did not constitute legal tender and that Plaintiff unlawfully created money and credit. Attached is a permanent injunction restraining Jerome Daly from commencing or prosecuting any suit, action or proceeding in any Court regarding unlawful creation of money and credit.

On December 9, 1969, judgement for defendant was entered in Justice Court, Credit River Township, County of Scott, Justice Martin V. Mahoney. Affiant verily believes Jerome Daly drafted the judgement and decree and memorandum of the Court attatched thereto.

Plaintiff duly appealed therefrom to the District Court, Scott County, Minnesota. On January 6, 1969, Justice Martin V. Mahoney, Credit River Township, Scott County, Minnesota, issued in NOTICE OF REFUSAL TO ALLOW APPEAL, a copy of which is attached. Affiant verily believes Jerome Daly drafted said document asserting the Two dollars ($2.00) remitted to Justice Mahoney was not legal tender.

On January 8, 1969, Honorable Harold E. Flynn, Judge of District Court, Scott County, Minnesota, issued an ORDER requiring Justice Martin V. Mahoney to show cause before his Court on January 17, 1969, why he should not make a return on appeal.

On January 15, 1969, defendant filed an affidavit of prejudice against the Honorable Harold E. Flynn with the Clerk of District Court, Scott County, Minnesota. On January 16, 1969, Honorable Harold E. Flynn issued ORDER TRANSFERRING TRIAL to the Honorable Arlo E. Haering, the Chief Judge of the First Judicial District. Haering on the Order to show cause was noticed for hearing on January 24, 1969.

On January 20, 1969, defendant obtained an exparte order from Justice Martin V. Mahoney ordering plaintiff to appear before said Justice on January 22, 1969, to show cause why the Justice Courts notice of refusal to allow appeal therein should not be made absolute. Plaintiff did not appear.

Hearing on the District Court Order to show cause was duly held on January 24, 1969. On January 30, 1969, Honorable Arlo E. Haering, Judge of District Court, McLeod County ordered Martin V. Mahoney, Justice of the Peace, Credit River Township, County of Scott, State of Minnesota, to make return on appeal to the Clerk of District Court in and for the County of Scott, State of Minnesota.

On February 25, 1969, defendant appealed to the Minnesota Supreme Court. Defendant did not comply with Rule 107, Civil Appellate Procedure. On March 26, 1969, plaintiff made application to the Minnesota Supreme Court for an order dismissing defendant's appeal.

On April 15, 1969, the Minnesota Supreme Court dismissed defendant's appeal.

On June 11, 1969, I contacted the Clerk of District Court, Scott County, Minnesota, and was informed that Justice Martin V. Mahoney had not complied with the order of the Court dated January 30, 1969, by making a return on appeal.

Further Affiant sayeth not

Theodore R. Mellby

Wilma V. Fortney, Notary Public
County of LeSueur, State of Minnesota

My commission expires Nov. 23, 1971

☆☆☆ BLANK POLICE

Form No. 1749—Return for Personal ... ce Exhibition Judge's Signature. (Rev. 1959.)

State of Minnesota,
County of Scott } ss. **I Hereby Certify and Return,** That at the Township of Credit River in County and State aforesaid, on the 24th day of June 1969 I served the hereunto attached Order To Show Cause, Application For An Order, Affidavit upon the within named Martin V. Mahoney personally by then and there handing to and leaving with Martin V. Mahoney a true and correct copy thereof, and at the same time and place exhibiting to Martin V. Mahoney so that he could see and read the same, the original signature of Honorable Arlo E. Haering, Judge of the District Court of Scott County, Minnesota, to said original.

Dated this 24th day of June 19 69.

Sheriff Fees—Service, $4.00
Travel, $4.50
Total, $8.50

W. B. Schroeder
Sheriff of Scott County, Minn.
By George D. Lee Deputy Sheriff

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 19,080

Bernard E. Koll, Appellant,
v.
Wayzata State Bank, et al., Appellees.

Appeal from the United States District Court for the District of Minnesota.

[July 5, 1968.]

Before MEHAFFY, GIBSON and LAY, Circuit Judges.

LAY, Circuit Judge.

Plaintiff brings this action against the Wayzata State Bank and its officers; the Federal Reserve Bank of Minneapolis, Joyce A. Swan, the "Federal Reserve Agent"; First National Bank of Minneapolis; Northwestern National Bank of Minneapolis; and Eileen Cronk, his former wife; for damages allegedly arising out of a conspiracy to deprive him of "rights, privileges and immunities" secured by the Declaration of Independence, Constitution of the United States and the Constitution of the State of Minnesota. The suit alleges it is for $4,250,000.00. Upon motion to dismiss the complaint for failure to state a claim

or for lack of jurisdiction, the trial court without opinion dismissed plaintiff's suit.

Beyond the above description it is impossible from the brief or record to interpret further plaintiff's contentions. The complaint occupies 16 printed pages of disconnected, incoherent and rambling statements. We dismiss for lack of jurisdiction.

Plaintiff is represented by a lawyer, whose unreachable quest is a judicial decree of unconstitutionality of the federal income tax and the federal reserve and monetary system of the United States. See *Daly* v. *United States*, ... F.2d ..., No. 18,906 (8 Cir. filed April 11, 1968).[1] Cf. *Horne* v. *Federal Reserve Bank of Minneapolis*, 344 F.2d 725 (8 Cir. 1965). The present complaint could have been dismissed for failure to comply with Fed. R. Civ. P. 8(a) and 8(e)(1)[2] in that it is "confusing, ambiguous, redundant, vague" and a completely unintelligible statement of argumentative fact. See *Wallach* v. *City of Pagedale, Mo.*, 359 F.2d 57 (8 Cir. 1966) and *Wallach* v. *City of Pagedale, Mo.*, 376 F.2d 671 (8 Cir. 1967). At best the complaint represents a euphoric harassment of bank offi-

1 According to defendants' brief, three similar cases based upon the same contentions have been filed and dismissed on summary judgment motions of the defendants in the Minnesota District Court.

2 Fed. R. Civ. P. 8(a):

"Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded."

Fed. R. Civ. P. 8(e)(1):

"Pleading to be Concise and Direct; Consistency.

"(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required."

cials, lawyers and federal courts. It is difficult to accept that the complaint has been drafted by a person licensed to practice law. To demonstrate the muddled allegations we briefly summarize from the complaint in plaintiff's language:

II. "Congress . . . have treasonably surrendered . . . control over this power of coining and creating the Nation's credit and currency by an unlawful delegation . . . to . . . the Defendants . . . who are dominated and controlled by a small oligarchy of foreign and domestic financiers. . . . Federal Reserve Notes which are not redeemable in either gold or silver coin and are passed out for use by the general public for purposes of swindle, fraud, theft and forgery by the said Defendants."

III. "This suit is brought pursuant to, and for a violation of the following provisions:

"U.S. Constitution, Article 1, Section 8, Clause 5: 'The Congress shall have the power to coin money, regulate the value thereof and of foreign coin.'

"U.S.C.A., Article 1, Section 10—'No state shall coin money. . . .'"

and several sections of the Minnesota Constitution and statutes relating to banking, slavery, due process, government, double jeopardy, self-incrimination, bail and habeas corpus.

IV. The plaintiff is in the insecticide business and has built up in 15 years valuable good will.

V. Plaintiff and defendant Cronk were married on May 4, 1956 and have three children; that the defendant Wayzata State Bank has a mortgage on personal property of plaintiff for $6,000.00. The mortgage is void; the bank has created money and credit by bookkeeping entry and passed Federal Reserve Notes.

VI. That defendant Cronk, plaintiff's wife, knows the bank directors and is in "an unlawful combination" with them. She obtained a divorce in December 1966.

VII. All defendants formed a conspiracy to deprive plaintiff of his rights, property and liberty. This was accomplished by two false imprisonments, the first resulting in an imprisonment for 42 days and the second for 180 days. Both sentences were issued by the Hennepin District Court. This imprisonment is in some way (unexplained) related to a $11,000.00 judgment obtained by plaintiff's wife in the divorce action.

VIII. The above conduct deprived plaintiff of the use of $70,000.00 of his property, because of conduct of defendants not ascertainable at this time.

IX. That defendants have agreed to use unlawful Federal Reserve Notes not redeemable in gold or silver coin to obtain false imprisonment and deprivation of plaintiff's rights and immunities under state law.

X. That all national and federal reserve banks are correspondent banks.

XI. The United States Government does not own any stock in any of the banks and therefore has abdicated its control to private individuals by allowing them to create bookkeeping entries to create money; that such constitutes a common law conspiracy under Minnesota Criminal Statute 609.175; that all monies and properties held by the banks equitably belong to the people since the banks are constructive trustees of the Government.

XII. That the defendant banks pay for Federal Reserve Notes only the cost of the printing. The attempted loan to the plaintiff violates the usury and forgery laws of Minnesota; that after income taxes plaintiff is flat broke; that the Federal Reserve Bank is exempt from taxation, 12 U.S.C. § 531.

XIII. Defendants hold a substantial sum of United States and state securities including their subdivisions.

XIV. Plaintiff is discriminated against because he cannot buy the Federal Reserve Notes for cost as the defendant banks do; he is not permitted to redeem Notes for gold or silver coins as aliens do. That the gold in Ft. Knox is being feloniously transferred to New York where aliens are transporting it out of the jurisdiction of the United States; that this is a continuing and mounting theft.

We have briefly detailed this summary to demonstrate the total obfuscation of the pleading. It is impossible for any party or court to understand plaintiff's alleged claim or damage. No responsive pleading could intelligently be filed by defendants. Cf. *Cole* v. *Riss & Co.*, 16 F.R.D. 116 (W.D.Mo. 1954); *Wallach* v. *City of Pagedale, Mo.*, 359 F.2d 57 (8 Cir. 1966). We, therefore, conclude the complaint should have been stricken for failure to comply with Fed. R. Civ. P. 8(a) and 8(e). See *Legg* v. *United States*, 353 F.2d 534 (9 Cir. 1965); *Car-Two, Inc.* v. *City of Dayton*, 357 F.2d 921 (6 Cir. 1966). However, if this were the sole basis of the lower court's dismissal, the court should have allowed plaintiff sufficient time to amend and plead in compliance with the rules. The lower court did not specify upon which ground or grounds of defendants' motion to dismiss it was relying. We do not assume, in absence of an order giving leave to amend, that the complaint was dismissed under Fed. R. Civ. P. 8(a). In any event, it would be improper for us to affirm dismissal under Fed. R. Civ. P. 8. Cf. *Klebanow* v. *New York Produce Exchange*, 344 F.2d 294 (2 Cir. 1965). And it is clear that a dismissal under Fed. R. Civ. P. 8 would not be an appealable order since it would be lacking finality. *Dann* v. *Studebaker-Packard Corporation*, 253 F.2d 28 (6 Cir. 1958).

We affirm dismissal since the complaint fails to establish any grounds for federal jurisdiction. The federal courts

are courts of limited jurisdiction. Essential to jurisdiction must be a stated "case or controversy." This must be disclosed by the plaintiff's complaint. The only complaint we can glean from the pleading filed is plaintiff's dissatisfaction with the monetary system of the United States of America. But a party cannot seek advisory opinions of the court on constitutional issues without some direct relation or damage involved. Cf. *Flast* v. *Cohen*, 36 U.S.L.W. 4601 (U.S. June 10, 1968).

Plaintiff does not assert, nor could he, federal jurisdiction under 28 U.S.C. § 1331 or § 1391. Plaintiff has not shown that his damage "arises under" federal law or the United States' Constitution. Cf. *Pan Am. Corp.* v. *Superior Court*, 366 U.S. 656 (1961). He relies upon Minnesota law as the basis of an alleged conspiracy. He premises that conspiracy only indirectly upon construction of the Constitution of the United States and totally avoids any allegation of fact tending to show the existence of a federal question. Cf. *Givens* v. *Moll*, 177 F.2d 765 (5 Cir. 1949); *Seeley* v. *Brotherhood of Painters, Decorators and Paper Hangers of America*, 308 F.2d 52 (5 Cir. 1962). One might again struggle with the complaint to say that under *Bell* v. *Hood*, 327 U.S. 678 (1946), plaintiff has attempted to assert a federal question. But the complaint is so unintelligible to allow even this conclusion. Jurisdiction must affirmatively appear clearly and distinctly. *International Ass'n of Machinists* v. *Central Airlines, Inc.*, 295 F.2d 209 (5 Cir. 1961). A mere "suggestion" of a federal question is not sufficient. *Stanturf* v. *Sipes*, 335 F.2d 224 (8 Cir. 1964); *Martin* v. *Graybar Electric Co.*, 285 F.2d 619 (7 Cir. 1961). It must be real and substantial, not conjectural; *Gardner* v. *Schaffer*, 120 F.2d 840 (8 Cir. 1941); and must relate to substance not form; *Regents of New Mexico* v. *Albuquerque Broadcasting Co.*, 158 F.2d 900 (10 Cir. 1947).

Plaintiff does not plead diversity of citizenship of the parties to establish jurisdiction under 28 U.S.C. § 1331. At best plaintiff's case sounds in tort, and as such must fail for lack of diversity of citizenship. Even the defendant Federal Reserve Bank assumes the citizenship of the state in which it resides, which is plaintiff's citizenship, to-wit, Minnesota. See 28 U.S.C. § 1348.

The last possible jurisdictional basis that we can decipher is that plaintiff seeks some relief under 28 U.S.C. § 1342 or § 1391 for violation of his civil rights. However, there is no intelligible claim that plaintiff was damaged by any one acting "under color" of state law, and within the most liberal interpretation of the civil rights cases he does not allege a proper jurisdictional bases here. See *Screws* v. *United States*, 325 U.S. 91, 142 (1945); *Wallach* v. *Cannon*, 357 F.2d 557 (8 Cir. 1966); *McGuire* v. *Todd*, 198 F.2d 60 (5 Cir. 1952) cert. denied 344 U.S. 835 (1952); *Moffett* v. *Commerce Trust Co.*, 187 F.2d 242 (8 Cir. 1951).

Judgment affirmed.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF RAMSEY — SECOND JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

-vs- ORDER

William E. Dresdler,

Defendant.

Upon motion by the plaintiff, Gerald T. Laurio, Special Assistant Attorney General, appeared for the plaintiff and defendant William E. Dresdler appeared pro se in the chambers of Judge Robert V. Rensch at 2:00 P.M. on October 14, 1968.

After hearing the arguments of both parties, it is HEREBY ORDERED

1. That defendant's counterclaim be and hereby is dismissed with prejudice.

2. That the defendant's pro se answer be and hereby is dismissed.

3. That defendant's sole remaining defense is the general denial in paragraph I of the answer and counterclaim filed by defendant's attorney Jerome Daly.

10/17/68

Judge Robert V. Rensch
Ramsey County District Court

STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

FILE NO. 360991

State of Minnesota,

Plaintiff,

-vs-

William E. Drexler,

Defendant.

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO DISMISS DEFENDANT'S COUNTERCLAIM

NATURE OF CONTROVERSY

The State of Minnesota served a summons and complaint on the defendant, William E. Drexler, on September 9, 1968, alleging that he has not paid the penalty and interest on his 1965 and 1966 Minnesota individual income taxes. The plaintiff received, within twenty days after service of the summons and complaint, an answer and a counterclaim from Jerome Daly, attorney for defendant, and an answer from William E. Drexler, attorney pro se. The counterclaim alleged that the State of Minnesota is in conspiracy with the Federal Reserve and national banking system to defraud the defendant and the people generally by the illegal creation of money and bank credit. One million dollars is the relief requested in the counterclaim.

I. SOVEREIGN IMMUNITY

The State of Minnesota cannot be sued by any individual or in any court without its consent. Dunn v. Schmid, 239 Minn. 559, 60 N.W.2d 14 (1953). The legislature of the State of Minnesota has not consented to be sued in this matter. Minnesota Rules of Civil Procedure, Rule 13.04, states:

> "These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the State of Minnesota or an officer or agency thereof."

Thus, the defendant cannot bring the instant counterclaim against the State of Minnesota.

II. PRIOR DECISIONS

Defendant's attorney, Jerome Daly, has been permanently enjoined by Roy L. Stephenson, Chief Judge, United States District Court, Southern District of Iowa, from bringing any claims regarding unlawful creation of money and credit in any court, state or federal. (See attached photocopy of Permanent Injunction dated June 20, 1968.)

In Bernard E. Koll v. Wayzata State Bank, July 5, 1968, Eighth Circuit Court of Appeals (see attached photocopy of the decision), Jerome Daly represented the plaintiff and questioned, as he does in the counterclaim, the constitutionality of the federal reserve and monetary system of the United States. The Eighth Circuit Court of Appeals upheld the Minnesota federal district court's dismissal of the claim. The court said:

> "...The present complaint could have been dismissed for failure to comply with Fed.R.Civ.P. 8(a) and 8(e)(1) in that it is 'confusing, ambiguous, redundant, vague' and a completely unintelligible statement of argumentative fact... At best the complaint represents a euphoric harassment of bank officials, lawyers and federal courts. It is difficult to accept that the complaint has been drafted by a person licensed to practice law...
>
> "We affirm dismissal since the complaint fails to establish any grounds for federal jurisdiction. The federal courts are of limited jurisdiction. Essential to jurisdiction must be a stated 'case or controversy.' This must be disclosed by the plaintiff's complaint. The only complaint we can glean from the pleading filed is plaintiff's dissatisfaction with the monetary system of the United States of America. But a party cannot seek advisory opinions of the court on constitutional issues without some direct relation or damages involved..."

In Horne v. Federal Reserve Bank of Minneapolis, 344 F.2d 725 (1965) (8th Circuit), the plaintiffs were "residents, freeholders, voters, citizens and taxpayers of the United States" and brought suit "...on behalf of, in the interest of, and representing the people of the United States..." The plaintiffs primarily attacked the constitutionality of two federal statutes alleging that the defendants were creating illegal money and credit. The court held that the plaintiffs

did not have standing to sue. One prerequisite of standing is that the party must suffer a direct injury and the court said that the plaintiffs suffered no such injury. The defendant here has not suffered a direct injury as a result of the alleged conspiracy and hence he has no standing to sue.

The State of Minnesota has been a party defendant in at least two lawsuits where the plaintiffs were represented by Jerome Daly and raised the same claim that is raised in the counterclaim, i.e., the illegality of money and bank credit. In both lawsuits the defendants were granted summary judgment against the plaintiffs. See William Wildanger, Leo Zurn, Jo Ann Van Popperin, Richard Roe and John Doe vs. Federal Reserve Bank of Minneapolis, First National Bank of Minneapolis, Northwestern National Bank of Minneapolis, Lyndon B. Johnson, President of the United States of America, Henry H. Fowler, Secretary of the U.S. Treasury, The United States of America, State of Minnesota, Val Bjornson, Treasurer of Minnesota, Richard Roe and John Doe (United States District Court, District of Minnesota, Fourth Division, No. 4-66 Civ. 83); Leo Zurn, Jo Ann Van Popperin, William Wildanger, John Doe and Richard Roe vs. Federal Reserve Bank of Minneapolis, First National Bank of Minneapolis, Northwestern National Bank of Minneapolis, American National Bank of St. Paul, First National Bank of St. Paul, State of Minnesota, United States of America, Lyndon Johnson, President of the United States, Henry Fowler, Secretary of the Treasury of the United States, Val Bjornson, Treasurer of the State of Minnesota, Farmers and Mechanics Savings Bank of Minneapolis (United States District Court, District of Minnesota, Fourth Division, No. 4-66 Civ. 399).

In the Wildanger case the complaint alleged, inter alia, a conspiracy by the defendants under Minnesota Statutes, Sections 609.175 and 609.52 to unlawfully create money. In an order dated July 17, 1966, the federal district court granted defendants summary judgment because the plaintiffs did not have standing to sue. The court cited the Horne case.

The defendant's attorney, Jerome Daly, raises the claim of the illegality of money and bank credit at every instance. In Daly v. United States, 393 F.2d 873, 877 (1968), the court said:

> "The government urges that appellant's basic claim is not the fear of self-incrimination, but a quixotic contention that the Federal Reserve System is unconstitutional. Based upon appellant's arguments and his brief originally filed with the revenue agent, we are inclined to agree..."

For the sake of the courts, the lawyers, and the federal and state governments, it is time to enforce the permanent injunction prohibiting Mr. Daly from making any claim concerning the illegality of money and bank credit.

III. RES JUDICATA

The rules of res judicata apply to the state as well as to private persons. Restatement, Judgments, Section 78 Commentd. The Restatement, Judgments, 886 states:

> "A person who is one of a class of persons on whose account action is properly brought or defended in a representative action or defense is bound by and entitled to the benefits of the rules of res judicata with reference to the subject matter of the action."

> Comment i. "...As to the parties, the judgment operates as a personal judgment for or against them...On the other hand, as to persons not parties, the judgment operates merely as a declaration of rights and liabilities with reference to the issue decided..."

It is settled in Minnesota that the determination in an action brought by one taxpayer binds other taxpayers the same as it binds plaintiffs. Driscoll v. Board of Commissioners of Ramsey County, 161 Minn. 494, 201 N.W. 495 (1925) The Zurn and Wildanger claims were class actions brought in the names of Richard Roe and John Doe, the named defendants, taxpayers and others. The summary judgments granted to the State of Minnesota and other defendants in those claims bars the instant taxpayer from counterclaiming as he does against the State of Minnesota. The judgments in those claims have already declared the rights and liabilities of the State of Minnesota and the instant taxpayer (and all other taxpayers) with regard to the issue raised in the instant counterclaim.

Prior decisions clearly holding that a taxpayer lacks standing to sue on claims identical to the instant counterclaim, the doctrines of res judicata and sovereign immunity, and other rules of law and procedure not herein discussed, are sufficient reasons to grant plaintiff's motion to dismiss with prejudice the counterclaim in this matter.

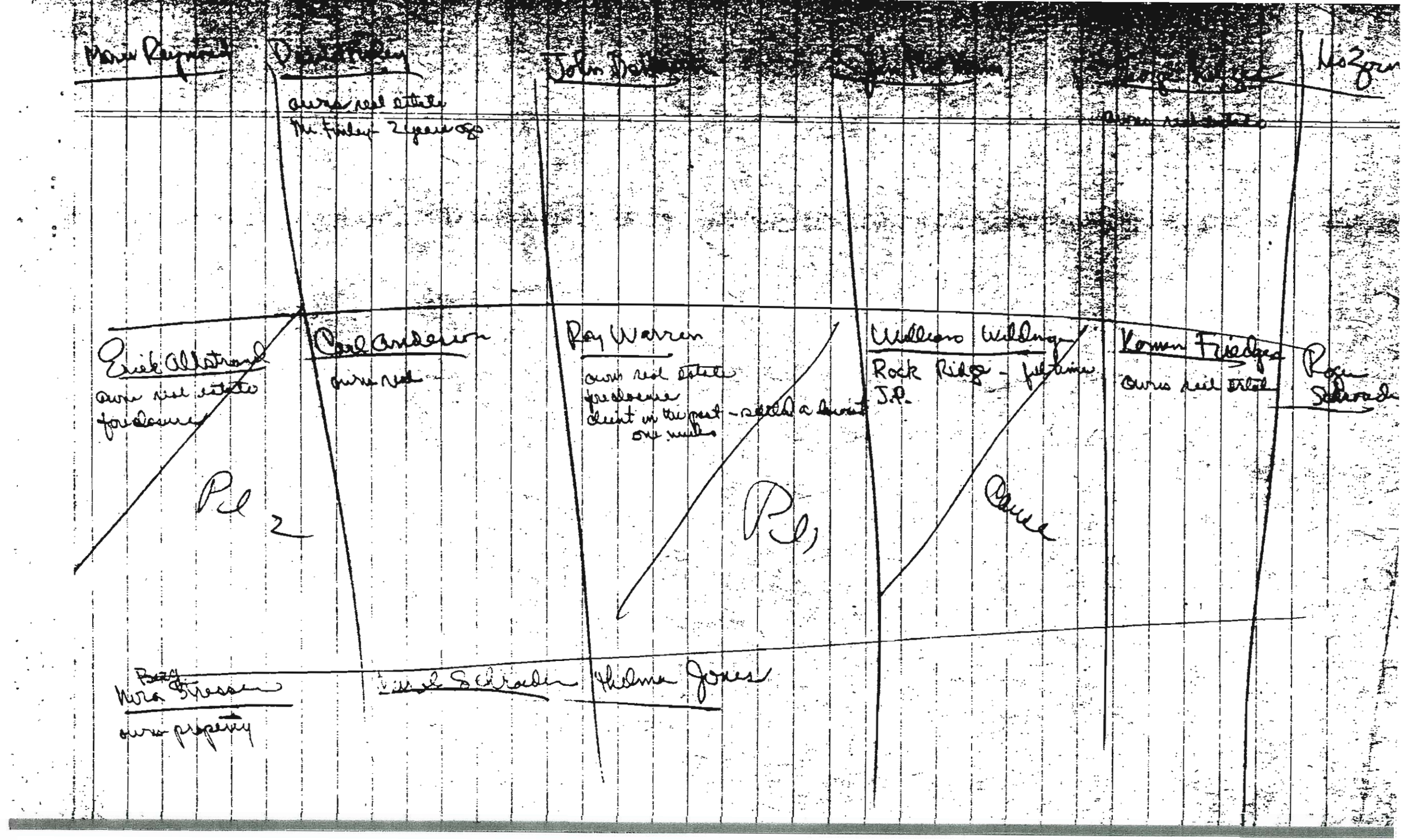
Respectfully submitted,

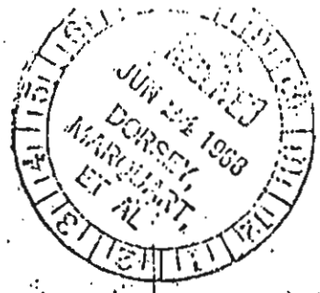
DOUGLAS M. HEAD
Attorney General

Gerald T. Laurie

GERALD T. LAURIE
Special Assistant Attorney General
Centennial Office Building
St. Paul, Minnesota 55101

ATTORNEYS FOR PLAINTIFF


Mavis Raymond
Dave Friedley
owns real estate
Mr. Friedley 2 years ago
John Robertson
Mrs Logan
Erick Allstrand
owns real estate
for Oconee
Carl Anderson
owns real
Ray Warren
owns real estate
for Oconee
Rock Ridge - full time
J.R.
Vernon Friedley
owns real estate
Ron
Schrade
Pd 2
Pd 1
Owns
Nora Stevens
owns property
Lillie S. Chrisler
Thelma Jones



UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION
No. 3-68 Civil 32

ALFRED M. JOYCE,

Plaintiff,

vs.

NORTHWESTERN STATE BANK OF APPLETON, et al.,

Defendants.

PERMANENT INJUNCTION

The above entitled and numbered cause coming on to be heard on the 3rd day of May, 1968, upon the motion of the defendants to dismiss and for a restraining order, and all the parties thereto having appeared by counsel and the Court having heard the pleadings, the evidence and arguments of counsel, and upon due consideration thereof, it appearing to the Court that the defendants should be granted the relief prayed for in their motions,

It is therefore, on this 20th day of June, 1968,

ORDERED, ADJUDGED AND DECREED that the preliminary injunction heretofore granted and issued orally by this Court herein on the 3rd day of May, 1968, and affirmed in memorandum and order of the Court dated June 17, 1968, be and the same hereby is made perpetual and permanent and that the plaintiff Alfred M. Joyce and his attorney, Jerome Daly, are permanently enjoined and restrained from continuing, commencing or prosecuting any suit, action or proceeding, either in this Court or in any court, state or federal, upon any claim arising out of any claimed transaction between the parties hereto at and prior to

the date of this Order, or any claims regarding unlawful creation of money and credit, or an attempt to relitigate the same cause of action, and matters previously determined in respect to the same subject matter, or based upon any right, question or fact previously decided by this Court on March 16, 1967, and by the decision of the State District Court, Eighth Judicial District, at Montevideo, Minnesota, decided on March 14, 1966.

Dated this 20th day of June, 1968.

/s/ Roy L. Stephenson
CHIEF JUDGE, UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF IOWA, (By assignment to the United States District Court, District of Minnesota, Third Division)

(M-16)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

William Wildanger, et al Plaintiff, -vs- Federal Reserve Bank of Minneapolis, et al Defendant.	No. 4-66 Civ. 83 Clerk's Notice under Rule 77 (d) F.R. Civ. Pr. or Rule 49 (c) F.R. Civ. Pr.

You are hereby notified that in the above-entitled cause, on the 18th day of July, 1966, an order was filed granting defendants' motion for summary judgment.

FRANK A. MASSEY, Clerk,
By Gerald H. Bergquist
Deputy.
Gerald H. Bergquist

Roland Graham
73 South 5th Street
Minneapolis, Minnesota

Peter Dorsey
Dorsey, Owen, Marquart, Windhorst & West
2400 First National Bank Bldg.
Minneapolis, Minnesota

Lawrence C. Brown
Faegre & Benson
Northwestern National Bank Bldg.
Minneapolis, Minnesota

Patrick J. Foley
Sidney P. Abramson
U. S. Courthouse
Minneapolis, Minnesota

Paul Casey, Asst. Atty. General
State Capitol
St. Paul, Minnesota

NOTE: If an appeal is contemplated, the Rules of the United States Court of Appeals and "Suggestions to Attorneys concerning Appellate

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
No. 4-66 Civil 399

Leo Zurn, JoAnn Van Popperin,
William Wildanger, John Doe
and Richard Roe,

Plaintiffs,

v.

ORDER FOR JUDGMENT

Federal Reserve Bank of Minneapolis,
First National Bank of Minneapolis,
Northwestern National Bank of Minneapolis,
American National Bank of St. Paul,
First National Bank of St. Paul,
State of Minnesota, United States of America,
Lyndon Johnson, President of the United States,
Henry Fowler, Secretary of the Treasury of
the United States, Val Bjornson, Treasurer
of the State of Minnesota, Farmers and
Mechanics Savings Bank of Minneapolis,

Defendants.

The motion of the plaintiffs for a Three-Judge Court and for judgment by default, and the motions for summary judgment by the answering defendants came on for hearing before the undersigned Judge of the above named Court on the 7th day of March, 1967, at 10 o'clock in the forenoon on the motion day of the above named Court.

Stanley H. Green, Assistant United States Attorney, appeared on behalf of the United States; Jerome Daly appeared on behalf of the plaintiffs; Melvin L. Burstein appeared on behalf of Federal Reserve Bank of Minneapolis; Michael Gallagher, Assistant Attorney General of the State of Minnesota, appeared on behalf of the State of Minnesota and Val Bjornson, Treasurer of the State of Minnesota; John F. Kelly appeared on behalf of the American National Bank of St. Paul, Charles A. Geer appeared on behalf of First National Bank of Minneapolis and First National Bank of St. Paul, and Dennis L. Paul appeared on behalf of Northwestern National Bank of Minneapolis.

The Court being fully advised in the premises, IT IS HEREBY ORDERED:

1. That the motion for a Three-Judge Court is denied.

2. That the motion for judgment against the non-answering defendants is denied.

3. That the motion for summary judgment by the answering defendants, United States of America, Federal Reserve Bank of Minneapolis, President Lyndon B. Johnson, Henry Fowler, State of Minnesota, Val Bjornson, Treasurer of the State of Minnesota, Northwestern National Bank of Minneapolis, American National Bank of St. Paul, First National Bank of St. Paul and First National Bank of Minneapolis is granted and the action is dismissed against all parties.

Dated: March 15 1967, at Minneapolis, Minnesota.

Edward J. Devitt

EDWARD J. DEVITT
CHIEF JUDGE
UNITED STATES DISTRICT COURT

STATE OF MINNESOTA

COUNTY OF SCOTT

IN JUSTICE COURT

TOWNSHIP OF CREDIT RIVER
MARTIN V. MAHONEY, JUSTICE

First National Bank of Montgomery,

Plaintiff,

vs.

JUDGMENT AND DECREE

Jerome Daly,

Defendant.

The above entitled action came on before the Court and a Jury of 12 on December 7,1968 at 10:00 A.M. Plaintiff appeared by its President Lawrence V. Morgan and was represented by its Counsel Theodore E. Mellby. Defendant appeared on his own behalf.

A Jury of Talesmen were called, impanneled and sworn to try the issues in this Case. Lawrence V. Morgan was the only witness called for Plaintiff and Defendant testified as the only witness in his own behalf.

Plaintiff brought this as a Common Law action for the recovery of the possession of Lot 19, Fairview Beach, Scott County, Minn., Plaintiff claimed title to the Real Property in question by foreclosure of a Note and Mortgage Deed dated May 8,1964 which Plaintiff claimed was in default at the time foreclosure proceedings were started.

Defendant appeared and answered that the Plaintiff created the money and credit upon its own books by bookeeping entry as the consideration for the Note and Mortgage of May 8,1964 and alleged failure of consideration for the Mortgage Deed and alluged that the Sheriff's sale passed no title to Plaintiff.

The issues tried to the Jury were whether there was a lawful consideration and whether Defendant had waived his rights to complain about the consideration having paid on the Note for almost 3 years.

Mr. Morgan admitted that all of the money or credit which was used as a consideration was created upon their books, that this was standard banking practice exercised by their bank in combination with the Federal Reserve Bank of Minneapolis, another private Bank, further that he knew of no United States Statute or Law that gave the Plaintiff the authority to do this. Plaintiff further claimed that Defendant by using the ledger book created credit and by paying

on the Note and Mortgage waived any right to complain about the Consideration and that Defendant was estopped from doing so.

At 12:15 on December 7,1968 the Jury returned a unaminous verdict for the Defendant.

Now therefore, by virtue of the authority vested in me pursuant to the Declaration of Independence, the Northwest Ordinance of 1787, the Constitution of the United States and the Constitution and laws of the State of Minnesota not inconsistent therewith;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That Plaintiff is not entitled to recover the possession of Lot 19, Fairview Beach, Scott County, Minnesota according to the Plat thereof on file in the Register of Deeds office.

2. That because of failure of a lawful consideration the Note and Mortgage dated May 8,1964 are null and void.

3. That the Sheriff's sale of the above described premises held on June 26,1967 is null and void, of no effect.

4. That Plaintiff has no right, title or interest in said premises or lien thereon, as is above described.

5. That any provision in the Minnesota Constitution and any Minnesota Statute limiting the Jurisdiction of this Court is repugnant to the Constitution of the United States and to the Bill of Rights of the Minnesota Constitution and is null and void and that this Court has Jurisdiction to render complete Justice in this Cause.

6. That Defendant is awarded costs in the sum of $75.00 and execution is hereby issued therefore.

7. A 10 day stay is granted.

8. The following memorandum and any supplemental memorandum made and filed by this Court in support of this Judgment is hereby made a part hereof by reference.

BY THE COURT

Dated December 7,1968

MARTIN V. MAHONEY
JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP
SCOTT COUNTY, MINNESOTA

MEMORANDUM

The issues in this case were simple. There was no material dispute on the facts for the Jury to resolve.

Plaintiff admitted that it, in combination with the Federal Reserve Bank of Minneapolis, which are for all practical purposes, because of there interlocking activity and practices, and both being Banking Instutions Incorporated under the Laws of the United States, are in the Law to be treated as one and the same Bank, did create the entire $14,000.00 in money or credit upon its own books by bookeeping entry. That this was the Consideration used to support the Note dated May 8,1964 andthe Mortgage of the same date. The money and credit first came into existance when they created it. Mr. Morgan admitted that no United States Law or Statute existed which gave him the right to do this. A lawful consideration must exist and be tendered to support the Note. See Anheuser-Busch Brewing Co. v. Emma Mason, 44 Minn. 318, 46 N.W. 558. The Jury found there was no lawful consideration and I agree [illegible] value out of nothing.

Even if Defendant could be charged with waiver or estoppel as a matter of Law this is no defense to the Plaintiff. The Law leaves wrongdoers where it finds them. See sections 50, 51 and 52 of Am Jur 2d "Actions" on page 584 -"no action will lie to recover on a claim based upon, or in any manner depending upon, a fraudulent, illegal, or immoral transaction or contract to which Plaintiff was a party.

Plaintiff's act of creating credit is not authorized by the Constitution and Laws of the United States, is unconstitutional and void, and is not a lawful consideration in the eyes of the Law to support any thing or upon which any lawful rights can be built.

Nothing in the Constitution of the United States limits the Jurisdiction of this Court, which is one of original Jurisdiction with right of trial by Jury guaranteed. This is a Common Law Action. Minnesota cannot limit or impair the power of this Court to render Complete Justice between the parties. Any provisions in the Constitution and laws of Minnesota which attempt to do so are repugnant to the

Constitution of the United States and ~~and~~ void. No question as to the Jurisdiction of this Court was raised by either party at the trial. Both parties were given complete liberty to submit any and all facts and law to the Jury, at least in so far as they saw fit.

No complaint was made by Plaintiff that Plaintiff did not recieve a fair trial. From the admissions made by Mr. Morgan the path of duty was made direct and clear for the Jury. Their Verdict could not reasonably have been otherwise. Justice was rendered completely and without denial, promptly and without delay, freely and without purchase, conformable to the laws in this Court on December 7,1968.

BY THE COURT

December 7,1968

MARTIN V. MAHONEY
JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP
SCOTT COUNTY, MINNESOTA

Note: It has never been doubted that a Note given on a Consideration which is prohibited by law is void. It has been determined, independent of Acts of Congress, that sailing under the license of an enemy is illegal. The emmission of Bills of Credit upon the books of these private Corporations, for the purposes of private gain is not warranted by the Constitution of the United States and is unlawful. See Craig v. Mo. 4 Peters Reports 912. This Court can tmead only that path which is marked out by duty. M.V.M.

JEROME DALY
P.O. BOX 936
MARTINEZ, CA 94553
TEL (510) 372-7525
FAX (510) 370-8950

July 28,1993

Court Administrator's Office
Civil Division
District Court
212 Court House
Scott County
428 So. Holmes
Shakopee, Minnesota
55379

Attention Margaret

Re: First National Bank of
Montgomery, Minn

vs.

Jerome Daly

On Appeal from Justice Martin
V. Mahoney, Justice of the Peace
Credit River Township

Dear Margaret;

This will acknowledge our phone conversation of today.

Please note the above change of address and phone number in your file and please send out this change of address to any one ordering a copy of the file. As I told you, I have had complaints from people who have obtained a copy of the file and then have wanted to call me. I know it is not your fault. So please send out my change of address to any one who orders the file.

Also I am sending you a check for $30.00. Please send me a copy of the file as it exists in your office.

Thank you,

Jerome Daly

Jerome Daly

State of Minnesota, } ss.
County of LE SUEUR

DISTRICT COURT,
FIRST *JUDICIAL DISTRICT.*

FIRST NATIONAL BANK OF MONTGOMERY
Plaintiff

vs.

JEROME DALY
Defendant

Know all Men by These Presents, *That we,* FIRST NATIONAL BANK OF MONTGOMERY, MINNESOTA, by L. V. Morgan, its President, and Ralph G. Hendrickson, its executive vice-president and cashier and Elroy Mladek and Francis Dolejs

as sureties, are held and firmly bound unto the defendant above named in the sum of Two Hundred Fifty and no/hundredths ($250.00) ---------- *Dollars, lawful money of the United States, to be paid unto said defendant his heirs, legal representatives or assigns, for which payment well and truly to be made, we jointly and severally bind ourselves our heirs and legal representatives, firmly by these presents.*

Signed and sealed by us this ____ *day of* July, 1969

The condition of this obligation is such; that said plaintiff has filed in the court above named its affidavit for a writ of attachment in said action against the property of the defendant; and Justice Court, Credit River Township, Scott County, Minnesota.

Now Therefore, *If judgment shall be given for the defendant in said action or if said writ be vacated, the plaintiff will pay all costs that may be awarded against it and all damages caused by said attachment, not exceeding the penalty of this bond, this obligation shall become void; otherwise to remain and be of full force and effect.*

IN WITNESS WHEREOF, We have hereunto set our hands and seals this 18th *day of* July, 1969

Signed, Sealed and Delivered in Presence of

Wilma V. Fortney
Theodore F. Mladek

FIRST NATIONAL BANK OF MONTGOMERY, MINN.
BY: L. V. Morgan (SEAL)
BY: Ralph G. Hendrickson (SEAL)
Elroy Mladek (SEAL)
Fr. Dolejs (SEAL)

State of Minnesota, } ss.
County of Le Sueur

On this 18th *day of* July, 1969, *before me personally appeared* Elroy Mladek and Francis Dolejs

to me known to be the persons described in and who executed the foregoing bond, and acknowledged that they executed the same as their free act and deed.

Wilma V. Fortney
Wilma V. Fortney
Notary Public LeSueur *County, Minn.*

My commission expires November 23, 1971

STATE OF MINNESOTA, COUNTY OF SCOTT
Certified to be a true and correct copy of the original on file and of record in my office
GREGORY M. ESS
Court Administrator
5-9 2006 By Audrey K Brown
Deputy

State of Minnesota, } ss.
County of LeSueur }

FIRST NATIONAL BANK OF MONTGOMERY, MINNESOTA by L.V. Morgan, its President and Ralph G. Hendrickson, its executive vice president and cashier and Elroy Mladek and Francis Dolejs

being duly sworn, on oath, each for himself, says; that he is a resident and freeholder of the State of Minnesota; that he justifies on the foregoing bond in the sum below set opposite his name; and that he is worth said sum above his debts and liabilities and exclusive of his property exempt from execution, to-wit:

Said FIRST NATIONAL BANK *in the sum of* $ 250.00 *Dollars*

Said Elroy Mladek *in the sum of* $ 250.00 *Dollars*

Said Francis Dolejs *in the sum of* $ 250.00 *Dollars*

Said ..... *in the sum of* ..... *Dollars*

FIRST NATIONAL BANK OF MONTGOMERY, MINNESOTA

Subscribed and sworn to before me this

BY: Lmorgan Pres

18th day of July, *1969*

By: Ralph G Hendrickson

Wilma V. Fortney

Elroy Mladek
Elroy Mladek

Wilma V. Fortney
Notary Public LeSueur *County, Minn.*

Francis Dolejs
Francis Dolejs

My commission expires November 23, 1971

The foregoing bond and the sureties thereon are hereby approved, this 22nd *day of* July, *19*69

Arlo E. Haering
District Judge.

STATE OF MINNESOTA)
)ss
COUNTY OF LE SUEUR)

CORPORATE ACKNOWLEDGMENT

On this 18th day of July, 1969, before me appeared L. V. Morgan and Ralph G. Hendrickson, to me personally known, who being by me duly sworn, did say that they are ~~President and executive vice president and cashier of the~~ FIRST NATIONAL BANK OF MONTGOMERY MINNESOTA, a corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was executed in behalf of said corporation by L. V. Morgan and Ralph G. Hendrickson, by authority of its Board of Directors; and the said L. V. Morgan and Ralph G. Hendrickson acknowledged said instrument to be the free act and deed of said corporation.

Wilma V. Fortney

Wilma V. Fortney, Notary Public
LeSueur County, Minnesota
My commission expires November 23, 1971

State of Minnesota,
County of .....

DISTRICT COURT

Bond in Attachment

Office of the Clerk of District Court

County of ....., *Minn.*
Filed this ..... *day of*
....., *19*.....,
at ..... *o'clock* ..... *M.*

Clerk of District Court.

By ..... *Deputy.*

KELLER-DAVIS CO., MINNEAPOLIS

FORM A

HUGO P. HENTGES
CLERK OF DISTRICT COURT
Scott County

Shakopee, Minn. May 20th 196 70

TO Theodore E. Mellby, Atty
Montgomery, Minn 56069

Mr. Mellby:

Judge Fitzgerald requested of me that I write you in regard to the 1st Nat. Bank vs Jerome Daly, for you to find out and have Mr. Daly bring with him or send to the Judge, a copy of the Supreme Court as to allowing Mr. Daly to act as counsel in this case., or any other case of similarity.

Thank you.

Yours very truly,

John F. Dennig, Deputy Clerk
Clerk—Deputy Clerk

McGUIRE and MELLBY

ATTORNEYS-AT-LAW

Montgomery, Minnesota 56069

MICHAEL E. McGUIRE
THEODORE R. MELLBY

TELEPHONE 364-7927

May 15, 1970

Hon. John M. Fitzgerald
District Judge
New Prague, Minnesota

In re: First National Bank of Montgomery, Minnesota
-vs- Jerome Daly

Dear Judge Fitzgerald:

Scott County calendar numbers 12 and 13 involve the First National Bank of Montgomery and Jerome Daly. These cases may be consolidated and tried by the Court as soon as possible.

I anticipate that the trial of these matters will take one/half day. If it is at possible, I would appreciate it very much if you would use these cases as the first "fillers".

I will make it a point to contact you by telephone as soon as possible if you have any questions concerning this matter.

Very truly yours,

Theodore R. Mellby

TRM:wvf

Be sure that Daly has copy of Order allowing him to act in this case.

State of Minnesota

District Court, First District

CHAMBERS OF
JUDGE ARLO E. HAERING

December 24, 1969

GLENCOE, MINNESOTA

Mr. Hugo Hentges
Clerk of Court
Court House
Shakopee, Minnesota

Dear Hugo:

Re: State Bank of Montgomery vs. Daly

Please file the enclosed Order in the above action.

I have the original file and will enclose the Order with it if you wish to return the same after filing. I will return the entire file on my next opportunity.

Yours truly,

Arlo

FORM A

HUGO P. HENTGES
CLERK OF DISTRICT COURT
Scott County

Shakopee, Minn. December 8, 1969

TO Hon. Arlo E. Haering

Judge of District Court -Courthouse

Glencoe, Minnesota

Dear Judge Haering:

First National Bank Montgomery
vs. Jerome Daly

Enclosed hererwith Return on appeal from Justice Court and two other paper which were filed after you took file with you.

With you please put these papers in the file. With kindest regards,

Yours very truly,

Hugo P. Hentges

Clerk—Deputy Clerk

Jerome Daly
28 East Minnesota Street
Savage, Minn. 55378
December 27, 1968

Mr. Patrick Foley
United States Attorney for Minnesota
United States Court House Bldg.
Minneapolis, Minnesota

Sir:

Re: First National Bank of Montgomery
vs.
Jerome Daly

As you are on my mailing list, at your request, attached kindly find 2 copies of a decision rendered at Credit River Twp. Justice of the Peace Court on December 9, 1968 by Justice Martin V. Mahoney, who by occupation is a dirt farmer and a carpenter and who is not dependent upon the fraudulent Federal Reserve Mob for his sustenance; thus he was able to view the whole fraud, which is Global in scope, with a mind in the settled calmness of impartiality, disinterestedness, and fairness, in keeping with his oath and with a completely friendly feeling toward the Constitution of the United States of America.

In truth and in fact the Justice of the Peace Court is the highest Court in the land as it is the closest to the People. Every Judge who is dependent upon this fraudulent Federal Reserve, National and State Banking System for his sole support is disqualified because of self interest and has no jurisdiction to sit in review of this Judgment. If any Appellate Court, including the Supreme Court of the United States, in the review of this Judgment, perpetrates a fraud upon the People by defying the Constitutional Law of the United States Mahoney has resolved that he will convene another Jury in Credit River Township to try the issue of the Fraud on the part of any State or Federal Judge, and in an action on my part to recover the possession if the Jury decides in my favor, the Constable and the Citizens Militia of Credit River Township will, pursuant to the law, deliver me back into possession. So you see this Justice of the Peace can keep the peace in Scott County, Minnesota, not with the help of these State and Federal Judges who have fled reality, but in spite of them. Thus Thomas Jefferson's prophesy with reference to Chattel Slavery once again rings true; "God's Justice will not sleep forever.".

One wonders sometimes what the United States, and its leaders, including the Shylock usury element, did to bring on a Pearl Harbor attack on December 7, 1941 with such suddenness and devestation. It could be the Judgment of a Just God giving vent to a stored wrath in retaliation to the money changers. It is ironic in deed that the Jury should return its verdict on the same day 27 years later and the National and International Banking and Oil Mob shudder in their back rooms where they have cornered the money of the World and where they

- over -

McGUIRE and MELLBY

ATTORNEYS-AT-LAW

Montgomery, Minnesota 56069

MICHAEL E. McGUIRE
THEODORE R. MELLBY

TELEPHONE 364-7327

December 4, 1969

Hugo P. Hentges
Clerk of District Court
Shakopee, Minnesota 55379

In re: First National Bank of Montgomery
-vs- Jerome Daly

Dear Hugo:

Enclosed herein please find Motion, Notice of Motion, Affidavit in Support of Motion, and Affidavit of Service by Mail.

The Motion is scheduled for hearing before Arlo Haering at Glencoe on Friday, December 12, 1969. I would appreciate it if you would forward the complete file to Lloyd Lipke prior to the hearing date.

A copy of this letter is being forwarded to Lloyd Lipke in order that he may know that this motion should be placed on the Special Term calendar for December 12.

If you have any questions concerning this matter, please contact my office.

Very truly yours,

Theodore R. Mellby

Theodore R. Mellby

TRM:wvf
cc: Lloyd Lipke

McGUIRE and MELLBY

ATTORNEYS-AT-LAW

Montgomery, Minnesota 56069

MICHAEL E. McGUIRE
THEODORE R. MELLBY

TELEPHONE 364-7327

November 5, 1969

Hon. Arlo E. Haering
Judge of District Court
Glencoe, Minnesota

In re: First National Bank -vs- Daly

Dear Judge Haering:

Enclosed herein please find the affidavit in support of our oral application for an order concerning Jerome Daly.

Thanking you, I am

Very truly yours,

Theodore R Mellby

Theodore R. Mellby

TRM:wvf
Enclosure

STATE OF MINNESOTA

IN SUPREME COURT

First National Bank of Montgomery,
Respondent,

vs. 41929

Jerome Daly,
Appellant.

ORDER DISMISSING APPEAL

This matter is before this court on motion of respondent for an order dismissing the appeal and for other relief.

Pursuant to said motion, and upon all of the files herein,

IT IS ORDERED that the appeal be, and hereby is dismissed.

Dated April 15, 1969.

WALTER F. ROGOSHESKE
Associate Justice

Filed Apr. 15, 1969
Mae Sherman, Clerk

State of Minnesota } ss.
SUPREME COURT

I, Mae Sherman, clerk of the above named court and custodian of the records thereof, do hereby certify that I have compared the within paper writing, to which this certificate is attached, with the original Order dismissing appeal in re

First National Bank of Montgomery,

Respondent,

vs. 41929

Jerome Daly,

Appellant,

now remaining on file in said action, and that the same is/are a true and correct copy of said original and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court, at the Capitol in the City of Saint Paul, Minnesota,

April 15, 1969

Mae Sherman

Clerk of Supreme Court.

By _____

Deputy Clerk.

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF SCOTT — FIRST JUDICIAL DISTRICT

First National Bank of Montgomery, Plaintiff, -vs- Jerome Daly, Defendant.	ORDER TO MAKE RETURN ON APPEAL

The above entitled matter came before this Court pursuant to an Order to Show Cause issued by the Honorable Harold E. Flynn on January 8, 1969 and by reason of an affidavit of prejudice filed as against said judge.

Upon consideration of the files and records herein, the arguments of counsel and brief submitted,

IT IS ORDERED that you, Martin V. Mahoney as Justice of the Peace, Credit River Township, County of Scott, State of Minnesota, make return to the Clerk of the District Court in and for the County of Scott, State of Minnesota consisting of a transcript of all entries made in your docket, together with all process and other papers relating to the action and filed with you in the action by First National Bank of Montgomery, Minnesota, Plaintiff vs. Jerome Daly, Defendant wherein judgment was rendered by you in favor of Defendant Jerome Daly on December 9, 1968 and that you make said return in all respects as provided by Minnesota Statutes Annotated Section 532.40 forthwith.

Dated January 30, 1969.

Arlo E. Haering

Arlo E. Haering
Judge of District Court

State of Minnesota
COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT
DISTRICT COURT

File No. 19144

First National Bank of Montgomery
Plaintiff

-vs-

Jerome Daly
Defendant

McGuire and Melby
Plaintiff's Attorney

Jerome Daly
Defendant's Attorney

To : McGuire and Melby - Montgomery, Minn 56069
Jerome Daly - Savage, Minnesota 55378

YOU ARE HEREBY NOTIFIED, That a Order to make return on appeal

in the above entitled cause was, on the 3rd day of Feb A. D. 1969 filed-entered in the office of the Clerk of said Distrtrict Court.

Dated 2/3/ A. D. 1969

Hugo P. Hentges
Clerk

By
Deputy

copy of order enclosed

FORM C

State of Minnesota
COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT
DISTRICT COURT

File No. 19144

First National Bank of Montgomery
Plaintiff

-vs-

Jerome Daly
Defendant

McGuire and Melly
Plaintiff's Attorney

Jerome Daly
Defendant's Attorney

To : Martin V. Mahoney - Justice of Peace, Credit River Twp. R.1 Prior Lake

YOU ARE HEREBY NOTIFIED, That a Order to make return on appeal

in the above entitled cause was, on the 3rd day of Feb A. D. 1969 filed-entered in the office of the Clerk of said Distrtrict Court.

Dated 2/3/ A. D. 1969

Hugo P. Hentges
Clerk

By
Deputy

copy of order enclosed

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF SCOTT — FIRST JUDICIAL DISTRICT

- - - - - - - - - - - - - — - - - - - - - - - - -

First National Bank of Montgomery, Minnesota,

Plaintiff,

-vs-

Jerome Daly,

Defendant.

ORDER TRANSFERRING FILE

- - - - - - - - - - - - - — - - - - - - - - - - -

An affidavit of prejudice having been filed in this case against the undersigned judge, and it therefore necessitating hearing by another district judge of the First Judicial District, and it appearing to the undersigned judge that the next special term of district court of the chief judge of said district will be at the courthouse in the City of Glencoe, County of McLeod and State of Minnesota, on Friday, January 24, 1969;

It is therefore ordered that the clerk of the district court of Scott County, Minnesota, is hereby directed to forward the above-captioned file to the clerk of the district court of McLeod County, Courthouse, Glencoe, Minnesota, forthwith.

Dated this 16th day of January, 1969.

Harold E. Flynn, Judge
First Judicial District

FILED
JAN 17 1969
Scott County, Minn.
Clerk of District Court
HUGO F. HINGER, Clerk
Deputy

STATE OF MINNESOTA, COUNTY OF SCOTT

Certified to be a true and correct copy of the original on file and of record in my office
GREGORY M ESS
Court Administrator

5-9 2006 By Audrey K. Brown
Deputy

STATE OF MINNESOTA — IN DISTRICT COURT

COUNTY OF SCOTT — FIRST JUDICIAL DISTRICT

- - - - - - - -

First National Bank of Montgomery, Minnesota,

Plaintiff,

Vs.

Jerome Daly,

Defendant.

AFFIDAVIT OF PREJUDICE

- - - - - - - -

STATE OF MINNESOTA)
(ss.
COUNTY OF SCOTT)

Jerome Daly, having been first duly sworn, deposes and states that he is the defendant herein; that he has good reason to believe, and does believe and so states, that because of bias and prejudice on the part of Harold Flynn, one of the Judges in the above named Court, a fair trial or hearing cannot result; and therefore he makes this Affidavit to disqualify said Judge, for all purposes.

Jerome Daly

Subscribed and sworn to before me
this 15 day of January, 1969

Janis Zilka Tasser
Notary Public

JANIS ZILKA
Notary Public, Dakota County, Minn.
My Commission Expires Jan. 17, 1973.

STATE OF MINNESOTA, COUNTY OF SCOTT

Certified to be a true and correct copy
of the original on file and of record
in my office
GREGORY M. ESS
Court Administrator

5-9 2006 By Audrey K Brom
Deputy

AFFIDAVIT OF MAILING

STATE OF MINNESOTA

COUNTY OF SCOTT

Jerome Daly, being first sworn, deposes and states that on behalf of Himself on January 14,1969 he served the annexed Affidavit of Prejudice on all other parties hereto in this action by mailing to them or their respective attorneys a copy thereof, inclosed in an envelope, postage prepaid, by depositing the same in the post office at Savage, Minnesota, directed to them or their attorneys at their last known address as follows:

Theodore R. Melby
Lawyer
Montgomery,Minnesota

Jerome Daly

Subscribed and sworn to
before me this 15
January

Janis Gilkerson
~~Jerome Daly~~, Notary Public
Dakota County, Minn.
My Commission expires January 17, 1973

JANIS GILKERSON
Notary Public, Dakota County, Minn.
My Commission Expires Jan. 17, 1973.

STATE OF MINNESOTA

COUNTY OF SCOTT

IN DISTRICT COURT

FIRST JUDICIAL DISTRICT

First National Bank of
Montgomery, Minnesota,

Plaintiff

-vs-

ORDER TO SHOW CAUSE

Jerome Daly,

Defendant

* *

On reading the application for an Order attached hereto, and on Motion and Affidavit of Theodore R. Mellby, Attorney for Plaintiff, due showing having been made that an exigency exists.

IT IS ORDERED, that Martin V. Mahoney, Justice of the Peace, Credit River Township, County of Scott, State of Minnesota, appear in person before the above Court at 10:00 A.M., Friday, January 17, 1969, at the Special Term of Court to be held in the Court House in the City of Shakopee, County of Scott, State of Minnesota, or as soon thereafter as counsel can be heard, to show cause why he should not file in the office of the Clerk of District Court, First Judicial District, County of Scott, State of Minnesota, a transcript of all the entries made in his docket, together with all process and other papers relating to the above identified cause of action in his possession or the possession of any other Justice of the Peace of the State of Minnesota.

LET THIS ORDER, APPLICATION FOR ORDER, AFFIDAVIT, all heretofore attached, be served on Martin V. Mahoney by leaving with him copies of the same and exhibiting this original ORDER with the signature of the Judge of District Court hereto affixed, service to be made forthwith.

BY THE COURT:

Dated at Shakopee, Minnesota
this 8th day of January, 1969

Judge of District Court

Miller-Davis Co., Minneapolis

State of Minnesota, } ss.
County of Scott

I Hereby Certify and Return, *That at the* City of / Township
Credit River *County and State aforesaid, on the* 10th *day of* January *19* 69
I served the hitherto attached Order To Show Cause *on the within named*
Martin V. Mahoney
personally by then and there handing to and leaving with Martin V. Mahoney *a true and correct copy thereof, and at the same time and place exhibiting to* Martin V. Mahoney *so that he could see and read the same, the original signature of Honorable* Harold E. Flynn
Judge of District Court of Scott *County, Minnesota, to said original.*
Dated this 10th *day of* January *19* 69

Sheriff Fees—Service, $ 2.00
Travel, $ 4.50
Total, $ 6.50

W. B. Schroeder
Sheriff Scott *County, Minn.*
By [signature]
Deputy Sheriff.

MONDAY

ORDER TO SHOW CAUSE

MAIL LETTER TO
JUSTICE
MARTIN V. MAHONEY
RURAL ROUTE
PRIOR LAKE MINN.

ATTORNEY
JEROME DALY
SHAKOPEE MINN
MOTION & NOTICE
OF MOTION.

COPIES
ATT. TED MELBY
~~Michael~~ McGUIRE
MONTGOMERY MINN

STATE OF MINNESOTA

COUNTY OF SCOTT

IN DISTRICT COURT

FIRST JUDICIAL DISTRICT

First National Bank of
Montgomery, Minnesota,

Plaintiff

-vs-

APPLICATION FOR
AN ORDER

Jerome Daly,

Defendant

* *

TO: Martin V. Mahoney, Justice of the Peace, Credit River Township, County of Scott, State of Minnesota

You will please take notice that at a special term of the above named court to be held in the Court House in the City of Shakopee, County of Scott, State of Minnesota, on the 17th day of January, 1969, at 10:00 A.M., or as soon thereafter as counsel can be heard, the Plaintiff will move the court as follows, to-wit:

1. For an order directing Justice Martin V. Mahoney, Justice of the Peace, Credit River Township, to file in the office of the Clerk of District Court, Scott County, State of Minnesota, on January 17, 1969, a transcript of all the entries made in his docket, together with all process and other papers relating to the above captioned action in his possession or in the possession of any other Justice of the Peace of the State of Minnesota.

2. For such other relief as the court may determine fair and justice.

MCGUIRE & MELLBY

Theodore R. Mellby
Attorney for Plaintiff
Montgomery, Minnesota 56069
Tel: (612) 364-7327

STATE OF MINNESOTA, COUNTY OF SCOTT

Certified to be a true and correct copy
of the original on file and of record
in my office
GREGORY M. ESS
Court Administrator

5-9 2006 By Audrey K. Brown
Deputy

STATE OF MINNESOTA

COUNTY OF SCOTT

IN JUSTICE COURT

TOWNSHIP OF CREDIT RIVER
MARTIN V. MAHONEY, JUSTICE

- - - - - - - - -

First National Bank of Montgomery,

Plaintiff,

Vs.

Jerome Daly,

Defendant.

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
JUDGMENT

- - - - - - - - -

The above-entitled action came on before the Court on January 22, 1969 at 7:00 P. M., pursuant to Motion and Notice of Motion and Order to Show Cause, a true and correct copy of which is attached hereto a page 13 at "A".

An action for the recovery of the possession of Real Property was brought before this Court for trial on December 7, 1968 at 10:00 A. M., by Jury. A true and correct copy of the Judgment and Decree entered by this Court on December 9, 1968 is attached hereto, a pages 14 thru 17.

On January 6, 1969 this Court filed a Notice of Refusal to Allow Appeal with the Clerk of the District Court, Hugo L. Hentges, for the County of Scott and State of Minnesota, which is attached hereto, a pages 18, 19 & 20.

Minnesota Statutes Annotated 532.38 required that the Appellant, First National Bank of Montgomery deposit with the Clerk of the District Court within ten (10) days, two ($2.00) Dollars (lawful money of the United States) for payment to the Justice of the Peace before whom the cause was tried. This is one of the conditions for the allowance of an appeal.

Two One ($1.00) Dollar Federal Reserve Notes were deposited with the Clerk of the District Court. One was issued by the Federal Reserve Bank of San Francisco, bearing Serial No. L12782836 and the other on deposit was issued by the Federal Reserve Bank of Minneapolis bearing Serial No.

I80410697A. A specimen, for illustrative purposes, is as follows:

This Court determined that said Notes on their face were contrary to Article 1, Section 10 of the Constitution of the United States and also, based upon the evidence deduced at the hearing on December 7, 1968, the Notes were without any lawful consideration and therefore were void; however, this Court indicated it would give the Plaintiff, First National Bank of Montgomery, a full and complete hearing with reference to this issue.

No hearing was requested and this Court was ordered to show cause before the District Court as to why the Appeal should not be allowed.

Therefore, this Court ordered a hearing before this Court on January 22, 1969 for the purposes of making Findings of Fact and Conclusions of Law.

Pursuant thereto, the above-entitled action came on for hearing before this Court on January 22, 1969 at 7:00 P. M.

The First National Bank of Montgomery made no appearance although service of the Motion and Order was served upon Ralph Hendrickson, its Cashier, on January 20,1969. No continuance was requested by Plaintiff or its Attorney.

The Defendant appeared by and on behalf of himself.

After waiting for one hour for the Bank or its representative to appear the Court recieved the testimony of Defendant.

Now, Therefore, based upon all of the files, records and proceedings herein and the evidence offered this Court makes the following Findings of Fact, Conclusions of Law, Judgment and Determination with reference to the allowance of an appeal:

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DETERMINATION

1. That the Federal Reserve Banking Corporation is a United States Corporation with twelve (12) banks throughout the United States, including New York, Minneapolis and San Francisco. That the First National Bank of Montgomery is also a United States Corporation, incorporated and existing under the laws of the United States and is a member of the Federal Reserve System, and more specifically, of the Federal Reserve Bank of Minneapolis.

2. That because of the interlocking activities, transactions and practices, the Federal Reserve Banks and the National Banks are for all practical purposes, in the law, one and the same bank.

3. As is evidenced from the book "The Federal Reserve System; Its Purposes and Functions: put out by the Board of Governors of the Federal Reserve System, Washington, D. C., 1963, and from other evidence adduced herein, the said Federal Reserve Banks and National Banks create money and credit upon their books and exercise the ultimate prerogative of expanding and reducing the supply of money or credit in the United States. To illustrate the admission of their activity, pages 74 through 78 are attached hereto as pages 21, 22 & 23.

The creation of this money or credit constitutes the creation of fiat money upon the books of these banks.

When the Federal Reserve Banks and National Banks acquire United States Bonds and Securities, State Bonds and Securities, State Subdivision Bonds and Securities, mortgages on private Real property and mortgages on private personal property, the said banks create the money and credit upon their books by bookkeeping entry. The first time that the money comes into existance is when they create it on their bank books by bookkeeping entry. The banks create it out of nothing. No substantial fund of gold or silver is back of it, or any fund at all.

The mechanics followed in the acquisition of United States Bonds are as follows: The Federal Reserve Bank places its name on a United States Bond and goes to its banking books and credits the United States Government for an equal amount of the face value of the Bonds. The money or credit first comes into existance when they create it on the books of the bank.

The Federal Reserve Bank of Minneapolis obtains Federal Reserve Notes in denominations of One ($1.00) Dollar, Five, Ten, Twenty, Fifty, One Hundred, Five Hundred, One Thousand, Ten Thousand, and One Hundred Thousand Dollars for the cost of the printing of each note, which is less than one cent. The Federal Reserve Bank must deposit with the Treasurer of the United States a like amount of Bonds for the Notes it receives. The Bonds are without lawful consideration, as the Federal Reserve Bank created the money and credit upon the books by which they acquired the Bond.

The net effect of the entire transaction is that the Federal Reserve Bank obtains Federal Reserve Notes comparable to the ones they placed on file with the Clerk of the District Court, and a specimen of which is above, for the cost of printing only. Title 31 U.S.C., Section 462/attempts to make Federal Reserve Notes a legal tender for all debts, public and private. From 1913 down to date, the Federal Reserve Banks and the National Banks are privately owned. As of March 18,

(See page 41)

all gold backing is removed from the said Federal Reserve Notes. No gold or silver backs up these notes.

The Federal Reserve Notes in question in this case are unlawful and void upon the following grounds:

A. Said Notes are fiat money, not redeemable in gold or silver coin upon their face, not backed by gold or silver, and the notes are in want of some real or substantial fund being provided for their payment in redemption. There is no mode provided for enforcing the payment of the same. There is no mode providing for the enforcement of the payment of the Notes in anything of value.

B. The Notes are obviously not gold or silver coin.

C. The sole consideration paid for the One Dollar Federal Reserve Notes is in the neighborhood of nine-tenths of one cent, and therefore, there is no lawful consideration behind said Notes.

D. That said Federal Reserve Notes do not conform to Title 12, United States Code, Sections 411 and 418. Title 31 USC, Section 462, insofar as it attempts to make Federal Reserve Notes and circulating Notes of Federal Reserve Banks and National Baning Associations a legal tender for all debts, public and private, it is unconstitutional and void, being contrary to Article 1, Section 10, of the Constitution of the United States, which prohibits any State from making anything but gold or silver coin a tender, or impairing the obligation of contracts.

IN CONCLUSION, it is therefore the further judgment and determination of this Court:

1. That the original Judgment entered herein on December 9, 1968 is in all respects confirmed.

2. That the Federal Reserve Notes on deposit with the Clerk of the Court are not lawful money of the United States; are in violation of the Constitution of the United States and are not valid for any purpose.

3. That M.S.A. 532.38 requiring $2.00 to be deposited

with the Clerk of District Court within ten (10) days of the entry of Judgment was not complied with. That the conditions prerequisite to this Court allowing an appeal have not been complied with. That this Court's Notice of its Refusal to Allow Appeal dated January 6, 1969 is hereby made absolute.

4. That following memorandum is attached and made a part of this decision.

MEMORANDUM

Article 1, Section 10 of the United States Constitution provides that no State shall make anything but gold and silver coin a legal tender in payment of debts.

The act of the Clerk of the District Court is the act of the State. The Clerk of the District Court is the agent of the Judicial Branch of the Government of the State of Minnesota. See Birscoe et al vs. The Bank of the Commonwealth of Kentucky 11 Peters Reports at Page 319, "A State can act only through its agents; and it would be absurd to say that any act was not done by a State which was done by its authorized agents."

The bank attempted to get the Clerk of District Court to perform an act contrary to the Constitution of the United States. The states have no power to make bank notes a legal tender. See 36 Amer Jur on Money, Section 13, attached hereto, pages 24 and 25

See also 36 Amer. Jur. on Money, Section 9, attached hereto. Bank Notes are a good tender as money unless specifically objected to. Their consent and usage is based upon their convertability of such notes to coin at the pleasure of the holder upon presentation to the bank for redemption. When the inability of a bank to redeem its notes is openly avowed they instantly lose their character as money and their circulation as currency ceases.

There is also no lawful consideration for these notes to circulate as money. See pages 74 through 78 of "The Federal System; Its Purposes and Functions", a copy of which is attached pages 21 thru 23
hereto. The banks actually obtained these notes for the cost

of the printing. There is no lawful consideration for said Notes.

A lawful consideration must exist for a Note. See 17 Amer. Jur. on Contracts, Section 85, page 30 and also Sections 215, 216 and 217 of 11 Amer. Jur. 2nd on Bills and Notes page 31 & 32 As a matter of fact, the "Notes" are not Notes at all, as they contain no promise to pay.

The activity of the Federal Reserve Banks of Minneapolis, San Francisco and the First National Bank of Montgomery is contrary to public policy and the Constitution of the United States and constitutes an unlawful creation of money and credit and the obtaining of money and credit for no valuable consideration. The activity of said banks in creating money and credit is not warranted by the Constitution of the United States.

The Federal Reserve and National Banks exercise an exclusive monopoly and privilege of creating credit and issuing their Notes at the expense of the public, which does not receive a fair equivalent. This scheme is for the benefit of an idle monopoly and is used to rob, blackmail and oppress the the producers of wealth.

The Federal Reserve Act and the National Bank Act is in its operation and effect contrary to the whole letter and spirit of the Constitution of the United States; confers an unlawful and unnecessary power on private parties; holds all of our fellow citizens in dependance; is subversive to the rights and liberties of the people. It has defied the lawfully constituted Government of the United States. The two banking acts and Sec. 462 of Title 31, U.S.C. pages 41 and 42 are therefore unconstitutional and void.

The law leaves wrongdoers where it finds them. See 1 Amer. Jur. 2nd on Actions, Sections 50, 51 and 52 which are attached hereto and made a part hereof, pages 35 and 36.

This Court therefore is not allowing the appeal.

BY THE COURT:

January 23, 1969

MARTIN V. MAHONEY
JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP
SCOTT COUNTY, MINNESOTA

FURTHER MEMORANDUM

The jurisdiction of this Court is confered by Article 6, Sec. 1 of the Minnesota Constitution; "Sec. 1. The judicial power of the state is hereby vested in a Supreme Court, a District Court, a probate court, and such other Courts, minor judicial officers and commissioners with jurisdiction inferior to the District Court as the legislature may establish."

The pertinant parts of the United States Constitution are as follows, along with the Declaration of Independence:

DECLARATION OF INDEPENDENCE

(Unanimously Adopted in Congress, July 4, 1776, at Philadelphia)

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitles them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under

WE THEREFORE, the Representatives of the United States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies, are and of Right ought to be free and independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliance, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.

JOHN HANCOCK.

THE CONSTITUTION OF THE UNITED STATES

We the People OF THE UNITED STATES, IN ORDER TO FORM A MORE PERFECT UNION, ESTABLISH JUSTICE, INSURE DOMESTIC TRANQUILLITY, PROVIDE FOR THE COMMON DEFENSE, PROMOTE THE GENERAL WELFARE, AND SECURE THE BLESSINGS OF LIBERTY TO OURSELVES AND OUR POSTERITY, DO ORDAIN AND ESTABLISH THIS CONSTITUTION FOR THE UNITED STATES OF AMERICA.

Article I

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque or Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin A Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;

Article VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

Article VII.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Article IX.

The enumeration of the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Nothing in the Constitution or Laws of the United States limits the jurisdiction of this Court. The Constitution of Minnesota Does Not limit the jurisdiction of this Court. It therefore has complete jurisdiction to render justice in this Cause. See 16 Am Jur 2d "Constitutional Law Sections 219 thru 221. Apendix Pages 26-28. When a Court is created the judicial power is confered by the Constitution, and not by the act creating the Court. See the Bill of Rights of the Minnesota Constitution. Furthermore, the First National Bank of Montgomery invoked the jurisdiction of this Court and never has questioned its jurisdiction to decide all issues presented to this Court.

As to the effect of an unconstitutional law se 16 Am Jur 2d Constitutional Law Sections 177 thru 179 attached hereto, Pages 33-35

The meaning of the Constitutional provision "No State Shall make any thing but Gold and Silver Coin a tender in payment of debts" is direct, clear, unambigious and without any qualification. This Court is without authority to interpolate any exception. My duty is simply to execute it, as written, and to pronounce the legal result. From an examination of the case of Edwards v. Kearzey, 96 U.S. 595, the Federal Reserve Notes (Fiat Money), which are attempted to be made a legal tender, are exactly what the authors of the Constitution of the United States intended

to prohibit. No State can make these Notes a legal tender. Congress is incompetent to authorize a State to make the Notes a legal tender. For the effect of binding Constitutional provisions see Cooke V. Iverson 108 M. 388 and State v. Sutton 63 M. 147 See Page 37. This fraudulent Federal Reserve System and National Banking System has impaired the obligation of Contract, promoted disrespect for the Constitution and Law and has shaken society to its foundations.

The Court is at a loss, because of the non-appearance of Plaintiff to determine, upon what legal theory, Plaintiff could possibly claim that the Notes in question are a legal tender. If they have any validity it must come from the Constitution of the United States and laws passed pursuant thereto. Inquiry was made of Mr. Daly as to what laws these Notes could be possibly be based upon to sustain their validity. To aid the Court he presented the following: See Pages 38 & 40 containing Section 411,412, 417,418,420 or USC Title 12 and Title 31USC Sec. 462.

On the one hand section 411 holds and states that the Notes are to be used for the purpose of making advances to Federal Reserve Banks thru Federal Reserve Agents and for no other purposes. Then Title 31 Section 462 states "All ---Federal Reserve Notes and circulating Notes of Federal Reserve Banks and National Banking Associations heretofore or hereafter issued, shall be legal tender for all debts public and private."

The Constitution states "No State shall make any thing but Gold and Silver Coin a legal tender in payment of debts." The above refered to enactments of Congress states that the Notes are a legal tender. There is a direct conflict between the Constitution and the Acts of Congress. If the Constitution is not controling then Congress is above and has superior authority from the Constitution and the People who ordained and established it.

Title 31 USC Section 432 Pages 41-42 is in direct conflict with the Constitution in so far, at least, that it attempts to make Federal Reserve Notes a Legal Tender. The Constitution is the

Supreme Law of the Land. Sec. 432 is not a law which is made in pursuance of the U.S.Constitution. It is unconstitutional and void, and, I so hold. Therefore, the two FederalReserve Notes are null and void for any lawful purpose so far as this case is concerned and are not a valid deposit of $2.00 with the Clerk of the District Court for the purpose of effecting an Appeal from this Court to the District Court. I hold that this case has not been lawfully removed from this Court and Jurisdiction thereof is still vested in this Court.

However, there is a second ground of possible invalidity of these Federal Reserve Notes and that is that the Notes are invalid because on no theory are they based upon a valid, adequate or lawful consideration.

At the hearing scheduled for January 22,1969 at 7 PM Mr. Morgan, nor any one else from or representing the Bank, attended to aid this Court in making a correct determination.

Mr. Morgan appeared at the trial on December 7,1968 and appeared as a witness to be candid, open,direct, experienced and truthful. He testified to 20 years of experience with the Bank of America in Los Angeles, the Marquette National Bank of Minneapolis and the Plaintiff in this case. He seemed to be Familiar with the operations of the Federal Reserve System. He freely admitted that his Bank created all of the money or credit upon its books with which it acquired the Note of May 8,1964. The credit first came into existence when the Bank Created it upon its Books. Further he freely admitted that no United States Law gave the Bank the authority to do this. There was obviously no lawful consideration for the Note. The Bank parted with absolutely nothing except a little ink. In this case the evidence was on January 22,1969 that the Federal Reserve Banks obtain the Notes for the cost of the printing only. This seems to be confirmed by Title 12 USC Section 420. The cost is about 9/10ths of a cent per Note, regardless of the amount of the Note. The Federal Reserve Banks create all of the Money and Credit upon their books by bookeeping entry by which they acquire

United States and State Securities. The collateral required to obtain the Notes is, by section 412, USC, Title 12, is a deposit of a like amount of Bonds; Bonds which the Banks acquired by creating money and credit by bookeeping entry.

No rights can be acquired by fraud. The Federal Reserve Notes are acquired thru the use of unconsitutional statutes and fraud.

The Common Law requires a lawful consideration for any Contract or Note. These Notes are void for failure of a lawful consideration at Common Law, entirely apart from any Constitutional Considerations. Upon this ground the Notes are iineffectual for any purpose. This seems to be the principle objection to paper Fiat Money and the cause of its depreciation and failure down thru the ages. If allowed to continue Federal Reserve Notes will meet the same fate. It would have been helpful had Mr. Morgan appeared at the last hearing. It is this Court's understanding that as of March 18,1968 all Gold and Silver backing was taken from the Notes in question.

This Court determines that the Appeal requirement of the Statutes of the State of Minnesota have not been complied with. The Appeal therefore is not allowed and my Docket so shows.

BY THE COURT

Martin V. Mahoney

January 23,1969

MARTIN V. MAHONEY
JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP
SCOTT COUNTY,MINNESOTA

STATE OF MINNESOTA

COUNTY OF SCOTT

IN JUSTICE COURT
TOWNSHIP OF CREDIT RIVER
JUSTICE, MARTIN V. MAHONEY

First National Bank of Montgomery, Plaintiff,

vs.

MOTION AND NOTICE OF MOTION AND ORDER TO SHOW CAUSE

Jerome Daly, Defendant.

To: Plaintiff above named and to its Attorney Theodore R. Melby

Sirs:

You will please take notice that the Defendant, Jerome Daly, will move the above named Court at the Credit River Township Village Hall, Scott County, Minnesota before Justice Martin V. Mahoney at 7 P.M. on Wednesday January 22,1969 to make findings of fact, Conclusions of law and order and Judgment refusing to allow Appeal on the grounds that the two One Dollar Federal Reserve Notes are unlawful and void and are not a deposit of Two Dollars in lawful money of the United States to perfect the Appeal, and to make the Court's refusal to allow appeal absolute.

January 20,1969

Jerome Daly

Jerome Daly
Attorney for himself
28 East Minnesota Street
Savage, Minnesota

ORDER

On application of Defendant Jerome Daly, it appearing that an exigency exists because this Court is Ordered to show cause at Glencoe, Minnesota on January 24,1969 why this Court should not allow the Appeal herein, therefore,

IT IS HEREBY ORDERED that Plaintiff appear before this Court on January 22,1969 at 7 P.M. at the Credit River Town Hall, Scott County, Minnestoa, and Show Cause why this Court should not, at a hearing to be held at that time when both sides will be given the opportunity to present evidence, grant the Motion and relief requested by Defendant Jerome Daly and why this Court's Notice of Refusal to Allow Appeal herein should not be made absolute.

Service of the above Order shall be made upon Defendant, its Attorney or Agents.

BY THE COURT

Martin V. Mahoney

MARTIN V. MAHONEY, JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP

January 20,1969

STATE OF MINNESOTA

COUNTY OF SCOTT

IN JUSTICE COURT

TOWNSHIP OF CREDIT RIVER
MARTIN V. MAHONEY, JUSTICE

First National Bank of Montgomery,

Plaintiff,

vs.

JUDGMENT AND DECREE

Jerome Daly,

Defendant.

The above entitled action came on before the Court and a Jury of 12 on December 7,1968 at 10:00 A.M. Plaintiff appeared by its President Lawrence V. Morgan and was represented by its Counsel Theodore R. Mellby. Defendant appeared on his own behalf.

A Jury of Talesmen were called, impanneled and sworn to try the issues in this Case. Lawrence V. Morgan was the only witness called for Plaintiff and Defendant testified as the only witness in his own behalf.

Plaintiff brought this as a Common Law action for the recovery of the possession of Lot 19, Fairview Beach, Scott County,Minn. Plaintiff claimed title to the Real Property in question by foreclosure of a Note and Mortgage Deed dated May 8,1964 which Plaintiff claimed was in default at the time foreclosure proceedings were started.

Defendant appeared and answered that the Plaintiff created the money and credit upon its own books by bookeeping entry as the consideration for the Note and Mortgage of May 8,1964 and alleged failure of consideration for the Mortgage Deed and alleged that the Sheriff's sale passed no title to Plaintiff.

The issues tried to the Jury were whether there was a lawful consideration and whether Defendant had waived his rights to complain about the consideration having paid on the Note for almost 3 years.

Mr. Morgan admitted that all of the money or credit which was used as a consideration was created upon their books, that this was standard banking practice exercised by their bank in combination with the Federal Reserve Bank of Minneapolis, another private Bank, further that he knew of no United States Statute or Law that gave the Plaintiff the authority to do this. Plaintiff further claimed that Defendant by using the ledger book created credit and by paying

on the Note and Mortgage waived any right to complain about the Consideration and that Defendant was estopped from doing so.

At 12:15 on December 7,1968 the Jury returned a unaminous verdict for the Defendant.

Now therefore, by virtue of the authority vested in me pursuant to the Declaration of Independence, the Northwest Ordinance of 1787, the Constitution of the United States and the Constitution and laws of the State of Minnesota not inconsistent therewith;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That Plaintiff is not entitled to recover the possession of Lot 19, Fairview Beach, Scott County, Minnesota according to the Plat thereof on file in the Register of Deeds office.

2. That because of failure of a lawful consideration the Note and Mortgage dated May 8,1964 are null and void.

3. That the Sheriff's sale of the above described premises held on June 26,1967 is null and void, of no effect.

4. That Plaintiff has no right, title or interest in said premises or lien thereon, as is above described.

5. That any provision in the Minnesota Constitution and any Minnesota Statute limiting the Jurisdiction of this Court is repugnant to the Constitution of the United States and to the Bill of Rights of the Minnesota Constitution and is null and void and that this Court has Jurisdiction to render complete Justice in this Cause.

6. That Defendant is awarded costs in the sum of $75.00 and execution is hereby issued therefore.

7. A 10 day stay is granted.

8. The following memorandum and any supplemental memorandum made and filed by this Court in support of this Judgment is hereby made a part hereof by reference.

BY THE COURT

Dated December 9,1968

MARTIN V. MAHONEY
JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP
SCOTT COUNTY, MINNESOTA

MEMORANDUM

The issues in this case were simple. There was no material dispute on the facts for the Jury to resolve.

Plaintiff admitted that it, in combination with the Federal Reserve Bank of Minneapolis, which are for all practical purposes, because of there interlocking activity and practices, and both being Banking Instutions Incorporated under the Laws of the United States, are in the Law to be treated as one and the same Bank, did create the entire $14,000.00 in money or credit upon its own books by bookeeping entry. That this was the Consideration used to support the Note dated May 8,1964 andthe Mortgage of the same date. The money and credit first came into existance when they created it. Mr. Morgan admitted that no United States Law or Statute existed which gave him the right to do this. A lawful consideration must exist and be tendered to support the Note. See Anheuser-Busch Brewing Co. v. Emma Mason, 44 Minn. 318, 46 N.W. 558. The Jury found there was no lawful consideration and I agree. Only God can created something of value out of nothing.

Even if Defendant could be charged with waiver or estoppel as a matter of Law this is no defense to the Plaintiff. The Law leaves wrongdoers where it finds them. See sections 50, 51 and 52 of Am Jur 2d "Actions" on page 584 -"no action will lie to recover on a claim based upon, or in any manner depending upon, a fraudulent, illegal, or immoral transaction or contract to which Plaintiff was a party.

Plaintiff's act of creating credit is not authorized by the Constitution and Laws of the United States, is unconstitutional and void, and is not a lawful consideration in the eyes of the Law to support any thing or upon which any lawful rights can be built.

Nothing in the Constitution of the United States limits the Jurisdiction of this Court, which is one of original Jurisdiction with right of trial by Jury guaranteed. This is a Common Law Action. Minnesota cannot limit or impair the power of this Court to render Complete Justice between the parties. Any provisions in the Constitution and laws of Minnesota which attempt to do so are repugnant to the

Constitution of the United States and ~~are~~ void. No question as to the Jurisdiction of this Court was raised by either party at the trial. Both parties were given complete liberty to submit any and all facts and law to the Jury, at least in so far as they saw fit.

No complaint was made by Plaintiff that Plaintiff did not recieve a fair trial. From the admissions made by Mr. Morgan the path of duty was made direct and clear for the Jury. Their Verdict could not reasonably have been otherwise. Justice was rendered completely and without denial, promptly and without delay, freely and without purchase, conformable to the laws in this Court on December 7,1968.

BY THE COURT:

December 9,1968

MARTIN V. MAHONEY
JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP
SCOTT COUNTY, MINNESOTA

Note: It has never been doubted that a Note given on a Consideration which is prohibited by law is void. It has been determined, independent of Acts of Congress, that sailing under the license of an enemy is illegal. The emmission of Bills of Credit upon the books of these private Corporations, for the purposes of private gain is not warranted by the Constitution of the United States and is unlawful. See Craig v. Mo. 4 Peters Reports 912. This Court can tread only that path which is marked out by duty. M.V.M.

hold only a fraction of their deposits as reserves and the fact that payments made with the proceeds of bank loans are eventually redeposited with banks make it possible for additional reserve funds, as they are deposited and invested through the banking system as a whole, to generate deposits on a multiple scale.

An Apparent Banking Paradox?

The foregoing discussion of the working of the banking system explains an apparent paradox that is the source of much confusion to banking students. On the one hand, the practical experience of each individual banker is that his ability to make the loans or acquire the investments making up his portfolio of earning assets derives from his receipt of depositors' money. On the other hand, we have seen that the bulk of the deposits now existing have originated through expansion of bank loans or investments by a multiple of the reserve funds available to commercial banks as a group. Expressed another way, increases in their reserve funds are to be thought of as the ultimate source of increases in bank lending and investing power and thus of deposits.

The statements are not contradictory. In one case, the day-to-day aspect of a process is described. In a bank's operating experience, the demand deposits originating in loans and investments move actively from one bank to another in response to money payments in business and personal transactions. The deposits seldom stay with the bank of origin.

The series of transactions is as follows: When a bank makes a loan, it credits the amount to the borrower's deposit account; the depositor writes checks against his

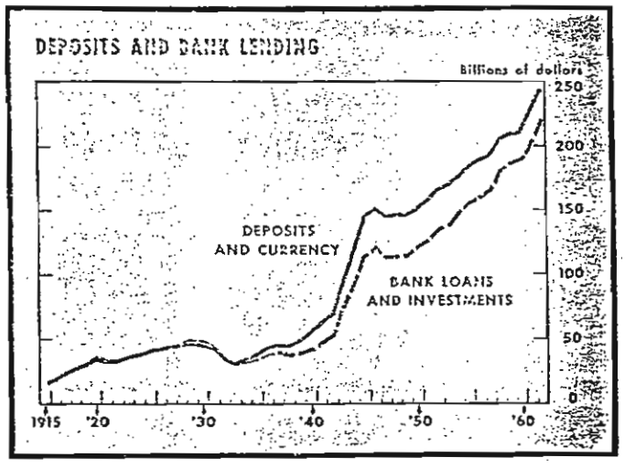
account in favor of various of his creditors who deposit them at their banks. Thus the lending bank is likely to retain or receive back as deposits only a small portion of the money that it lent, while a large portion of the money that is lent by other banks is likely to be brought to it by its customers.

From the point of view of the individual bank, therefore, the statement that the ability of a single bank to lend or invest rests largely on the volume of funds brought to it by depositors is correct. Taking the banking system as a whole, however, demand deposits originate in bank loans and investments in accordance with an authorized multiple of bank reserves. The two inferences about the banking process are not in conflict; the first one is drawn from the perspective of one bank among many, while the second has the perspective of banks as a group.

The commercial banks as a whole can create money only if additional reserves are made available to them. The Federal Reserve System is the only instrumentality endowed by law with discretionary power to create (or extinguish) the money that serves as bank reserves or as the public's pocket cash. Thus, the ultimate capability for expanding or reducing the economy's supply of money rests with the Federal Reserve.

New Federal Reserve money, when it is not wanted by the public for hand-to-hand circulation, becomes the reserves of member banks. After it leaves the hands of the first bank acquiring it, as explained above, the new reserve money continues to expand into deposit money as it passes from bank to bank until deposits stand in some established multiple of the additional reserve funds that Federal Reserve action has supplied.

How the process of expansion in deposits and bank loans and investments has worked out over the years is depicted by the accompanying chart. The curve "deposits and currency" relates to the public's holdings of demand deposits, time deposits, and currency. Time deposits are included because commercial banks in this country generally engage in both a time deposit and a demand deposit business and do not segregate their loans and investments behind the two types of deposits.



Additional Aspects of Bank Credit Expansion

At this stage of our discussion, three other important aspects of the functioning of the banking system must be noted. The first is that bank credit and monetary expansion on the basis of newly acquired reserves takes place only

through a series of banking transactions. Each transaction takes time on the part of individual bank managers and, therefore, the deposit-multiplying effect of new bank reserves is spread over a period. The banking process thus affords some measure of built-in protection against unduly rapid expansion of bank credit should a large additional supply of reserve funds suddenly become available to commercial banks.

The second point is that for expansion of bank credit to take place at all there must be a demand for it by credit-worthy borrowers — those whose financial standing is such as to entail a likelihood that the loan will be repaid at maturity — and/or an available supply of low-risk investment securities such as would be appropriate for banks to purchase. Normally these conditions prevail, but there are times when demand for bank credit is slack, eligible loans or securities are in short supply, and the interest rate on bank investments has fallen with the result that banks have increased their preference for cash. Such conditions tend to slow down bank credit expansion. In general, market conditions for bankable paper and attitudes of bankers with respect to the market exert an important influence on whether, with a given addition to the volume of bank reserves, expansion of bank credit will be faster or slower.

Thirdly, it must be kept in mind that reserve banking power to create or extinguish high-powered money is exercised through a market mechanism. The Federal Reserve may assume the initiative in creating or extinguishing bank reserves, or the member banks may take the initiative through borrowing or repayment of borrowing at the Federal Reserve.

Sometimes the forces of initiative work against one another. At times this counteraction may work to avoid an abrupt impact on the flow of credit and money of pressures working to expand or contract the volume of bank reserves. At other times, banks' desires to borrow may tend to bring about either larger or smaller changes in bank reserves than are desirable from the viewpoint of public policy, especially in periods when banks' willingness to borrow is changing rapidly in response to market forces. The relation between reserve banking initiative and member bank initiative in changing the volume of Federal Reserve credit was discussed in Chapter III.

These additional aspects of bank credit expansion are significant because they indicate that in practice we cannot expect bank credit and money to expand or contract by any simple multiple of changes in bank reserves. Expansion or contraction takes place under given market conditions, and these have an influence on the public's preferences or desires for money and on the banks' preferences for loans and investments. Market conditions are modified in the course of credit expansion or contraction, but the reactions of the public and of the banks will influence the extent and nature of the changes in money and credit that are attained.

Management of Reserve Balances

In managing its reserve balances, an individual commercial bank constantly watches offsetting inflows and outflows of deposits that result from activities of depositors and borrowers. It estimates their net impact on its deposits and its reserve position. Its day-to-day management

CHAPTER X

RELATION OF RESERVE BANKING TO CURRENCY. *The Federal Reserve System is responsible for providing an elastic supply of currency. In this function it pays out currency in response to the public's demand and absorbs redundant currency.*

AN important purpose of the Federal Reserve Act was to provide an elastic supply of currency — one that would expand and contract in accordance with the needs of the public. Until 1914 the currency consisted principally of notes issued by the Treasury that were secured by gold or silver and of national bank notes secured by specified kinds of U.S. Government obligations, along with gold and silver coin. These forms of currency were so limited in amount that additional paper money could not easily be supplied when the nation's business needed it. As a result, currency would become hard to get and at times command a premium. Currency shortages, together with other related developments, caused several financial crises or panics, such as the crisis of 1907.

One of the tasks of the Federal Reserve System is to

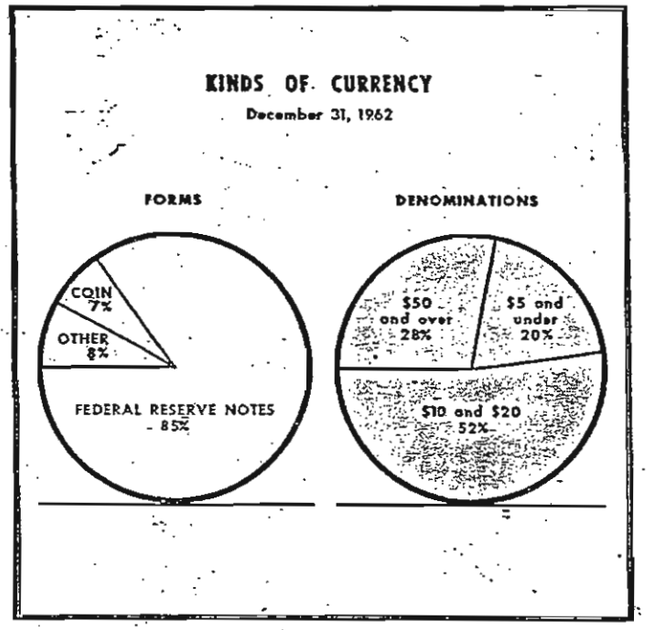
prevent such crises by providing a kind of currency that responds in volume to the needs of the country. The Federal Reserve note is such a currency.

The currency mechanism provided under the Federal Reserve Act has worked satisfactorily: currency moves into and out of circulation automatically in response to an increase or decrease in the public demand. The Treasury, the Federal Reserve Banks, and the thousands of local banks throughout the country form a system that distributes currency promptly wherever it is needed and retires surplus currency when the public demand subsides.

How Federal Reserve Notes Are Paid Out

Federal Reserve notes are paid out by a Federal Reserve Bank to a member bank on request, and the amount so paid out is charged to the member bank's reserve account. Any Federal Reserve Bank, in turn, can obtain the needed notes from its Federal Reserve Agent, a representative of the Board of Governors of the Federal Reserve System, who is located at the Federal Reserve Bank and has custody of its unissued notes.

The Reserve Bank obtaining notes must pledge with the Federal Reserve Agent an amount of collateral at least equal to the amount of notes issued. This collateral may consist of gold certificates, U.S. Government securities, and eligible short-term paper discounted or purchased by the Reserve Bank. The amount of notes that may be issued is subject to an outside limit in that a Reserve Bank must have gold certificate reserves of not less than 25 per cent of its Federal Reserve notes in circulation (and also of its deposit liabilities). Gold certificates pledged as collateral with the Federal Reserve Agent and gold certificates deposited by the Reserve Bank with the Treasury of the United States as a redemption fund for Federal Reserve notes both are counted as a reserve against notes.



As our monetary system works, currency in circulation increases when the public satisfies its larger needs by withdrawing cash from banks. When these needs decline and member banks receive excess currency from their depositors, the banks redeposit it with the Federal Reserve Banks, where they receive credit in their reserve accounts. The Reserve Banks can then return excess notes

to the Federal Reserve Agents and redeem the assets they had pledged as collateral for the notes.

As of mid-1963 the total amount of currency in circulation outside the Treasury and the Federal Reserve was $35.5 billion, of which $30.3 billion — or six-sevenths — was Federal Reserve notes. All of the other kinds of currency in circulation are Treasury currency. Such currency includes United States notes (a remnant of Civil War financing), various issues of paper money in process of retirement, silver certificates, silver coin, nickels, and cents.

Until 1963, Federal Reserve notes were not authorized for issue in denominations of less than $5. Hence, all of the $1 and $2 bills, as well as some bills of larger denominations, were in other forms of paper money, chiefly silver certificates and United States notes. A law passed in 1963 permits the Federal Reserve to issue notes in denominations as low as $1, and silver certificates will eventually be retired.

All kinds of currency in circulation in the United States are legal tender, and the public makes no distinction among them. It may be said that the Federal Reserve has endowed all forms of currency with elasticity since they are all receivable at the Federal Reserve Banks whenever the public has more currency than it needs and since they may all be paid out by the Reserve Banks when demand for currency increases. In the subsequent discussion reference will be made to the total of currency in circulation rather than to any particular kind.

Demand for Currency

It has already been stated that the amount of currency in circulation changes in response to changes in the pub-

ly and lawfully current in commercial transactions as the equivalent of legal tender coin and paper money.[16]

§ 8. "Currency;" "Specie;" "Current Funds;" "Dollar."—The term "currency" has been held to include bank bills,[17] and has been limited, in some jurisdictions, to bank bills or other paper money which passes at par as a circulating medium in the business community as and for the constitutional coin of the country.[18] It has also been held, however, that it includes both coin and paper money and is practically synonymous with "money," and that the only practical distinction between paper money and coined money, as currency, is that coined money must generally be received, paper money may generally be specially refused in payment of debt, but a payment in either is equally made in money.[19]

The word "specie" means gold or silver coins of the coinage of the United States.[20]

The term "current funds" means current money, par funds, or money circulating without any discount,[1] and is intended to cover whatever is receivable and current by law as money, whether in the form of notes or coin.[2]

The term "dollar" means money, since it is the unit of money in this country,[3] and in the absence of qualifying words, it cannot mean promissory notes or bonds or other evidences of debt.[4] The term also refers to specific coins of the value of one dollar.[5]

§ 9. Bank Notes.—The courts are not agreed whether bank notes are to be classed as money, but the weight of authority and the better reason supports the rule that bank notes constitute a part of the common currency of the country[6] and ordinarily pass as money.[7] They are a good tender as money unless specially objected to.[8] They are not, like bills of exchange, considered as mere securities or documents for debts,[9] and generally, they are classed

[16] See supra, § 2.

[17] Howe v. Hartness, 11 Ohio St 449, 78 Am Dec 312.

[18] Woodruff v. Mississippi, 162 US 291, 40 L ed 973, 16 S Ct 820; Galena Ins. Co. v. Kupfer, 28 Ill 332, 81 Am Dec 284.

[19] Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.
Generally as to bank notes as money, see infra, § 9.

[20] Belford v. Woodward, 158 Ill 122, 41 NE 1097, 29 LRA 593.

[1] Galena Ins. Co. v. Kupfer, 28 Ill 332, 81 Am Dec 284; Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.

[2] Woodruff v. Mississippi, 162 US 291, 40 L ed 973, 16 S Ct 820.
At one time, shortly after the first issue in this country of notes declared to have the quality of legal tender, it was a common practice of drawers of bills of exchange or checks, or makers of promissory notes, to indicate whether the same were to be paid in gold or silver or in such notes; and the term "current funds" was used to designate any of these, all being current and declared by positive enactment to be legal tender. Ibid.

[3] See supra, § 5.

[4] 27 Ohio Jur pp. 125, 126, § 2.

[5] United States v. Van Auken, 96 US 366, 24 L ed 852.

[6] Bank of United States v. Bank of Georgia, 10 Wheat(US) 333, 6 L ed 334; Howe v. Hartness, 11 Ohio St 449, 78 Am Dec 312; Vick v. Howard, 136 Va 101, 116 SE 465, 31 ALR 240; Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.
Anno: 4 Ann Cas 630.
See PAYMENT [Also 21 RCL p. 39, § 36].

[7] Bank of United States v. Bank of Georgia, 10 Wheat(US) 333, 6 L ed 334; Howe v. Hartness, 11 Ohio St 449, 78 Am Dec 312; Crutchfield v. Robins, 5 Humph (Tenn) 15, 42 Am Dec 417; Ross v. Burlington Bank, 1 Alk(Vt) 43, 15 Am Dec 664; Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.
Anno: 4 Ann Cas 630.
Bank notes lawfully issued and actually current at par in lieu of coin are treated as money because they flow as such through the channels of trade and commerce without question. Woodruff v. Mississippi, 162 US 291, 40 L ed 973, 16 S Ct 820; Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773. Anno: 4 Ann Cas 630.
Bank notes are regarded as money to the extent that they will pass by a bequest of cash. Anno: 52 Am Dec 448.
See also 7 Am Jur 283, BANKS, §§ 400 et seq.

[8] See infra, § 18.
See PAYMENT [Also 21 RCL p. 40, § 36].

[9] Bank of United States v. Bank of Georgia, 10 Wheat(US) 333, 6 L ed 334; Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.

as money even in criminal proceedings, where, as a rule, the greatest strictness of construction prevails.[10] However, notwithstanding the generally prevailing rule that bank notes are money, there is considerable authority, especially among the earlier cases, which maintains the rule that bank notes are not to be classed as money.[11]

Even under the majority rule, all bank notes are not necessarily money.[12] They circulate as such only by the general consent and usage of the community.[13] This consent and usage is based upon the convertability of such notes into coin, at the pleasure of the holder, upon their presentation to the bank for redemption.[14] This fact is the vital principle which sustains their character as money. As long as they are in fact what they purport to be, payable on demand, common consent gives them the ordinary attributes of money.[15] But, upon the failure of the bank by which they were issued, when its doors are closed, and its inability to redeem its bills is openly avowed, they instantly lose the character of money, their circulation as currency ceases with the usage and consent upon which it rested, and the notes become the mere dishonored and depreciated evidences of debt.[16]

The power of states to make bank notes legal tender is discussed in a subsequent section.[17]

§ 10. Certificates of Deposit, Negotiable Instruments, etc.—Certificates of deposits or other vouchers for money deposited in solvent banks, payable on demand, are a most convenient medium of exchange, and are extensively used in commercial and financial transactions to represent the money thus deposited, and as the equivalent thereof, and are considered in most transactions as money.[18] Similarly, a certified check, while not a legal medium of payment, is a substitute for money which is commonly and generally used in business and commercial transactions and likewise in legal proceedings and may be considered as so much money. Thus, it has been held that under a statute authorizing a money deposit in lieu of an undertaking, the deposit of a certified check is a sufficient compliance with the statute,[19] and it has also been held that where the question involved is whether negotiable paper was purchased with money, an uncertified check received and presently paid in cash is equivalent to money.[20]

Generally as to bills of exchange, see 7 Am Jur 790, BILLS AND NOTES, § 6.

[10] State v. Finnegean, 127 Iowa 286, 103 NW 155, 4 Ann Cas 628; State v. Kube, 20 Wis 217, 91 Am Dec 390.
Anno: 4 Ann Cas 630.
See 18 Am Jur 574, EMBEZZLEMENT, § 6; 32 Am Jur 987, LARCENY, § 77.

[11] Hamilton v. State, 60 Ind 193, 28 Am Rep 653.
Anno: 4 Ann Cas 630.

[12] Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.

[13] Westfall v. Braley, 10 Ohio St 188, 75 Am Dec 509.

[14] Howe v. Hartness, 11 Ohio St 449, 78 Am Dec 312; Westfall v. Braley, 10 Ohio St 188, 75 Am Dec 509.
Money includes only such bank notes as are current de jure et de facto at the locus in quo; that is, bank notes which are issued for circulation by authority of law, and are in actual and general circulation at par with coin, as a substitute for coin, interchangeable with coin; bank notes which actually represent dollars and cents, and are paid and received for dollars and cents at their legal standard value. Whatever is at a discount—that is, whatever represents less than the standard value of coined dollars and cents at par—does not properly represent dollars and cents, and is not money. Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.

[15, 16] Westfall v. Braley, 10 Ohio St 188, 75 Am Dec 509.

[17] See infra, § 13.

[18] Allibone v. Ames, 9 SD 74, 68 NW 165, 33 LRA 585; State v. McFetridge, 84 Wis 473, 54 NW 1, 998, 20 LRA 223.
Anno: Ann Cas 1912C 356.
Generally as to the definition and nature of certificates of deposit, see 7 Am Jur 351, BANKS, §§ 491 et seq.

[19] Smith v. Field, 19 Idaho 558, 114 P 668, Ann Cas 1912C 354.

[20] Poorman v. Woodward, 21 How(US) 266, 16 L ed 151.

III. COINAGE, ISSUANCE, AND REGULATION

§ 11. Generally.—It is obvious that a uniform monetary system is an essential requisite of modern commerce, and that governmental control and regulation is necessary in order to secure such uniformity. The powers of various governmental authorities in this connection,[1] and particular matters and subjects of regulation,[2] are considered in the following sections. The establishment of a standard unit of value is discussed in a prior section.[3]

The issuance of bank notes is discussed under another title.[4]

§ 12. By Federal Government.—In order that money throughout the United States may be uniform, the Federal Government is given, by the Constitution of the United States, the exclusive power to coin money and regulate its value and the value of foreign coin. Congress has the power to make all laws which shall be necessary and proper to carry into effect these powers.[5] Hence, Congress may establish a uniform national currency, declare of what it shall consist, endow that currency with the character and qualities of money having a defined legal value, by requiring its acceptance at its face value as legal tender in the discharge of all debts, and regulate the value of such money, unless by so doing property is taken without due process of law.[6] Moreover, Congress, under its power to provide a currency for the entire country, may deny the quality of legal tender to foreign coins, and may provide by law against the imposition on the community of counterfeit and base coin, and may restrain by suitable enactments circulation as money of any notes not issued under its own authority.[7]

§ 13. By States.—By the Constitution of the United States, the several states are prohibited from coining money,[8] emitting bills of credit,[9] or making anything but gold and silver coin a tender in payment of debts.[10] Thus, states have no power to make bank notes legal tender,[11] except in payment of debts and dues owing the state.[12]

As a general rule, the extent of a state's power as to currency is limited to the right to establish banks, to regulate or prohibit the circulation, within the state, of foreign notes, and to determine in what the public dues shall be paid,[13] and inasmuch as a state is prohibited from coining money, the money which it may coin cannot be circulated as such. A creditor will be under no obligation to receive it in discharge of his debt; and if any statutory provision of the state is framed, with a view of forcing the circulation of such coin, by suspending the interest or postponing the debt of a creditor where it is refused, such statute is void, because it acts on the thing prohibited and comes directly in conflict with the Constitution.[14] Similarly, applying the prohibition against making anything but gold or silver coin a legal tender in the payment of debts, a state statute providing that a creditor must, on penalty of delay, indorse his consent on an execution, to receive property in payment of his debt, is invalid.[15]

§ 14. By Municipalities.—It seems well established that a municipal corporation in a state in which it is against public policy, as well as express law, for any person or corporate body to issue small bills to circulate as currency has no implied power to issue such bills. Moreover, such power is not conferred by a clause in the city charter, authorizing the borrowing of money.[16]

§ 15. Value of Coin.—The power to regulate the value of coin may be exercised by Congress from time to time as the value of the metal changes, for the power to regulate the value of money coined, and of foreign coinage, is not exhausted by a single initial regulation.[17] Thus, it has been held that Congress may issue coins of the same denominations as those already current by law, but of less intrinsic value than those, by reason of containing a less weight of the precious metals, and thereby enable debtors to discharge their debts by the payment of coins of the lesser real value.[18]

[1] See infra, §§ 12 et seq.

[2] See infra, §§ 12 et seq.

[3] See supra, § 5.

[4] See 7 Am Jur 284, BANKS, § 402.

[5] Perry v. United States, 294 US 330, 79 L ed 912, 55 S Ct 432, 95 ALR 1336; Norman v. Baltimore & O. R. Co. 294 US 240, 79 L ed 885, 55 S Ct 407, 95 ALR 1352, affirming 265 NY 37, 191 NE 726, 92 ALR 1523; Ling Su Fan v. United States, 218 US 302, 54 L ed 1049, 31 S Ct 21, 30 LRA(NS) 1176; Legal Tender Case, 110 US 421, 28 L ed 204, 4 S Ct 122; United States v. Ballard, 14 Wall.(US) 457, 20 L ed 845; Legal Tender Cases, 12 Wall.(US) 457, 20 L ed 287; Veazie Bank v. Fenno, 8 Wall.(US) 533, 19 L ed 482; United States v. Marigold, 9 How.(US) 560, 13 L ed 257; Federal Land Bank v. Wilmarth, 218 Iowa 339, 252 NW 507, 94 ALR 1338.

Authority to impose requirements of uniformity and parity is an essential feature of the control over the currency vested in Congress. Norman v. Baltimore & O. R. Co. 294 US 240, 79 L ed 885, 55 S Ct 407, 95 ALR 1352, affirming 265 NY 37, 191 NE 726, 92 ALR 1523.

As to the power of the Federal Government to regulate the value of coin, generally, see infra, § 15.

As to powers of the Federal Government with respect to matters of revenue, finance, and currency, generally, see UNITED STATES [Also 26 RCL p. 1425, § 17].

[6] Legal Tender Case, 110 US 421, 28 L ed 204, 4 S Ct 122; Norman v. Baltimore & O. R. Co. 265 NY 37, 191 NE 726, 92 ALR 1523, affirmed in 294 US 240, 79 L ed 885, 55 S Ct 407, 95 ALR 1352.

As to what money constitutes legal tender, see infra, § 18.

[7] Legal Tender Case, 110 US 421, 28 L ed 204, 4 S Ct 122; Veazie Bank v. Fenno, 8 Wall.(US) 533, 19 L ed 482.

It is against public policy to allow individuals or corporations to issue notes as a common currency or circulating medium without express legislative sanction. Thomas v. Richmond, 12 Wall.(US) 349, 20 L ed 453.

[8] Norman v. Baltimore & O. R. Co. 294 US 240, 79 L ed 885, 55 S Ct 407, 95 ALR 1352; Legal Tender Case, 110 US 421, 28 L ed 204, 4 S Ct 122; Craig v. Missouri, 4 Pet.(US) 410, 7 L ed 903.

Anno: 31 ALR 246.

As to fiscal management of states, generally, see STATES [Also 25 RCL p. 394, §§ 27 et seq.].

[9] See infra, § 17.

[10] Legal Tender Case, 110 US 421, 28 L ed 204, 4 S Ct 122; Sturges v. Crowninshield, 4 Wheat.(US) 122, 4 L ed 529; Townsend v. Townsend, Peck(Tenn) 1, 14 Am Dec 722.

Anno: 31 ALR 246.

The states cannot declare what shall be money, or regulate its value, since whatever power there is over the currency is vested in Congress. Norman v. Baltimore & O. R. Co. 294 US 240, 79 L ed 885, 55 S Ct 407, 95 ALR 1352, affirming 265 NY 37, 191 NE 726, 92 ALR 1523.

If a state establishes a tender law it must be for coin the value of which is regulated by Congress. Anno: 31 ALR 246.

[11] Markle v. Hatfield, 2 Johns.(NY) 455, 3 Am Dec 446; Westfall v. Braley, 10 Ohio St 188, 75 Am Dec 509; Thorp v. Wegefarth, 56 Pa 82, 93 Am Dec 789; Bayard v. Shunk, 1 Watts & S(Pa) 92, 37 Am Dec 441; Wainwright v. Webster, 11 Vt 576, 34 Am Dec 707; Tancil v. Seaton, 28 Gratt(Va) 601, 26 Am Rep 380.

[12] Woodruff v. Trapnall, 10 How(US) 190, 13 L ed 383.

[13] Woodruff v. Trapnall, 10 How(US) 190, 13 L ed 383.

The expression "intended to circulate as money," as used in provisions of some state Constitutions to the effect that "the legislature shall, in no case, have power to issue treasury warrants, treasury notes, or paper of any description intended to circulate as money," implies that the paper in question must have a fitness for general circulation as a substitute for money in the common transactions of business; it does not apply to warrants made payable to an individual to whom the state is indebted, although the state may direct its officers to receive such warrants in payment of debts due the state. Houston & T. C. R. Co. v. Texas, 177 US 66, 44 L ed 673, 20 S Ct 545.

[14] Craig v. Missouri, 4 Pet.(US) 410, 7 L ed 903.

The prohibition of Art. 1, § 10, of the United States Constitution, expressly forbidding states to coin money or make anything but gold and silver legal tender for the payment of debts, takes from the paper of state banks all coercive circulation, and leaves it to stand on the credit of the banks. Veazie Bank v. Fenno, 8 Wall.(US) 533, 19 L ed 482. Anno: 31 ALR 246.

[15] Bally v. Gentry, 1 Mo 164, 13 Am Dec 484.

[16] Thomas v. Richmond, 12 Wall.(US) 349, 20 L ed 453.

As to the right of municipal corporations generally to borrow money or incur indebtedness, see MUNICIPAL CORPORATIONS [Also 19 RCL p. 779, § 84].

[17] Legal Tender Cases, 12 Wall.(US) 457, 20 L ed 287.

[18] Legal Tender Case, 110 US 421, 28 L ed 204, 4 S Ct 122; United States v. Ballard, 14 Wall.(US) 457, 20 L ed 845.

C. Judicial Powers

1. In General

§ 219. Generally.[1]

The power to maintain a judicial department is an incident to the sovereignty of each state.[2] Under the doctrine of the separation of the powers of government,[3] judicial power, as distinguished from executive and legislative power, is vested in the courts as a separate magistracy.[4]

The judiciary is an independent department of the state and of the federal government, deriving none of its judicial power from either of the other departments. This is true although the legislature may create courts under the provisions of the constitution. When a court is created, the judicial power is conferred by the constitution, and not by the act creating the court.[5] It was said at an early period in American law that the judicial power in every well-organized government ought to be coextensive with the legislative power so far, at least, as private rights are to be enforced by judicial proceedings.[6] The rule is now well settled that under the various state governments, the constitution confers on the judicial department all the authority necessary to exercise powers as a co-ordinate department of the government.[7] Moreover, the independence of the judiciary is the means provided for maintaining the supremacy of the constitution.[8]

In a general way the courts possess the entire body of judicial power. The other departments cannot, as a general rule, properly assume to exercise any part of this power,[9] nor can the constitutional courts be hampered or limited in the discharge of their functions by either of the other two branches.[10]

§ 220. Judicial functions, generally.

As a rule no effort is made in a constitution to accurately define the scope or nature of judicial powers. These matters are left to be determined in the light of the common law and the history of our institutions as they existed

1. Discussed at this point is the judicial power in its constitutional relationship to the other powers of government. A broad discussion of judicial power, generally, will be found in the article, Courts.

2. Hoxie v New York, N. H. & H. R. Co. 82 Conn 352, 73 A 754.

3. § 210, supra.

4. Brydonjack v State Bar, 208 Cal 439, 281 P 1018, 66 ALR 1507; Norwalk Street R. Co.'s Appeal, 69 Conn 576, 37 A 1080, 38 A 708; Brown v O'Connell, 36 Conn 432; Burnett v Green, 97 Fla 1007, 122 So 570, 69 ALR 244; Ex parte Earman, 85 Fla 297, 95 So 755, 31 ALR 1226; State v Shumaker, 200 Ind 623, 157 NE 769, 162 NE 441, 163 NE 272, 58 ALR 954; State v Denny, 118 Ind 382, 21 NE 252; Flournoy v Jeffersonville, 17 Ind 69; Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059; American State Bank v Jones, 184 Minn 498, 239 NW 144, 78 ALR 770.

5. Brown v O'Connell, 36 Conn 432; Norwalk Street R. Co.'s Appeal, 69 Conn 576, 37 A 1080, 38 A 708; Parker v State, 135 Ind 534, 35 NE 179; Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059.

6. Kendall v United States, 12 Pet (US) 524, 9 L ed 1181.

7. Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1509.

8. Riley v Carter, 165 Okla 262, 25 P2d 666, 88 ALR 1018.

9. State v Noble, 118 Ind 350, 21 NE 244; Attorney General ex rel. Cook v O'Neill, 280 Mich 649, 274 NW 445; Washington-Detroit Theatre Co. v Moore, 249 Mich 673, 229 NW 618, 68 ALR 105.

The whole of judicial power reposing in the sovereignty is granted to courts except as restricted in the constitution. Washington-Detroit Theatre Co. v Moore, supra.

10. Vidal v Backs, 218 Cal 99, 21 P2d 952, 86 ALR 1134; Shaw v Moore, 104 Vt 529, 162 A 373, 86 ALR 1139.

And see § 217, supra, and §§ 234 et seq., infra.

anterior to, and at the adoption of, the constitution.[11] It has been stated that the term "judicial power" is not capable of a precise definition.[12] The constitution is, however, the common source of the power and authority of every court, and all questions concerning jurisdiction of a court must be determined by that instrument,[13] with the exception of certain inherent powers which of right belong to all courts.[14] Therefore, unless the power or authority of a court to perform a contemplated act can be found in the constitution or the laws enacted thereunder, it is without jurisdiction and its acts are invalid.[15]

Various tests have been suggested for determining what are or what are not judicial powers.[16] It has been said that where the inquiry to be made involves questions of law as well as fact, where it affects a legal right, and where the decision may result in terminating or destroying that right, the powers to be exercised and the duties to be discharged are essentially judicial.[17] Thus,

11. State v Noble, 118 Ind 350, 21 NE 244; Decamp v Archibald, 50 Ohio St 618, 35 NE 1056.

Judicial power in matters of law and equity is, under a constitutional provision vesting it in courts, such power as the courts, under the English and American systems of jurisprudence, had always exercised in actions at law and in equity. State ex rel. Ellis v Thome, 112 Wis 81, 87 NW 797.

12. People ex rel. Rusch v White, 334 Ill 465, 166 NE 100, 64 ALR 1006; Rohde v Newport, 246 Ky 476, 55 SW2d 368, 87 ALR 701; Goetz v Black, 256 Mich 564, 240 NW 94, 84 ALR 802; American State Bank v Jones, 184 Minn 498, 239 NW 144, 78 ALR 770; State ex rel. Standard Oil Co. v Blaisdell, 22 ND 86, 132 NW 769; State v Creamer, 85 Ohio St 349, 97 NE 602.

13. State v Bigelow, 76 Ariz 13, 258 P2d 409, 37 ALR2d 979; Wilmington Trust Co. v Baldwin, 38 Del 595, 195 A 287; State ex rel. Peterson v Dunlap, 28 Idaho 784, 156 P 1141; Washington-Detroit Theatre Co. v Moore, 249 Mich 673, 229 NW 618, 68 ALR 105; McWillie v Van Vacter, 35 Miss 428; Atchison, T. & S. F. R. Co. v State Corp. Commission, 43 NM 503, 95 P2d 676; Springer v Shavender, 118 NC 33, 23 SE 976; Alexander v Gladden, 205 Or 375, 288 P2d 219; Deitz Colliery Co. v Ott, 99 W Va 663, 129 SE 708; Smith v Smith, 81 W Va 761, 95 SE 199, 8 ALR 1149; State v True, 26 Wyo 314, 184 P 229.

The jurisdiction of courts is subject to regulation only by the supreme sovereign power of the state. Sapulpa v Land, 101 Okla 22, 223 P 640, 35 ALR 872.

The constitutional power of states to provide for the determination of controversies in their courts may be restricted only by the action of Congress in conformity to the judiciary sections of the Constitution. Healy v Ratta, 292 US 263, 78 L ed 1248, 54 S Ct 700.

Except so far as is necessary to secure the supremacy of the Constitution, laws, and treaties of the United States, the jurisdiction of the state courts has not been interfered with by the federal judicial system established by Congress in exercising its constitutional powers. Whitten v Tomlinson, 160 US 231, 40 L ed 406, 16 S Ct 297.

14. Re Buckles, 331 Mo 405, 53 SW2d 1055.

15. Godchaux Sugars, Inc. v Ockman, 225 La 599, 73 So 2d 577; Gay v Clark County, 41 Nev 330, 171 P 156, 173 P 885, 3 ALR 224; Christianson v Farmers' Warehouse Asso. 5 ND 438, 67 NW 300.

But see Boggess v Buxton, 67 W Va 679, 69 SE 367, holding that the constitutional jurisdiction of mandamus conferred on a court might be extended by an enlargement of the scope of the writ by the legislature.

Where a court is established and its jurisdiction is specifically defined by the organic law, the legislature is powerless to diminish, enlarge, transfer, or otherwise infringe upon the powers thus conferred. State ex rel. Cave v Tincher, 258 Mo 1, 166 SW 1028.

The power of a state to determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard in them and to deny access to its courts, in the exercise of its right to regulate practice and procedure, is subject to the restrictions imposed by the contract, full faith and credit, and privileges or immunities clauses of the Federal Constitution. Angel v Bullington, 330 US 183, 91 L ed 832, 67 S Ct 657.

16. State ex rel. Standard Oil Co. v Blaisdell, 22 ND 86, 132 NW 769.

17. State ex rel. Standard Oil Co. v Blaisdell, supra.

Judicial adherence to the doctrine of the separation of powers preserves the courts for the decision of issues, between litigants, capable of effective determination. United Public Workers v Mitchell, 330 US 75, 91 L ed 754, 67 S Ct 556.

"Judicial power" is the power which adjudicates upon and protects the rights and interests of individual citizens, and to that end construes and applies the laws, and this power involves, not only the power to hear and determine a cause, but also the power and jurisdiction to adjudicate and determine the rights of the parties to the controversy and to render

where the facts out of which a moral or legal obligation is claimed to arise are disputed, the contention falls within the province of the courts, under the distribution of governmental powers prescribed by the constitutions of the states.[18] Using different language, it may be said that a judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts, under laws supposed already to exist.[19] The courts declare the law as it is[20] and construe it,[1] resolving every doubt in favor of its constitutionality,[2] and enforce it.[3]

It has also been said that judicial power is the power which a regularly constituted court exercises in matters brought before it, in the manner prescribed by statute or established rules of practice, and which matters do not come within powers granted to the executive or vested in the legislative department of the government.[4]

a judgment or decree which will be effectual and binding upon them in respect to their personal or property rights in controversy in such proceedings, and the power to hear without the power to adjudicate and determine the rights of the parties is not judicial power, as that term is used in the constitution. People ex rel. Rusch v White, 334 Ill 465, 166 NE 100, 64 ALR 1006; Devine v Brunswick-Balke-Collender Co. 270 Ill 504, 110 NE 780; People ex rel. Denceen v Simon, 176 Ill 165, 52 NE 910; People ex rel. Kern v Chase, 165 Ill 527, 46 NE 454.

Judicial power is the power of the court to decide and pronounce its judgment and to carry it into effect between parties who institute a suit before it according to the regular course of judicial procedure. Muskrat v United States, 219 US 346, 55 L ed 246, 31 S Ct 250; Goetz v Black, 256 Mich 564, 240 NW 94, 84 ALR 802.

But it has also been said that the power to ascertain and decide is not necessarily a judicial power and is frequently exercised by ministerial officers and legislative bodies. Whether the power to hear and determine is judicial depends upon the nature of the subject of the inquiry, the parties to be affected, and the effect of the determination. State ex rel. Monnett v Guilbert, 56 Ohio St 575, 47 NE 551.

If a change is to be made in a statute, Congress, and not the court, is the one to do it. Timken Roller Bearing Co. v United States, 341 US 593, 95 L ed 1199, 71 S Ct 971.

18. Harris v Alleghany County, 130 Md 488, 100 A 733.

19. Ross v Oregon, 227 US 150, 57 L ed 458, 33 S Ct 220; Prentis v Atlantic Coast Line Co. 211 US 210, 53 L ed 150, 29 S Ct 67; Sinking Fund Cases, 99 US 700, 25 L ed 496 (per Field, J.); Rosenbaum v Stone, 131 Ark 251, 199 SW 388; Van Winkle v State, 1 Boyce (Del) 578, 91 A 385; Fenske Bros. v Upholsterers' International Union, 358 Ill 339, 193 NE 112, 97 ALR 1318, cert den 295 US 734, 79 L ed 1682, 55 S Ct 645; Nega v Chicago R. Co. 317 Ill 482, 148 NE 250, 39 ALR 1057; Local Union, N. B. O. P. v Kokomo, 211 Ind 72, 5 NE2d 624, 108 ALR 1111; Mathison v Minneapolis Street R. Co. 126 Minn 286, 148 NW 71; State v Revii, 193 NC 192, 136 SE 346, 50 ALR 98; Langever v Miller, 124 Tex 80, 76 SW2d 1025, 96 ALR 836; White Bros. & C. Co. v Watson, 64 Wash 666, 117 P 497.

20. Ebert v Poston, 266 US 548, 69 L ed 435, 45 S Ct 188; William Filene's Sons Co. v Weed, 245 US 597, 62 L ed 497, 38 S Ct 211; United States v Baltimore & O. R. Co. 225 US 306, 56 L ed 1100, 32 S Ct 817; Henry v A. B. Dick Co. 224 US 1, 56 L ed 645, 32 S Ct 364; Dewey v United States, 178 US 510, 44 L ed 1170, 20 S Ct 981; Dysart v St. Louis, 321 Mo 514, 11 SW2d 1045, 62 ALR 762; People v Gowasky, 244 NY 451, 155 NE 737, 58 ALR 9; State ex rel. Harris v Watson, 201 NC 661, 161 SE 215, 79 ALR 441.

1. Minnesota Rate Cases (Simpson v Shepard) 230 US 352, 57 L ed 1511, 33 S Ct 729; Thornley v United States, 113 US 310, 28 L ed 999, 5 S Ct 491; Ward v Chamberlain, 2 Black (US) 430, 17 L ed 319; Ogden v Blackledge, 2 Cranch (US) 272, 2 L ed 276; Marbury v Madison, 1 Cranch (US) 137, 2 L ed 60; Birmingham v Weston, 233 Ala 563, 172 So 643, 109 ALR 970; Fountain Park Co. v Hensler, 199 Ind 95, 155 NE 465, 50 ALR 1518; Straub v Lyman Land & Invest. Co. 30 SD 310, 138 NW 957, affd on reh 31 SD 571, 141 NW 979; Exchange Nat. Bank v United States, 147 Wash 176, 265 P 722, 62 ALR 139, affd 279 US 80, 73 L ed 621, 49 S Ct 321.

2. § 146, supra.

3. Wilson v New, 243 US 332, 61 L ed 755, 37 S Ct 298; Barrett v Indiana, 229 US 26, 57 L ed 1050, 33 S Ct 692; United States v Baltimore & O. R. Co. 225 US 306, 56 L ed 1100, 32 S Ct 817; New Jersey v Anderson, 203 US 483, 51 L ed 284, 27 S Ct 137; Calhoun County v Galbraith, 99 US 214, 25 L ed 410; Journeymen Barbers, H. C. & P. I. U. v Industrial Com. 128 Colo 121, 260 P2d 941, 42 ALR2d 700.

4. State v Huber, 129 W Va 198, 40 SE 2d 11, 168 ALR 808.

It is clear that a proceeding is not necessarily nonjudicial because it is not adversary nor because there is not an appearance or active opposition by some defendant,[5] and it is not necessary that the adjudication between the parties would be conclusive of their rights put in issue.[6] Judicial power is not restricted to determining controversies actually existing, but may be extended to controversies anticipated, so as to include the functions of providing security against disputes and claims which may arise, of protecting property and rights from possible, though at the time unknown, hostile claims and pretensions, and of declaring a status or right, thereby forestalling and preventing controversies.[7]

Express provisions in the state constitutions often modify the general doctrine of separation of powers as applied to the judicial department. Certain powers which are essentially nonjudicial in character and not ordinarily to be used by the courts may be expressly entrusted to them by the constitution.[8]

§ 221. — Interpretation of constitution; maintaining separation of powers.

Under the American system of constitutional government, among the most important functions entrusted to the judiciary are the interpreting of constitutions[9] and, as a closely connected power, the determination of whether laws and acts of the legislature are or are not contrary to the provisions of the federal and state constitutions.[10]

The judicial powers include the important function of preventing departmental encroachment, such as marking out the boundaries of each department and remedying the invasions by either of the territory of the other.[11] When called on to review and control the acts of an officer of a co-ordinate branch of the government, however, the courts should proceed with extreme caution, and the right to exercise the power should be manifestly clear.[12] The whole

5. Robinson v Kerrigan, 151 Cal 40, 90 P 129.

6. People ex rel. Kern v Chase, 165 Ill 527, 46 NE 454.

7. Robinson v Kerrigan, 151 Cal 40, 90 P 129; Greenfield v Russel, 292 Ill 392, 127 NE 102, 9 ALR 1334.

The general subject of declaratory judgments is discussed in DECLARATORY JUDGMENTS.

8. Gay v District Ct. 41 Nev 330, 171 P 156, 173 P 885, 3 ALR 224; Ashford v Goodwin, 103 Tex 491, 131 SW 535.

9. Webster v Cooper, 14 How (US) 488, 14 L ed 510; Hamilton Bank v Dudley, 2 Pet (US) 492, 7 L ed 496; Greenwood Cemetery Land Co. v Routt, 17 Colo 156, 28 P 1125; Fountain Park Co. v Hensler, 199 Ind 95, 155 NE 465, 50 ALR 1518; State ex rel. Jameson v Denny, 118 Ind 382, 21 NE 252; State ex rel. Standard Oil Co. v Blaisdell, 22 ND 86, 132 NW 769.

10. Parker v State, 133 Ind 178, 32 NE 836, 33 NE 119; Pitman v Drabelle, 267 Mo 78, 183 SW 1055; State ex rel. Richards v Whisman, 36 SD 260, 154 NW 707, error dismd 241 US 643, 60 L ed 1218, 36 S Ct 449; Peay v Nolan, 157 Tenn 222, 7 SW2d 815, 60 ALR 408.

The questions whether the legislature has abridged some fundamental right of a citizen and whether it has assumed its prerogative over subjects not within its province are judicial questions. State v Martin, 193 Ind 120, 139 NE 282, 26 ALR 1386.

And see §§ 101 et seq., supra.

The court's delicate and difficult office is to ascertain and declare whether the legislation is in accordance with, or in contravention of, the provisions of the constitution; and, having done that, its duty ends. Savage v Martin, 161 Or 660, 91 P2d 273.

11. State ex rel. Mueller v Thompson, 149 Wis 488, 137 NW 20.

Deciding whether a matter has in any measure been committed by the Federal Constitution to another branch of government, or whether the action of that branch exceeds its authority, being itself a delicate exercise in constitutional interpretation, is a responsibility of the United States Supreme Court as ultimate interpreter of the Constitution. Baker v Carr, 369 US 186, 7 L ed 2d 663, 82 S Ct 691.

It is a judicial function to serve as a balance for the people's protection against abuse of power by other branches of government. United Public Workers v Mitchell, 330 US 75, 91 L ed 754, 67 S Ct 556.

12. Jobe v Urquhart, 102 Ark 470, 143 SW 121.

subject as to the power of the judiciary to construe constitutions and thus to determine the constitutionality of acts of the other two departments of government has been accorded detailed consideration elsewhere.[12]

It has been held in one jurisdiction that where there are two conflicting legislatures, each claiming the right to exercise legislative functions, it is for the courts to determine which has the lawful authority.[14]

2. Limitations

§ 222. Distinctions between judiciary and executive and legislative departments.

The distinction between legislative or ministerial functions and judicial functions is difficult to point out. What is a judicial function does not depend solely on the mental operation by which it is performed or the importance of the act. In solving this question, due regard must be had to the organic law of the state and the division of powers of government. In the discharge of executive and legislative duties, the exercise of discretion and judgment of the highest order is necessary, and matters of the greatest weight and importance are dealt with. It is not enough to make a function judicial that it requires discretion, deliberation, thought, and judgment.[15] To be judicial, the exercise of discretion and judgment must be within that subdivision of the sovereign power which belongs to the judiciary or, at least, which does not belong to the legislative or executive department. If the matter in respect to which it is exercised belongs to either of the two last-named departments of government, it is not judicial. What is judicial and what is not in such cases seem to be better indicated by the nature of a thing than its definition.[16]

Broadly speaking, a judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts, under laws supposed already to exist.[17] Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power.[18]

13. §§ 101 et seq., supra.

14. Prince v Skillin, 71 Me 361.

15. Wheeling & E. G. R. Co. v Triadelphia, 58 W Va 487, 52 SE 499.

An official act requiring the exercise of discretion in judgment may be administrative or judicial according to the nature of the subject matter. Trybulski v Bellows Falls Hydro-Electric Corp. 112 Vt 1, 20 A2d 117.

A court may not, under the guise of protecting private property, extend its authority to a subject of regulation not within its competency, but is confined to ascertaining whether the particular assertion of the legislative power to regulate has been exercised to so unwarranted a degree as, in substance and effect, to exceed regulation and to be equivalent to a taking of property without due process of law or a denial of the equal protection of the laws. Atlantic Coast Line R. Co. v North Carolina Corp. Com. 206 US 1, 51 L ed 933, 27 S Ct 585; Budd v New York, 143 US 517, 36 L ed 247, 12 S Ct 468 (fees chargeable by grain elevators); Durgin v Minot, 203 Mass 26, 89 NE 144; People v Luhrs 195 NY 377, 89 NE 171.

16. Solvuca v Ryan & R. Co. 131 Md 265, 101 A 710; State ex rel. Mason v Baker, 69 ND 488, 288 NW 202; Wheeling & E. G. R. Co. v Triadelphia, 58 W Va 487, 52 SE 499.

The selection of a site on which a public necessity or public work of any sort shall be located is essentially a legislative, and not a judicial, matter, but whether a public work or utility is prosecuted according to law is a judicial question. Gibson v Baton Rouge, 161 La 637, 109 So 339, 47 ALR 1151.

The duties of a state board of railway commissioners relative to granting permission to discontinue operation of certain trains are legislative. Re Minneapolis, St. P. & S. Ste. M. R. Co. 30 ND 221, 152 NW 513.

17. § 220, supra.

18. Ross v Oregon, 227 US 150, 57 L ed 458, 33 S Ct 220; Prentis v Atlantic Coast Line Co. 211 US 210, 53 L ed 150, 29 S Ct 67; Sinking Fund Cases, 99 US 700, 25 L ed 496 (per Field, J.); Wulzen v San Francisco, 101 Cal 15, 35 P 353; Van Winkle v State, 4 Boyce (Del) 578, 91 A 385; Re Speer, 53 Idaho 293, 23 P2d 239, 88 ALR 1086; State v Ramirez, 34 Idaho 623, 203 P 279, 29 ALR 297; Fenske Bros. v Upholsterers' International Union, 358 Ill 239, 193 NE 112, 97 ALR 1318, cert den 295 US 734, 79 L ed 1682, 55 S Ct 645; Neta v Chicago R. Co. 317 Ill 482, 148 NE 250, 39 ALR 1057; Local Union, N. B. O. P. v Kokomo, 211 Ind 72, 5 NE2d 624, 108 ALR 1111; Mathison v Minneapolis Street R. Co. 126 Minn 286, 148 NW 71; State v Revis, 193 NC 192, 136 SE 346, 50 ALR 98; Re Minneapolis, St. P. & S. Ste. M. R. Co. 30 ND 221, 152 NW 513; State ex rel. Yaple v Creamer, 85 Ohio St 349, 97 NE 602; Langever v Miller, 124 Tex 80, 76 SW2d 1025, 96 ALR 836.

To declare what the law is or has been is a judicial power; to declare what it shall be is legislative. Gorham v Robinson, 57 RI 1, 186 A 832.

Legislation consists in laying down laws or rules for the future; administration has to do with the carrying of those laws into effect, their practical application to current affairs by way of management and oversight including investigation, regulation, and control, in accordance with, and in execution of, the principles prescribed by the lawmaker; the judicial function is confined to injunctions, etc., preventing wrongs for the future, and judgments giving redress for those of the past. Mitchell Coal & Coke Co. v Pennsylvania R. Co. 230 US 247, 57 L ed 1472, 33 S Ct 916, Pitney, J., dissenting.

The judicial power is exercised in the decision of cases; the legislative in making general regulations by the enactment of laws. The latter acts from considerations of public policy, the former by the pleadings and evidence in a case (per McLean, J.). Pennsylvania v Wheeling & B. Bridge Co. 18 How (US) 421, 15 L ed 435.

19. Zanesville v Zanesville Teleg. & Teleph. Co. 64 Ohio St 67, 59 NE 781.

The legislative power can be restrained only by constitutional provisions—not by the common or statutory law of England. State v Lewis, 142 NC 626, 55 SE 600.

20. State v Bates, 96 Minn 110, 104 NW 709.

1. Parkinson v Watson, 4 Utah 2d 191, 291 P2d 400.

2. Burnett v Greene, 97 Fla 1007, 122 So 570, 69 ALR 244; Ex parte Griffiths, 118 Ind 83, 20 NE 513; Auditor v Atchison, T. & S. F. R. Co. 6 Kan 500; Searle v Yensen, 118 Neb 835, 226 NW 464; Woodward v Pearson, 165 Or 40, 103 P2d 737; State v Huber, 129 W Va 198, 40 SE2d 11, 168 ALR 808.

Annotation: 69 ALR 266, et seq.

There are limits to the nature of duties which Congress may impose on the constitutional courts vested with the federal judicial power. National Mut. Ins. Co. v Tidewater Transfer Co. 337 US 582, 93 L ed 1556, 69 S Ct 1173.

Powers of a legislative or executive nature are not capable of being conferred upon a court exercising solely the judicial power of the United States. United Steelworkers of America v United States, 361 US 39, 4 L ed 2d 12, 80 S Ct 1.

In Anway v Grand Rapids R. Co. 211 Mich 592, 179 NW 350, 12 ALR 26, it was held that under a constitution dividing governmental powers into three departments and conferring the judicial power upon the courts, the legislature cannot confer upon the courts a power not judicial or require them to perform functions not judicial in character.

As to imposing nonjudicial functions on courts by provision for review of adminis-

It has been said that the fact that a power is conferred by statute on a court of justice, to be exercised by it in the first instance in a proceeding instituted therein, is, itself, of controlling importance as fixing the judicial character of the power and is decisive in that respect, unless it is reasonably certain that the power belongs exclusively to the legislative or the executive department.[19] Every doubt will be resolved in favor of a statute conferring powers of an ambiguous character upon a judicial officer, in order that the powers so conferred may be held to be judicial.[20]

American courts are constantly wary not to trench upon the prerogatives of other departments of government or to arrogate to themselves any undue powers, lest they disturb the balance of power; and this principle has contributed greatly to the success of the American system of government and to the strength of the judiciary itself.[1]

§ 223. —Impermissibility of imposition of nonjudicial functions upon judiciary.

One application of the general principle as to the separation of the powers of government is the rule which has itself been described by some authorities as a rudimentary principle of constitutional law—namely, that on judges as such no functions can be imposed except those of a judicial nature.[2] It has been

the same rule has been applied with regard to an option to purchase property at the price offered to the optionor by a third person.[9]

G. Consideration

1. In General; Necessity

§ 85. Generally; definitions and nature of consideration.

Technically, consideration is defined as some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other.[10] Again, consideration for a promise is defined as an act or a forbearance; or the creation, modification, or destruction of a legal relation; or a return promise bargained for and given in exchange for the promise.[11] Consideration is, in effect, the price bargained[12] and paid for a promise[13]—that is, something given in exchange for the promise.[14] In some jurisdictions consideration is defined by statute.[15]

Generally, considerations are classified as "good" and "valuable."[16] A "good" consideration, sometimes called a "meritorious" consideration, is such as that of blood, or of natural love and affection, or of love and affection based on kindred by blood or marriage,[17] whereas a "valuable" consideration is generally understood as money or something having monetary value.[18]

Although historically the terms "quid pro quo" and "nudum pactum" applied only with regard to contracts which were at common law enforceable by an action of debt, these terms are now generally used with regard to the consideration for contracts generally—that is, consideration is referred to as the "quid pro quo," and any promise not supported by consideration is said to be "nudum pactum."[19] Consideration is, however, not identical with quid

specified sum and as much more than such sum as such stock may be sold for to any other person, was held in Huston v Harrington, 58 Wash 51, 107 P 874, to be too indefinite and uncertain, as to the price, to be enforced.

9. Slaughter v Mallet Land & Cattle Co. (CA5 Tex) 141 F 282, cert den 201 US 646, 50 L ed 903, 26 S Ct 761; Marske v Willard, 169 Ill 276, 48 NE 290; Hayes v O'Brien, 149 Ill 403, 37 NE 73; Levy v Peabody, 238 Mass 164, 130 NE 261; Nu-Way Service Stations v Vandenberg Bros. Oil Co. 283 Mich 551, 278 NW 683; Driebe v Ft. Penn Realty Co. 331 Pa 314, 200 A 62, 117 ALR 1091; Peerless Dept. Stores v George M. Snook Co. 123 W Va 77, 15 SE2d 169, 136 ALR 130; Goerke Motor Co. v Lonergan, 236 Wis 544, 295 NW 671.

Annotations: 136 ALR 139, 140.

10. Becker v Colonial Life Ins. Co. 153 App Div 382, 138 NYS 491.

58 Columbia L Rev 929 et seq.

It is said that the most widely used definition of "consideration" is a benefit to the promisor or a loss or detriment to the promisee. Test v Heaberlin, 254 Iowa 521, 118 NW2d 73.

11. Byerly v Duke Power Co. (CA4 NC) 217 F2d 803, citing Restatement, Contracts § 75.

12. La Flamme v Hoffman, 148 Me 444, 95 A2d 802; Re Sadler's Estate, 232 Miss 349, 98 So 2d 863; Coast Nat. Bank v Bloom, 113 NJL 597, 174 A 576, 95 ALR 528.

13. Howard College v Turner, 71 Ala 429; Re Sadler's Estate, 232 Miss 349, 98 So 2d 863; Coast Nat. Bank v Bloom, 113 NJL 597, 174 A 576, 95 ALR 528.

14. Phoenix Mut. L. Ins. Co. v Raddin, 120 US 183, 30 L ed 644, 7 S Ct 500; Re Sadler's Estate, 232 Miss 349, 98 So 2d 863; James v Fulcrod, 5 Tex 512.

15. Wilson v Blair, 65 Mont 155, 211 P 289, 27 ALR 1235; Clements v Jackson County Oil & Gas Co. 61 Okla 247, 161 P 216.

16. Thompson v Thompson, 17 Ohio St 649.

17. Williston, Contracts 3d ed § 110.

18. § 95, infra.

19. Contracts which were at common law enforceable by an action of debt generally derived their obligatory force from a duty imposed by law. This duty was based either on the form of the contract or on what was known as quid pro quo. By this was meant that the person owing the duty had received from the person to whom the duty was due something which he was bound to return or

pro quo. The policy of the courts in requiring a consideration for the maintenance of a contract action appears to be to prevent the enforcement of gratuitous promises. It is said that when one receives a naked promise and such promise is broken, he is no worse off than he was; he gave nothing for it, he has lost nothing by it, and on its breach he has suffered no damage cognizable by courts. No benefit accrued to him who made the promise, nor was any injury sustained by him who received it. Such promises are not made within the scope of transactions intended to confer rights enforceable at law.[20] This argument loses much of its force because of the rule that the courts do not ordinarily inquire into the adequacy of the consideration, and any consideration, however slight, is legally sufficient to support even an onerous promise.[1] In view of this rule it has been said that consideration is as much a form as a seal at common law.[2]

At common law, a seal was deemed to dispense with, or raise a presumption of, consideration.[3] In most jurisdictions now, however, private seals have been abolished by statute and are declared to be without effect.[4] In addition, in jurisdictions which have adopted the Uniform Commercial Code,[5] the provision in the Code article on "Sales" that the affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument applies, and the law with respect to sealed instruments does not apply to such a contract or offer.[6]

§ 86. Necessity.

It is well settled, as a general rule, that consideration is an essential element of, and is necessary to the enforceability or validity of, a contract.[7] It fol-

pay for. In the absence of quid pro quo, the engagement, except in the case of formal contracts, was termed "nudum pactum"—a phrase derived from the civil law. When the English courts finally declared that an action of assumpsit might be maintained for the nonperformance of a simple promise, they limited the right of action to cases in which there existed an element which came to be known as "consideration." Any promise not supported by a consideration they likewise termed "nudum pactum." The term "consideration" is thus in some respects analogous to the causa of the civil law and to quid pro quo in debt. In fact the latter term has sometimes been treated as though it were synonymous with consideration. Shackleford v Hendley, 1 AK Marsh (Ky) 496; Todd v Weber, 95 NY 181; Justice v Lang, 42 NY 493.

Williston, Contracts 3d ed §§ 99 et seq., 103.

For translation of legal phrases and maxims, see Am Jur 2d Desk Book, Document 185.

The consideration, in the legal sense of the word, of a contract is the quid pro quo, that which the party to whom a promise is made does or agrees to do in return for the promise. Phoenix Mut. L. Ins. Co. v Raddin, 120 US 183, 30 L ed 644, 7 S Ct 500.

20. Davis v Morgan, 117 Ga 504, 43 SE 732; Stonestreet v Southern Oil Co. 226 NC 261, 37 SE2d 676.

Williston, Contracts 3d ed §§ 99 et seq., 103.

1. § 102, infra.

2. Holmes, J., in Krell v Codman, 154 Mass 454, 28 NE 578.

3. See Seals (1st ed § 13).

4. See Seals (1st ed § 8).

5. See Am Jur 2d Desk Book, Document 130 (and supp).

6. Uniform Commercial Code § 2-203.

7. Tilley v Cook County (Tilley v Chicago) 103 US 155, 26 L ed 374; Heryford v Davis, 102 US 235, 26 L ed 160; Farrington v Tennessee, 95 US 679, 24 L ed 558; Chorpenning v United States, 94 US 397, 24 L ed 126; Byerly v Duke Power Co. (CA4 NC) 217 F2d 803; Lewis v Ogram, 149 Cal 505, 87 P 60; Davis v Seymour, 59 Conn 531, 21 A 1004; Porter v Title Guaranty & S. Co. 17 Idaho 364, 106 P 299; Leopold v Salkey, 89 Ill 412; Bright v Coffman, 15 Ind 371; Caylor v Caylor, 22 Ind App 666, 52 NE 465; Stewart v Todd, 190 Iowa 283, 173 NW 619, 20 ALR 1272, reh den 190 Iowa 296, 327, 180 NW 146, 20 ALR 1301; Neal v Coburn, 92 Me 139, 42 A 348; Harper v Davis, 115 Md 349, 80 A 1012; Hills v Snell, 104 Mass 173; De Moss v Robinson, 46 Mich 62, 8 NW 712; Wilson v Blair, 65 Mont 155, 211 P 289, 27 ALR 1235;

seal[17] or bond or specialty,[18] and the NIL does not destroy the significance of a seal[19] in states where a seal imparts a special quality to a writing. The mere fact, however, that a corporate instrument bears a seal does not necessarily establish the instrument as a specialty as in the case of an individual, since in such case the seal may be used only as a mark of genuineness.[20]

The Commercial Code—Commercial paper, declares that an instrument otherwise negotiable is within this article even though it is under a seal,[1] with the intent to place sealed instruments on the same footing as any other commercial paper without affecting any other statutes or rules of law relating to sealed instruments except so far as they are inconsistent.[2]

§ 214. Revenue stamps.[3]

Certain obligations for the payment of money come under the laws imposing stamp taxes, but instruments omitting required revenue stamps are valid unless the statute expressly invalidates them.[4] The revenue stamp is no part of a promissory note, and the omission of the stamp or failure to cancel the stamps does not affect its negotiability.[5]

III. CONSIDERATION

A. In General

§ 215. Generally.

This portion of the article treats of the necessity, sufficiency, and legality of consideration for a bill or note or an obligation thereon. Treated elsewhere are matters of consideration, or "value," for a transfer of a bill or note,[6] consideration for an extension or modification, as distinguished from a renewal instrument,[7] the effect of executory consideration on the unconditional nature of an order or promise,[8] the effect of the presence or absence of a statement of consideration,[9] and notice of, or from, the consideration.[10]

17. Alropa Corp. v Myers (DC Del) 55 F Supp 936; Clarke v Pierce, 215 Mass 552, 102 NE 1094.

18. Alropa Corp. v Myers (DC Del) 55 F Supp 936; Wooleyhan v Green, 34 Del 503, 155 A 602.

19. Balliet v Fetter, 314 Pa 284, 171 A 466.

20. Sigler v Mt. Vernon Bottling Co. (DC Dist Col) 158 F Supp 234, affd 104 App DC 260, 261 F2d 378.

1. Uniform Commercial Code § 3–113.

2. Comment to Uniform Commercial Code § 3–113.

See Otto v Powers, 177 Pa Super 253, 110 A2d 847.

3. *Practice Aids.*—Provision as to payment for revenue stamps. 2 Am Jur Legal Forms 2:748.

4. See Stamp Taxes (1st ed §§ 12 et seq., 29).

5. Goodale v Thorn, 199 Cal 307, 249 P 11; Newhall Sav. Bank v Buck, 197 Iowa 732, 197 NW 986; Farmers Sav. Bank v Neel, 193 Iowa 685, 187 NW 555, 21 ALR 1116; Currie-McGraw Co. v Friedman, 135 Miss 701, 100 So 273; Bank of High Hill v Rockey (Mo App) 277 SW 573; Security State Bank v Brown, 110 Neb 237, 193 NW 336.

6. §§ 334 et seq. infra.

While the NIL defines "value" in terms of "consideration" (§ 216, infra); and uses the term "value" in describing the character of an original party for accommodation (§ 118, supra), in the Commercial Code "consideration" is distinguished from "value." The former refers to what the obligor has received for his obligation, and is important only on the question whether his obligation can be enforced against him. (Comment 1 to Uniform Commercial Code § 3–408). "Value" is important only on the question whether the holder who has acquired that obligation qualifies as a particular kind of holder. Comment 2 to Uniform Commercial Code § 3–303.

7. §§ 302 et seq., infra.

8. § 141, supra.

9. §§ 90, 145, 188, 189, supra.

10. §§ 452 et seq., infra.

Like any other contract, a negotiable instrument requires a consideration as between the original parties, or a recognized substitute therefor,[11] but such an instrument is presumed to have been issued for a valuable consideration.[12]

B. What Constitutes

§ 216. Generally.

The general principles as to what constitutes consideration for a contract, full discussion of which appears in another article,[13] apply in determining what constitutes consideration for a bill or note. Any consideration,[14] that is, any valuable consideration as distinguished from "good" consideration,[15] sufficient to support a simple contract, supports a negotiable instrument.

Thus, while nothing is a consideration unless it is known and agreed to as such by both parties,[16] and these definitions are not completely comprehensive,[17] consideration may be said to consist in any benefit to the promisor, or in a loss or detriment to the promisee,[18] or to exist when, at the desire of the

11. § 237, infra.

12. See Vol. 12.

13. See Contracts (1st ed §§ 75 et seq.).

14. Flores v Woodspecialties, Inc. 138 Cal App 2d 763, 292 P2d 626.

Under the heading, "What constitutes consideration," the NIL declares that value is any consideration sufficient to support a simple contract. Negotiable Instrument Law § 25. Compare Negotiable Instrument Law § 191, which states that "value" means valuable consideration.

Apart from the "except" clause relating to an antecedent obligation, other obligations on an instrument are subject to the ordinary rules of contract law relating to contracts not under seal, with respect to the necessity or sufficiency of consideration. Comment 3 to Uniform Commercial Code § 3–408.

15. Sullivan v Sullivan, 122 Ky 707, 92 SW 966; Campbell v Jefferson, 296 Pa 368, 145 A 912, 63 ALR 1180 (slight loss, inconvenience, or benefit is valuable); Re Smith, 226 Wis 556, 277 NW 141.

Courts often speak of "good" consideration in the sense of a sufficient or valuable consideration, rather than "good" in the technical and limited sense.

16. Philpot v Gruninger, 14 Wall (US) 570, 20 L ed 743; United Beef Co. v Childs, 306 Mass 187, 27 NE2d 962; Suske v Straka, 229 Minn 408, 39 NW2d 745 (while preexisting indebtedness would constitute consideration for a note, this is not so where plaintiff testified that the note was "a present"); Leach v Treber, 164 Neb 419, 82 NW2d 544 (detriment to promisee); First Nat. Bank v Chandler (Tex Civ App) 58 SW2d 1056, error dismd; Good v Dyer, 137 Va 114, 119 SE 277.

Consideration is the price voluntarily paid for a promisor's undertaking. Philpot v Gruninger, 14 Wall (US) 570, 20 L ed 743; Coast Nat. Bank v Bloom, 113 NJL 597, 174 A 576, 95 ALR 528 (bargained for and paid).

Consideration is a matter of contract, and that which is claimed to be such must be within the express or implied contemplation of the parties. Van Houten v Van Houten, 202 Iowa 1085, 209 NW 293.

It is a question of fact for the jury whether a note given by a practically helpless invalid to his nurse was a gift, or compensation for services rendered. Meginnes v McChesney, 179 Iowa 563, 160 NW 50.

17. Irwin v Lombard University, 56 Ohio St 9, 46 NE 63.

18. Howard v Tarr (CA8 Mo) 261 F2d 561 (applying Ohio law); Hance Hardware Co. v Howard, 40 Del 209, 8 A2d 30; Tegtmeyer v Mordlund, 259 Ill App 247; Kelley, Glover & Vale, Inc. v Heitman, 220 Ind 625, 44 NE2d 981, cert den 319 US 672, 87 L ed 1713, 63 S Ct 1320; First State Bank v Williams, 143 Iowa 177, 121 NW 702; Bryan v Glass, 6 La Ann 740; Amherst Academy v Cowls, 6 Pick (Mass) 427; Becker County Nat. Bank v Davis, 204 Minn 603, 284 NW 789; Leach v Treber, 164 Neb 419, 82 NW2d 544 (trouble, injury, inconvenience, prejudice, or detriment to promisee); Coast Nat. Bank v Bloom, 113 NJL 597, 174 A 576, 95 ALR 528; Cockrell v McKenna, 103 NJL 166, 134 A 687, 48 ALR 234; Mills v Bonin, 239 NC 498, 80 SE2d 365; L. A. Randolph Co. v Lewis, 196 NC 51, 144 SE 545, 62 ALR 1474; City Trust & Sav. Bank v Schwartz, 68 Ohio App 80, 22 Ohio Ops 176, 39 NE2d 548; First Nat. Bank v Boxley, 129 Okla 159, 264 P 184, 64 ALR 588; Van Bebber v Vechill, 166 Or 10, 109 P2d 1046; Campbell v Jefferson, 296 Pa 368, 145 A 912, 63 ALR 1180; Shayne of Miami, Inc. v Greybow, Inc. 232 SC 161, 101 SE2d 486.

A valuable consideration in the sense of the law may consist either in some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken

promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, the consideration being the act, abstinence, or promise.[19] It has been said generally that to give a consideration value for the supporting of a promise, it must be such as deprives the person to whom the promise is made of a right which he possessed before, or else confers upon the other party a benefit which he could not otherwise have had.[20]

Consideration may be given to the promisor or to some other person. It matters not from whom the consideration moves or to whom it goes. If it is bargained for as the exchange for the promise, the promise is not gratuitous.[1] Consideration need not move from the promisee,[2] and it need not be pecuniary or beneficial to the promisor.[3] Consideration moving to the promisor may be a benefit to a third person[4] or a detriment incurred on his behalf.[5]

Consideration is not always a fact question. If all the facts concerning the issue of consideration are without dispute, such issue becomes a question of law.[6]

§ 217. Adequacy.

The law concerns itself only with the existence of legal consideration for a bill or note. Mere inadequacy of the consideration is not within this concern,[7] in the absence of fraud,[8] mistake, undue influence,[9] mental incapacity of the

by the other. Howard v Tarr (CA8 Mo) 261 F2d 561 (applying Ohio law); Currie v Misa (Eng) LR 10 Exch 153; See Seth v Lew Hing, 125 Cal App 729, 14 P2d 537, 15 P2d 190, which also sets forth a statutory definition.

19. Becker County Nat. Bank v Davis, 204 Minn 603, 284 NW 789; Irwin v Lombard University, 56 Ohio St 9, 46 NE 63.

20. Westmont Nat. Bank v Payne, 108 NJL 133, 156 A 652.

1. Shayne of Miami, Inc. v Greybow, Inc. 232 SC 161, 101 SE2d 486 (quoting Restatement, CONTRACTS § 75(2)).

2. Flores v Woodspecialties, Inc. 138 Cal App 2d 763, 292 P2d 626; Hance Hardware Co. v Howard, 40 Del 209, 8 A2d 30.

3. Howard v Tarr (CA8 Mo) 261 F2d 561 (applying Ohio law); Moriconi v Flemming, 125 Cal App 2d 742, 271 P2d 182; Re Berbecker, 277 Ill App 201; Kelley, Glover & Vale, Inc. v Heitman, 220 Ind 625, 44 NE2d 981, cert den 319 US 672, 87 L ed 1713, 63 S Ct 1320; Chick v Trevett, 20 Me 462; Greenwood Leflore Hospital Com. v Turner, 213 Miss 200, 56 So 2d 496; Leach v Treber, 164 Neb 419, 82 NW2d 544; County Trust Co. v Mara, 242 App Div 206, 273 NYS 597, affd 266 NY 540, 195 NE 190; First Nat. Bank v Boxley, 129 Okla 159, 264 P 184, 64 ALR 588; Shayne of Miami, Inc. v Greybow, Inc. 232 SC 161, 101 SE2d 486; Ballard v Burton, 64 Vt 387, 24 A 769.

4. Bromfield v Trinidad Nat. Invest. Co. (CA10) 36 F2d 646, 71 ALR 542; Tegtmeyer v Nordlund, 259 Ill App 247; Greenwood Leflore Hospital Com. v Turner, 213 Miss 200, 56 So 2d 496; Coast Nat. Bank v Bloom, 113 NJL 597, 174 A 576, 95 ALR 528; First Nat. Bank v Boxley, 129 Okla 159, 264 P 184, 64 ALR 588; Swanson v Sanders, 75 SD 40, 58 NW2d 809; Barrett v Mahnken, 6 Wyo 541, 48 P 202.

5. Brainard v Harris, 14 Ohio 107; Third Nat. Bank & Trust Co. v Rodgers, 330 Pa 523, 198 A 320; Skagit State Bank v Moody, 86 Wash 286, 150 P 425, LRA1916A 1215.

6. Jones v Hubbard (Tex Civ App) 302 SW 2d 493, error ref n r e.

7. Walker v Winn, 142 Ala 560, 39 So 12; Poggetto v Bowen, 18 Cal App 2d 173, 63 P2d 857; Smock v Pierson, 68 Ind 405; Central Sav. Bank v O'Connor, 132 Mich 578, 94 NW 11; Campbell v Jefferson, 296 Pa 368, 145 A 912, 63 ALR 1180; Ballard v Burton, 64 Vt 387, 24 A 769; Good v Dyer, 137 Va 114, 119 SE 277; Hatten's Estate, 233 Wis 199, 288 NW 278.

8. Lorber v Tooley, 47 Cal App 2d 47, 117 P2d 421.

Inadequacy sufficient to shock the conscience constitutes in itself a badge of fraud. Harshbarger v Eby, 28 Idaho 753, 156 P 619; Wolford v Powers, 85 Ind 294; Hannon v Fink, 66 Okla 115, 167 P 1152; Rauschenbach v McDaniel's Estate, 122 W Va 632, 11 SE2d 852.

9. Shocket v Fickling, 229 SC 412, 93 SE 2d 203; Rauschenbach v McDaniel's Estate, 122 W Va 632, 11 SE2d 852.

obligor,[10] or a statute requiring the quantum of consideration to be weighed.[11] The adequacy in fact, as distinguished from value in law, is for the parties to judge for themselves.[12] It is ordinarily immaterial that the consideration for a bill or note is inadequate as compared with the amount of the order or promise,[13] or that the obligor, knowing the circumstances or having an opportunity to inform himself, is disappointed in his expectations.[14]

Legal or valuable consideration may be of slight value,[15] or it may be a trifling benefit, loss, or act,[16] or it may be of value only to the promising party.[17] It may be of indeterminate value,[18] such as property the value of which is incapable of reduction to any fixed sum and is altogether a matter of opinion,[19] the good will of a business,[20] or an act which affords the promising party pleasure or gratification, pleases his fancy, or otherwise merits, in his judgment, his appreciation. However, it is obvious that in the case of a pecuniary or property consideration, there is a more objective standard by which the law can judge the nonexistence or gross inadequacy of value than in the case of satisfaction of desire or fancy.[1]

10. Rauschenbach v McDaniel's Estate, supra.

11. Herbert v Lankershim, 9 Cal 2d 409, 71 P2d 220 (statute providing that moral obligation is good consideration to the extent of the obligation but no further).

12. Philpot v Gruninger, 14 Wall (US) 570, 20 L ed 743; Price v Jones, 105 Ind 543, 5 NE 683; Amherst Academy v Cowls, 6 Pick (Mass) 427; Re Hore's Estate, 220 Minn 374, 19 NW2d 783, 161 ALR 1366; Ballard v Burton, 64 Vt 387, 24 A 769; Good v Dyer, 137 Va 114, 119 SE 277; Rauschenbach v McDaniel's Estate, 122 W Va 632, 11 SE2d 852 (purely a matter for the deceased maker to have determined, and his estate must pay the note); Hatten's Estate, 233 Wis 199, 288 NW 278; Sheldon v Blackman, 188 Wis 4, 205 NW 486.

There is no rule by which the courts can be guided if they undertake the determination of such adequacy. Wolford v Powers, 85 Ind 294.

13. Littlegreen v Gardner, 208 Ga 523, 67 SE2d 713; Re Hore's Estate, 220 Minn 374, 19 NW2d 783, 161 ALR 1366 (personal services may constitute sufficient consideration regardless of their economic value as compared to the amount of the note); Miller v McKenzie, 95 NY 575; Shocket v Fickling, 229 SC 412, 93 SE2d 203; Hatten's Estate, 233 Wis 199, 288 NW 278.

A note is valid as founded on sufficient consideration where, for a loan of $1,500 in gold coin, made at a time when that amount of gold would be worth $2,500 in paper currency, the note was executed for $2,500, without specifying in what kind of money it was payable. Cox v Smith, 1 Nev 161. Compare Turner v Young, 27 Ind 373.

Appreciation of the way in which medical services are performed will support a note to a doctor for an amount exceeding what would otherwise be the value of services. Foxworthy v Adams, 136 Ky 403, 124 SW 381.

Valid consideration supporting a note need not be of balanced value with the instrument. Rauschenbach v McDaniel's Estate, 122 W Va 632, 11 SE2d 852.

14. Philpot v Gruninger, 14 Wall (US) 570, 20 L ed 743; Harshberger v Eby, 28 Idaho 753, 156 P 619; Smock v Pierson, 68 Ind 405; Hannon v Fink, 66 Okla 115, 167 P 1152.

15. First Nat. Bank v Trott, 236 Ill App 412; Smock v Pierson, 68 Ind 405; Good v Dyer, 137 Va 114, 119 SE 277.

Slight loss or inconvenience to the promisee upon his entering into the contract, or like benefit to the promisor, is deemed a valuable consideration. Campbell v Jefferson, 296 Pa 368, 145 A 912, 63 ALR 1180.

16. Ballard v Burton, 64 Vt 387, 24 A 769; Good v Dyer, 137 Va 114, 119 SE 277.

17. Smock v Pierson, 68 Ind 405.

18. Price v Jones, 105 Ind 543, 5 NE 683; Smock v Pierson, 68 Ind 405; Miller v Finley, 26 Mich 249; Sheldon v Blackman, 188 Wis 4, 205 NW 486.

19. Miller v Finley, 26 Mich 249.

20. Harshbarger v Eby, 28 Idaho 753, 156 P 619 (business, property, and good will); Smock v Pierson, 68 Ind 405 (even though business proves unsuccessful).

In Magee v Pope, 234 Mo App 191, 112 SW2d 891, it was held that the practice and good will of a physician was not a salable item and did not constitute consideration and the maker was entitled to cancellation of a note given therefor.

1. Wolford v Powers, 85 Ind 294; Foxworthy v Adams, 136 Ky 403, 124 SW 381; Hatten's Estate, 233 Wis 199, 288 NW 278.

D. Effect of Totally or Partially Unconstitutional Statutes

1. Total Unconstitutionality

§ 177. Generally.

The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law,[8] but is wholly void,[9] and ineffective for any purpose;[10] since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it,[11] an unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed.[12] Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted.[13]

Since an unconstitutional law is void, the general principles follow that it imposes no duties,[14] confers no rights,[15] creates no office,[16] bestows no power or

Del Sordo, 16 NJ 530, 109 A2d 631; Fearon v Treanor, 272 NY 268, 5 NE2d 815, 109 ALR 1229; State v Weddington, 188 NC 643, 125 SE 257, 37 ALR 573; State v Williams, 146 NC 618, 61 SE 61; Daniels v Homer, 139 NC 219, 51 SE 992; State ex rel. Sathre v Board of University & School Lands, 65 ND 687, 262 NW 60; State v First State Bank, 52 ND 231, 202 NW 391; Wilson v Fargo, 48 ND 447, 186 NW 263; U'ren v Bagley, 118 Or 77, 245 P 1074, 46 ALR 1173; Templeton v Linn County, 22 Or 313, 29 P 795; State v Kofines, 33 RI 211, 80 A 432; Beaufort County v Jasper County, 220 SC 469, 68 SE2d 421; Parker v Bates, 216 SC 52, 56 SE2d 723; Gaud v Walker, 214 SC 451, 53 SE2d 316; Rio Grande Lumber Co. v Darke, 50 Utah 114, 167 P 241; Shea v Olson, 185 Wash 143, 53 P2d 615, 111 ALR 998, affd on reh 186 Wash 700, 59 P2d 1183, 111 ALR 1011; Uhden v Greenough, 181 Wash 412, 43 P2d 983, 98 ALR 1181; State v Pitney, 79 Wash 608, 140 P 918; State Road Com. v County Ct. 112 W Va 98, 163 SE 815; Booten v Pinson, 77 W Va 412, 89 SE 985; Van Dyke v Tax Com. 217 Wis 528, 259 NW 700, 98 ALR 1332.

A reasonable doubt in favor of the validity of a statute is enough to sustain it. McGlaughlin v Warfield, 180 Md 75, 23 A2d 12.

6. Nashville v Cooper, 6 Wall (US) 247, 18 L ed 851; Cap. F. Bourland Ice Co. v Franklin Utilities Co. 180 Ark 770, 22 SW 2d 993, 68 ALR 1018; Davis v Florida Power Co. 64 Fla 246, 60 So 759; Des Moines v Manhattan Oil Co. 193 Iowa 1096, 184 NW 823, 188 NW 921, 23 ALR 1322; Naudzius v Lahr, 253 Mich 216, 234 NW 581, 74 ALR 1189; Hopper v Britt, 203 NY 144, 96 NE 371; Lynn v Nichols, 122 Misc 170, 202 NYS 401, affd 210 App Div 812, 205 NYS 935; Jones v Crittenden, 4 NC (1 Car L Repos 385); Minsinger v Rau, 236 Pa 327, 84 A 902; State ex rel. Richards v Moorer, 152 SC 455, 150 SE 269, cert den 281 US 691, 74 L ed 1120, 50 S Ct 238; Wingfield v South Carolina Tax Com. 147 SC 116, 144 SE 846; State ex rel. Reuss v Giessel, 260 Wis 524, 51 NW2d 547.

Unless a statute is in positive conflict with some designated or identified provision of the constitution, it should not be held unconstitutional. State ex rel. Johnson v Goodgame, 91 Fla 871, 108 So 836, 47 ALR 118.

A school code which is the product of the deliberate thought of a commission of prominent citizens who worked upon it for several years, and has been passed by two legislatures after prolonged consideration before final approval by the governor, will not be set aside as unconstitutional unless the violations of the fundamental law are so glaring that there is no escape. Minsinger v Rau, 236 Pa 327, 84 A 902.

7. § 146, supra.

8. Chicago, I. & L. R. Co. v Hackett, 228 US 559, 57 L ed 966, 33 S Ct 581; United States v Realty Co. 163 US 427, 41 L ed 215, 16 S Ct 1120; Huntington v Worthen, 120 US 97, 30 L ed 588, 7 S Ct 469; Norton v Shelby County, 118 US 425, 30 L ed 178, 6 S Ct 1121; Ex parte Royall, 117 US 241, 29 L ed 868, 6 S Ct 734; Hirsh v Block, 50 App DC 56, 267 F 614, 11 ALR 1238, cert den 254 US 640, 65 L ed 452, 41 S Ct 13; Texas Co. v State, 31 Ariz 485, 254 P 1060, 53 ALR 258; Quong Ham Wah Co. v Industrial Acci. Com. 184 Cal 26, 192 P 1021, 12 ALR 1190, error dismd 255 US 445, 65 L ed 723, 41 S Ct 373; State ex rel. Nuveen v Greer, 88 Fla 249, 102 So 739, 37 ALR 1298; Commissioners of Roads & Revenues v Davis, 213 Ga 792, 102 SE2d 180; Grayson-Robinson Stores, Inc. v Oneida, Ltd. 209 Ga 613, 75 SE2d 161, cert den 346 US 823, 98 L ed 348, 74 S Ct 39; State v Garden City, 74 Idaho 513, 265 P2d 328; Security Sav. Bank v Connell, 198 Iowa 564, 200 NW 8, 36 ALR 486; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Opinion of Justices, 269 Mass 611, 168 NE 536, 66 ALR 1477; State ex rel. Miller v O'Malley, 342 Mo 641, 117 SW2d 319; Garden of Eden Drainage Dist. v Bartlett Trust Co. 330 Mo 554, 50 SW2d 627, 84 ALR 1078; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; Daly v Beery, 45 ND 287, 178 NW 104; Threadgill v Cross, 26 Okla 403, 109 P 558; Atkinson v Southern Exp. Co. 94 SC 444, 78 SE 516; Ex parte Hollman, 79 SC 6, 60 SE 19; Henry County v Standard Oil Co. 167 Tenn 485, 71 SW2d 683, 93 ALR 1483; Peay v Nolan, 157 Tenn 222, 7 SW2d 815, 60 ALR 408; State v Candland, 36 Utah 406, 104 P 285; Miller v State Entomologist (Miller v Schoene) 146 Va 175, 135 SE 813, 67 ALR 197, affd 276 US 272, 72 L ed 568, 48 S Ct 246; Bonnett v Vallier, 136 Wis 193, 116 NW 885.

A discriminatory law is, equally with the other laws offensive to the constitution, no law at all. Quong Him Wah Co. v Industrial Acci. Com. 184 Cal 26, 192 P 1021, 12 ALR 1190, error dismd 255 US 445, 65 L ed 723, 41 S Ct 373.

As to the effect of unconstitutionality of statutes creating and defining crimes, see Criminal Law (1st ed § 307).

9. Ex parte Royall, 117 US 241, 29 L ed 868, 6 S Ct 734; Ex parte Siebold, 100 US 371, 25 L ed 717; Cohen v Virginia, 6 Wheat (US) 264, 5 L ed 257; State ex rel. Nuveen v Greer, 88 Fla 249, 102 So 739, 37 ALR 1298; Commissioners of Roads & Revenues v Davis, 213 Ga 792, 102 SE2d 180; Grayson-Robinson Stores, Inc. v Oneida, Ltd. 209 Ga 613, 75 SE2d 161, cert den 346 US 823, 98 L ed 348, 74 S Ct 39; Hillman v Pocatello, 74 Idaho 69, 256 P2d 1072; Henderson v Lieber, 175 Ky 15, 192 SW 830, 9 ALR 620; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Opinion of Justices, 269 Mass 611, 168 NE 536, 66 ALR 1477; Michigan State Bank v Hastings, 1 Dougl (Mich) 225; Garden of Eden Drainage Dist. v Bartlett Trust Co. 330 Mo 554, 50 SW2d 627, 84 ALR 1078; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; State v Tufly, 20 Nev 427, 22 P 1054; State v Williams, 146 NC 618, 61 SE 61; Daly v Beery, 45 ND 287, 178 NW 104; Atkinson v Southern Exp. Co. 94 SC 444, 78 SE 516; Ex parte Hollman, 79 SC 9, 60 SE 19; Henry County v Standard Oil Co. 167 Tenn 485, 71 SW2d 683, 93 ALR 1483; Peay v Nolan, 157 Tenn 222, 7 SW2d 815, 60 ALR 408; Miller v Davis, 136 Tex 299, 150 SW2d 973, 136 ALR 177; Almond v Day, 197 Va 419, 89 SE2d 851; Miller v State Entomologist (Miller v Schoene) 146 Va 175, 135 SE 813, 67 ALR 197, affd 276 US 272, 72 L ed 568, 48 S Ct 246; Servonitz v State, 133 Wis 231, 113 NW 277.

Unconstitutionality is illegality of the highest order. Board of Zoning Appeals v Decatur Company of Jehovah's Witnesses, 233 Ind 83, 117 NE2d 115.

10. State v One Oldsmobile Two-Door Sedan, 227 Minn 280, 35 NW2d 525. Compare Swift v Calnan, 102 Iowa 206, 71 NW 233, holding that while no right may be based upon an unconstitutional statute, part of its provisions may be considered in construing other provisions confessedly good, in arriving at the correct interpretation of the latter.

11. State ex rel. Miller v O'Malley, 342 Mo 641, 117 SW2d 319.

12. Chicago, I. & L. R. Co. v Hackett, 228 US 559, 57 L ed 966, 33 S Ct 581; Norton v Shelby County, 118 US 425, 30 L ed 178, 6 S Ct 1121; Louisiana v Pilsbury, 105 US 278, 26 L ed 1090; Gunn v Barry, 15 Wall (US) 610, 21 L ed 212; Hirsh v Block, 50 App DC 56, 267 F 614, 11 ALR 1238, cert den 254 US 640, 65 L ed 452, 41 S Ct 13; Morgan v Cook, 211 Ark 755, 202 SW2d 355; Texas Co. v State, 31 Ariz 485, 254 P 1060, 53 ALR 258; Connecticut Baptist Convention v McCarthy, 128 Conn 701, 25 A2d 656; Commissioners of Roads & Revenues v Davis, 213 Ga 792, 102 SE2d 180; Grayson-Robinson Stores, Inc. v Oneida, Ltd. 209 Ga 613, 75 SE2d 161, cert den 346 US 823, 98 L ed 348, 74 S Ct 39; Security Sav. Bank v Connell, 198 Iowa 564, 200 NW 8, 36 ALR 486; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Cooke v Iverson, 108 Minn 388, 122 NW 251; Clark v Grand Lodge, B. R. T. 328 Mo 1084, 43 SW2d 404, 88 ALR 150; St. Louis v Polar Wave Ice & Fuel Co. 317 Mo 907, 296 SW 993, 54 ALR 1082; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; Daly v Beery, 45 ND 287, 178 NW 104; State ex rel. Tharel v Board of Comrs. 188 Okla 184, 107 P2d 542; Atkinson v Southern Exp. Co. 94 SC 444, 78 SE 516; Henry County v Standard Oil Co. 167 Tenn 485, 71 SW2d 683, 93 ALR 1483; State v Candland, 36 Utah 406, 104 P 285; Bonnett v Vallier, 136 Wis 193, 116 NW 885.

13. Commissioners of Roads & Revenues v Davis, 213 Ga 792, 102 SE2d 180; Grayson-Robinson Stores, Inc. v Oneida, Ltd. 209 Ga 613, 75 SE2d 161, cert den 346 US 823, 98 L ed 348, 74 S Ct 39; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Clark v Grand Lodge, B. R. T. 328 Mo 1084, 43 SW2d 404, 88 ALR 150.

14. Norton v Shelby County, 118 US 425, 30 L ed 178, 6 S Ct 1121; Security Sav. Bank v Connell, 198 Iowa 564, 200 NW 8, 36 ALR 486; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; Daly v Beery, 45 ND 287, 178 NW 104; Henry County v

authority on anyone,[17] affords no protection,[18] and justifies no acts performed under it.[19] A contract which rests on an unconstitutional statute creates no obligation to be impaired by subsequent legislation.[20]

No one is bound to obey an unconstitutional law[1] and no courts are bound to enforce it.[2]

A void act cannot be legally inconsistent with a valid one.[3] And an unconstitutional law cannot operate to supersede any existing valid law.[4] Indeed, insofar as a statute runs counter to the fundamental law of the land, it is superseded thereby.[5] Since an unconstitutional statute cannot repeal or in any way affect an existing one,[6] if a repealing statute is unconstitutional, the statute which it attempts to repeal remains in full force and effect.[7] And where a clause repealing a prior law is inserted in an act, which act is unconstitutional and void, the provision for the repeal of the prior law will usually fall with it and will not be permitted to operate as repealing such prior law.[8]

The general principles stated above[9] apply to the constitutions as well as to the laws of the several states insofar as they are repugnant to the Constitution and laws of the United States.[9] Moreover, a construction of a statute which brings it in conflict with a constitution will nullify it as effectually as if it had, in express terms, been enacted in conflict therewith.[10]

Standard Oil Co. 167 Tenn 485, 71 SW2d 683, 93 ALR 1483; State v Candland, 36 Utah 406, 104 P 285.

15. Chicago, I. & L. R. Co. v Hackett, 228 US 559, 57 L ed 966, 33 S Ct 581; Norton v Shelby County, 118 US 425, 30 L ed 178, 6 S Ct 1121; Hirsch v Block, 50 App DC 56, 267 F 614, 11 ALR 1238, cert den 254 US 640, 65 L ed 452, 41 S Ct 13; Smith v Costello, 77 Idaho 205, 290 P2d 742, 56 ALR2d 1020; Security Sav. Bank v Connell, 198 Iowa 564, 200 NW 8, 36 ALR 486; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Garden of Eden Drainage Dist. v Bartlett Trust Co. 330 Mo 554, 50 SW2d 627, 84 ALR 1078; St. Louis v Polar Wave Ice & Fuel Co. 317 Mo 907, 296 SW 993, 54 ALR 1082; Watkins v Dodson, 159 Neb 745, 68 NW2d 508; Henry County v Standard Oil Co. 167 Tenn 485, 71 SW2d 683, 93 ALR 1483.

Under Nebraska law an unconstitutional statute is an utter nullity, is void from the date of its enactment, and is incapable of creating any rights. Propst v Board of Education Lands & Funds (DC Neb) 103 F Supp 457, app dismd 343 US 901, 96 L ed 1321, 72 S Ct 636, reh den 343 US 937, 96 L ed 1344, 72 S Ct 769.

As to the effect of, and rights under, a judgment based upon an unconstitutional law, see JUDGMENTS (Rev ed § 19); as to the res judicata effect of such a judgment, see JUDGMENTS (Rev ed § 356).

16. Norton v Shelby County, 118 US 425, 30 L ed 178, 6 S Ct 1121; Security Sav. Bank v Connell, 198 Iowa 564, 200 NW 8, 36 ALR 486; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244.

17. Felix v Wallace County, 62 Kan 832, 62 P 667; Henderson v Lieber, 175 Ky 15, 192 SW 830, 9 ALR 620; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; Daly v Beery, 45 ND 287, 178 NW 104.

18. Huntington v Worthen, 120 US 97, 30 L ed 588, 7 S Ct 469; Norton v Shelby County, 118 US 425, 30 L ed 178, 6 S Ct 1121; Smith v Costello, 77 Idaho 205, 290 P2d 742, 56 ALR2d 1020; Highway Comrs. v Bloomington, 253 Ill 164, 97 NE 280; Security Sav. Bank v Connell, 198 Iowa 564, 200 NW 8, 36 ALR 486; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; St. Louis v Polar Wave Ice & Fuel Co. 317 Mo 907, 296 SW 993, 54 ALR 1082; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; State v Williams, 146 NC 618, 61 SE 61; Daly v Beery, 45 ND 287, 178 NW 104; Atkinson v Southern Exp. Co. 94 SC 444, 78 SE 516; State v Candland, 36 Utah 406, 104 P 285; Bonnett v Vallier, 136 Wis 193, 116 NW 885.

As to the limitations to which this rule is subject, see § 178, infra.

19. Osborn v Bank of United States, 9 Wheat (US) 738, 6 L ed 204; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Board of Managers v Wilmington, 237 NC 179, 74 SE2d 749; State ex rel. Tharel v Board of Comrs. 188 Okla 184, 107 P2d 542; Sharber v Florence, 131 Tex 341, 115 SW2d 604.

20. A contract executed solely for the purpose of complying with the provisions of an unconstitutional statute is not valid, and the person who under its terms is obligated to comply with the provisions of the unconstitutional act is entitled to relief. Cleveland v Clements Brot. Constr. Co. 67 Ohio St 197, 65 NE 885; Jones v Columbian Carbon Co. 132 W Va 219, 51 SE2d 790.

Generally, as to the application to invalid contracts of the obligation of contracts guaranty, see § 439, infra.

1. Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; State ex rel. Clinton Falls Nursery Co. v Steele County, 181 Minn 427, 232 NW 737, 71 ALR 1190; St. Louis v Polar Wave Ice & Fuel Co. 317 Mo 907, 296 SW 993, 54 ALR 1082; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; Amyot v Caron, 88 NH 394, 190 A 134; State v Williams, 146 NC 618, 61 SE 61; Daly v Beery, 45 ND 287, 178 NW 104.

2. Chicago, I. & L. R. Co. v Hackett, 228 US 559, 57 L ed 966, 33 S Ct 581; United States v Realty Co. 163 US 427, 41 L ed 215, 16 S Ct 1120; Payne v Griffin (DC Ga) 51 F Supp 588; Hammond v Clark, 136 Ga 313, 71 SE 479; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Anderson v Lehmkuhl, 119 Neb 451, 229 NW 773; State v Williams, 146 NC 618, 61 SE 61; Daly v Beery, 45 ND 287, 178 NW 104.

Only the valid legislative intent becomes the law to be enforced by the courts. State ex rel. Clarkson v Phillips, 70 Fla 340, 70 So 367; Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244.

3. Re Spencer, 228 US 652, 57 L ed 1010, 33 S Ct 709; Board of Managers v Wilmington, 237 NC 179, 74 SE2d 749.

4. Chicago, I. & L. R. Co. v Hackett, 228 US 559, 57 L ed 966, 33 S Ct 581; Berry v Summers, 76 Idaho 446, 283 P2d 1093; Board of Managers v Wilmington, 237 NC 179, 74 SE2d 749; State v Savage, 96 Or 53, 184 P 567, 189 P 427.

5. Thiede v Scandia Valley, 217 Minn 218, 14 NW2d 400.

6. State v One Oldsmobile Two-Door Sedan, 227 Minn 280, 35 NW2d 525.

7. State v One Oldsmobile Two-Door Sedan, supra.

8. See § 185, infra.

9. Gunn v Barry, 15 Wall (US) 610, 21 L ed 212; Cohen v Virginia, 6 Wheat (US) 264, 5 L ed 257.

10. Flournoy v First Nat. Bank, 197 La 1067, 3 So 2d 244; Gilkeson v Missouri P. R. Co. 222 Mo 173, 121 SW 138; Peay v Nolan, 157 Tenn 222, 7 SW2d 815, 60 ALR 408.

11. Chicot County Drainage Dist. v Baxter State Bank, 308 US 371, 84 L ed 329, 60 S Ct 217, reh den 309 US 695, 84 L ed 1035, 60 S Ct 581.

12. Chicot County Drainage Dist. v Baxter State Bank, supra.

13. § 177, supra.

14. Sumner v Beeler, 50 Ind 341.

This warning has been so phrased as to present the actual concept underlying the utter nullity of an invalid law by a holding to the effect that all persons are held to notice that all statutes are subject to all express and implied applicable provisions of the constitution, and also that should a conflict between a statute and any express or implied provision of the constitution be duly adjudged, the constitution by its own superior force and authority would render the statute invalid from its enactment, and further that the courts have no power to control the effect of the constitution in nullifying a statute that is adjudged to be in conflict with any of the express or implied provisions of the constitution. State ex rel. Nuveen v Greer, 88 Fla 249, 102 So 739, 37 ALR 1298.

§ 178. Protection of rights.

The actual existence of a statute prior to a determination that it is unconstitutional is an operative fact and may have consequences which cannot justly be ignored; when a statute which has been in effect for some time is declared unconstitutional, questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, and of public policy in the light of the nature both of the statute and of its previous application, demand examination.[11] It has been said that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.[12]

The general rule is that an unconstitutional act of the legislature protects no one.[13] It is said that all persons are presumed to know the law, meaning that ignorance of the law excuses no one; if any person acts under an unconstitutional statute, he does so at his peril and must take the consequences.[14]

Rights acquired under a statute while it is duly adjudged to be constitutional are valid legal rights that are protected by the constitution, not by judicial decision. But rights acquired under a statute that has not been adjudged valid

are subject to be lost if the statute is adjudged invalid, though the statute was considered valid by eminent attorneys, public officers, and others.[15] This general principle as to rights has varied practical applications. Thus, it is held that the fact that one acts in reliance on a statute which has theretofore been adjudged unconstitutional does not protect him from civil or criminal responsibility, if his act otherwise subjects him to such liability.[16] In a majority of jurisdictions it is held that reliance on a statute which is subsequently declared unconstitutional does not protect one from civil responsibility for an act in reliance thereon which would otherwise subject him to liability.[17] On the other hand, occasionally the position has been taken, as far as omissions to perform some duty are concerned, that reliance on a statute which is subsequently held to be unconstitutional protects from civil or criminal liability one who omits an act which, but for the statute, would be required by law.[18] It has been stated that an unconstitutional law should not be applied to work a hardship or impose a liability on one who has acted in good faith and relied on the validity of a statute before the courts have declared it invalid.[19] And it has also been held that reliance on a statute subsequently declared unconstitutional may properly be considered by the jury on the issue of damages in a civil action against the one who relied upon the statute.[20]

§ 179. Validation—generally; by amendment of legislation.

While it has been broadly stated that an unconstitutional act cannot be validated by the legislature,[1] it seems that it may be amended into a constitutional one so far as its future operation is concerned by removing its objectionable provisions, or supplying others, to conform it to the requirements of the constitution.[2] The true rule seems to be that where a statute is invalid by reason of an absence of power in the legislature in the first instance under the constitution to enact the law, it is not possible for that body to confirm or render the same valid by amendment; but where the obnoxious features of the statute may be removed or essential ones supplied by a proper amendment, so that had the law been primarily thus framed it would have been free from the objections existing

15. State ex rel. Nuveen v Greer, supra; Trustees of Wofford College v Burnett, 209 SC 92, 39 SE2d 155.

16. ***Annotation:*** 53 ALR 269.

17. Fleming v South Carolina Electric & Gas Co. (CA4 SC) 239 F2d 277; Highway Comrs. v Bloomington, 253 Ill 164, 97 NE 280; Fisher v McGirr, 1 Gray (Mass) 1; Chenango Bridge Co. v Paige, 83 NY 178.
Annotation: 53 ALR 269.

18. Texas Co. v State, 31 Ariz 485, 254 P 1060, 53 ALR 258.
Annotation: 53 ALR 273.

19. State v Garden City, 74 Idaho 513, 265 P2d 328 (holding that an unconstitutional act protects citizens dealing with public officers under its provision up to the time it is declared unconstitutional).

20. Fleming v South Carolina Electric & Gas Co. (CA4 SC) 239 F2d 277.

437; Atkinson v Southern Exp. Co. 94 SC 444, 78 SE 516; State v Whitesides, 30 SC 579, 9 SE 661.

2. Magnolia Petroleum Co. v Carter Oil Co. (CA10 Okla) 218 F2d 1, cert den 349 US 916, 99 L ed 1249, 75 S Ct 605; Los Angeles County v Jones, 6 Cal 2d 695, 59 P2d 489; Commissioners of Roads & Revenues v Davis, 213 Ga 792, 102 SE2d 180; State v Silver Bow Refining Co. 70 Mont 1, 252 P 301, later app 83 Mont 380, 272 P 604; Allison v Corker, 67 NJL 596, 52 A 362; State v Cincinnati, 52 Ohio St 419, 40 NE 508; Oklahoma Natural Gas Co. v State, 187 Okla 164, 101 P2d 793; Commonwealth v Great American Indem. Co. 312 Pa 183, 167 A 793; Paris Mountain Water Co. v Greenville, 110 SC 36, 96 SE 545.

A statute valid and enforceable within a certain limited field, but unconstitutional and unenforceable in a wider field, may by amendment or law removing unconstitutional features be extended into the wider field. Re Gillette Daily Journal, 44 Wyo 226, 11 P2d 265, supp op 45 Wyo 173, 17 P2d 665.

many cases the absence of authority affords a strong presumption against its having any legal foundation.[14]

§ 50. Actions contrary to public policy and practical considerations.

It does not follow, from the general statement that there is no wrong without a remedy, that a remedy is always obtainable in the courts.[15] Indeed, it is not sufficient for the maintenance of an action to remedy a supposed wrong that a technical right of action exists, unless it is at the same time practical, and in the interest of sound government to permit the action to prevail.[16] Practical considerations must at times determine the bounds of correlative rights and duties and the point beyond which the courts will decline to impose legal liability.[17] Thus, because of their legal unity, actions between husband and wife were ordinarily barred at common law;[18] and considerations of public policy forbid the bringing of actions against the state or its subdivisions, except with its consent.[19] The maxim that there is no wrong without a remedy is not applicable to acts which the written law has declared to be rightful,[20] especially things not malum in se, authorized by a valid act of the legislature and performed with due care and skill in strict conformity with the provisions of the act.[1] Public policy also forbids the maintenance of any suit in a court of justice, the trial of which would inevitably lead to the disclosure of matters which the law itself regards as confidential, and respecting which it will not allow the confidence to be violated.[2]

§ 51. Actions based upon plaintiff's wrongful, illegal, or immoral acts or conduct.

It is universally recognized that any conduct or any contract of an illegal, vicious, or immoral nature cannot be the proper basis for a legal or equitable proceeding,[3] and the parties will be left in the dilemma which they themselves devised.[4] The law does not permit one to profit by his own fraud or take advantage of his own wrong or found any claim on his own iniquity or acquire property by his own wrong,[5] and no court, particularly a court of equity,[6] will lend its aid to a party who grounds his action upon an immoral or illegal act[7]

14. Shearman v Folland (Eng) [1950] 2 KB 43, 18 ALR2d 652.

15. Pacific Steam Whaling Co. v United States, 187 US 447, 47 L ed 253, 23 S Ct 154.

16. Robertson v New Orleans & G. N. R. Co. 158 Miss 24, 129 So 100, 69 ALR 1180.

17. Comstock v Wilson, 257 NY 231, 177 NE 431, 76 ALR 676.

18. See HUSBAND AND WIFE (1st ed § 584).

19. See STATES, TERRITORIES, AND DEPENDENCIES (1st ed § 91).

20. Pietsch v Milbrath, 123 Wis 647, 101 NW 388, 102 NW 342.

1. Frazer v Chicago, 186 Ill 480, 57 NE 1055.

2. Totten v United States, 92 US 105, 23 L ed 605.

3. Miller v Miller (Ky) 296 SW2d 604, 65

4. Robenson v Yann, 224 Ky 56, 5 SW2d 271; Piechowiak v Bissell, 305 Mich 486, 9 NW2d 685.

5. Davis v Brown, 94 US 423, 24 L ed 204; Union Bank v Stafford, 12 How (US) 327, 13 L ed 1008; Watts v Malatesta, 262 NY 80, 186 NE 210, 88 ALR 1072; Riggs v Palmer, 115 NY 506, 22 NE 188; Byers v Byers, 223 NC 85, 25 SE2d 466; Merit v Losey, 194 Or 89, 240 P2d 933; Smith v Germania F. Ins Co. 102 Or 569, 202 P 1088, 19 ALR 1444; Slater v Slater, 365 Pa 321, 74 A2d 179; Langley v Devlin, 95 Wash 171, 163 P 395, 4 ALR 32.
Hyams v Stuart King [1908] 2 KB (Eng) 696 (CA).

6. Finnie v Walker (CA2) 257 F 698, 5 ALR 831.

7. The Florida (Collins v The Florida) 101 US 37, 25 L ed 898; Hunter v Wheate, 53 App DC 206, 289 F 604, 31 ALR 980; Western U. Teleg. Co. v McLaurin, 108 Miss 273, 66 So 739; Pennington v Todd, 47 NJ Eq

or an illegal contract,[9] or whose conduct in connection with the transaction upon which his claim is based is illegal or criminal.[9] No action can be founded upon acts which constitute a violation of criminal or penal laws of the state[10] or upon one's own dishonest, fraudulent,[11] or tortious act or conduct,[12] or upon his own moral turpitude.[13] Hence, an action will not lie to recover money or property which is the fruit of an employment involving a violation of law, where a recovery would have to be based on the illegal contract,[14] or to recover back the consideration given for the maintenance of illicit relations with the defendant.[15]

§ 52. — Where parties are in pari delicto.

The principle which precludes an action based upon the plaintiff's wrongful, immoral, or illegal act applies where both plaintiff and defendant were parties to such act; there may be times when the objection that the plaintiff has broken the law may sound ill in the mouth of the defendant,[16] yet, as a general rule, under the doctrine of in pari delicto,[17] no action will lie to recover on a claim based upon, or in any manner depending upon, a fraudulent, illegal, or immoral transaction[18] or contract[19] to which the plaintiff was a party.[20] It is a trite and

8. Standard Oil Co. v Clark (CA2 NY) 163 F2d 917, cert den 333 US 873, 92 L ed 1149, 68 S Ct 901, 902.

9. Falconi v Federal Deposit Ins. Corp. (CA3 Pa) 257 F2d 287.

There is no recorded instance where a court of law or of equity has given aid or comfort to one wrongdoer against his fellow wrongdoer seeking a division of the loot. Piechowiak v Bissell, 305 Mich 486, 9 NW2d 685.

10. Capps v Postal Teleg.-Cable Co. 197 Miss 118, 19 So2d 491; Dasmet v Sublett, 54 NM 355, 225 P2d 141; Lloyd v North Carolina R. Co. 151 NC 536, 66 SE 604; Stevens v Hallmark (Tex Civ App) 109 SW 2d 1106.

11. Picture Plays Theatre Co. v Williams, 75 Fla 556, 78 So 674, 1 ALR 1; D. I. Felsenthal Co. v Northern Assur. Co. 284 Ill 343, 120 NE 268, 1 ALR 602; Baltimore & O. S. W. R. Co. v Evans, 169 Ind 410, 82 NE 773.

12. Talbot v Seeman, 1 Cranch (US) 1, 2 L ed 15.

13. Levy v Kansas City (CA8) 168 F 524; Newton v Illinois Oil Co. 316 Ill 416, 147 NE 465, 40 ALR 1200.

14. Boylston Bottling Co. v O'Neill, 231 Mass 498, 121 NE 411, 2 ALR 902; Woodson v Hopkins, 85 Miss 171, 37 So 1000, 38 So 298; Buck v Albee, 26 Vt 184; Lemon v Grosskopf, 22 Wis 447.

Annotation: 2 ALR 906.

15. Hill v Freeman, 73 Ala 200; Monatt v Parker, 30 La Ann 585; Otis v Freeman, 199 Mass 160, 85 NE 168; Platt v Elias, 186 NY 374, 79 NE 1; Denton v English, 11 SCL (2 Nott & M'C) 581; Lanham v Meadows, 72 W Va 610, 78 SE 750.

16. Western U. Teleg. Co. v McLarvin, 10[illegible] Miss 273, 66 So 739.

17. Grapico Bottling Co. v Ennis, 140 Mi[illegible] 502, 106 So 97, 44 ALR 124.

18. Hunter v Wheate, 53 App DC 206, 28[illegible] F 604, 31 ALR 980; Kearney v Webb, 27[illegible] Ill 17, 115 NE 844, 3 ALR 1631; Re Brown 147 Kan 395, 76 P2d 857, 116 ALR 101. (holding that such rule does not apply wher the one complained of is an official of th court, who seeks to retain to his own us certain moneys he acquired by his official mi conduct); Bowlan v Lunsford, 176 Okla 11[illegible] 54 P2d 666 (plaintiff attempting to recove damages from a man who induced her to sub mit to an operation which produced an abo tion where she was of full age and voluntar ily consented to the operation); Gulf, C. & S F. R. Co. v Johnson, 71 Tex 619, 9 SW 60[illegible]

A court will not extend aid to either of th parties to a criminal act or listen to the complaints against each other, but will leav them where their own act has placed them Stone v Freeman, 298 NY 268, 82 NE2 571, 8 ALR2d 304.

19. Ring v Spina (CA2 NY) 148 F2d 64[illegible] 160 ALR 371; Reilly v Clyne, 27 Ariz 43 234 P 35, 40 ALR 1005; Berka v Woodwar 125 Cal 119, 57 P 777; Western U. Tel. C v Yopst, 118 Ind 248, 20 NE 222; Grapi Bottling Co. v Ennis, 140 Miss 502, 106 S 97, 44 ALR 124; Short v Bullion-Beck C. Min. Co. 20 Utah 20, 57 P 720; Rolle Murray, 112 Va 780, 72 SE 665.

Major v Canadian P. R. Co. 51 Ont L R 370, 67 DLR 341, affd 64 Can SC 367, DLR 242.

That which one promises to give for illegal or immoral consideration he cann be compelled to give, and that which he given on such a consideration he cannot cover. Platt v Elias, 186 NY 374, 79 1.

commonplace maxim that where parties are equally in wrong the courts will not give one legal redress against the other but will leave them where it finds them.[1] Neither law nor equity interferes to relieve either of the persons who engage in fraudulent transactions, against the other from the consequences of their own misconduct.[2]

Some courts have applied the rule in pari delicto to transactions with a public officer or an official of the court,[3] but most take the position that the rule does not apply to prevent maintenance of an action against public officers for the recovery of money acquired by official misconduct.[4]

However, illegality is no defense when merely collateral to the cause of action sued on;[5] one offender against the law cannot set up as a defense to an action the fact that plaintiff was also an offender, unless the parties were engaged in the same illegal transaction. It is only in such a case that the maxim, "in pari delicto potior est conditio defendentis et possidentis," applies,[6] and not even then when the plaintiff's unlawful participation was innocent, being induced by the fraud of the defendant on which the action is based.[7] Nor will a plaintiff be barred of his action against the defendant by the fact that he has done a wrong to a third person.[8] Moreover, courts will grant relief against present wrongs and to enforce existing rights, although the property involved was acquired by some past illegal act.[9] It is generally agreed, although there is authority to the contrary,[10] that one who has entrusted another with money or property for an illegal use or purpose may maintain an action to recover such property or money so long as it has not been used by the person to whom it was given.[11]

There can be no recovery as between the parties on a contract made in violation of a statute, the violation of which is prohibited by a penalty, although the statute does not pronounce the contract void or expressly prohibit the same. Sandage v Studebaker Bros. Mfg. Co. 142 Ind 148, 41 NE 380.

Although a man may contract that a future event may come to pass over which he has no, or only a limited, power, including contracts for the conveyance of land that he does not own, an agreement that on its face requires an illegal act, either of the contractor or a third person, no more imposes a liability to damages for nonperformance than it creates an equity to compel the contractor to perform. Sage v Hampe, 235 US 99, 59 L ed 147, 35 S Ct 94.

20. Ford v Caspers (CA7 Ill) 128 F2d 884; Duncan v Dazey, 318 Ill 500, 149 NE 495.

1. Clark v United States, 102 US 322, 26 L ed 181; Re Brown's Estate, 147 Kan 395, 76 P2d 857, 116 ALR 1012; Smith v Smith, 68 Nev 10, 226 P2d 279.

Annotation: 116 ALR 1018.

2. Ford v Caspers (CA7 Ill) 128 F2d 884.

3. *Annotation:* 116 ALR 1019, 1023.

4. Re Sylvester, 195 Iowa 1329, 192 NW 442, 30 ALR 180; Re Brown's Estate, 147 Kan 395, 76 P2d 857, 116 ALR 1012; Berman v Coakley, 243 Mass 348, 137 NE 667, 26 ALR 92.

Annotation: 116 ALR 1023–1031.

5. Loughran v Loughran, 292 US 216, 78 L ed 1219, 54 S Ct 684, reh den 292 US 615, 78 L ed 1474, 54 S Ct 861.

6. Wallace v Cannon, 38 Ga 199.

7. Doe ex dem. Hutchinson v Horn, 1 Ind 363; Jekshewitz v Groswald, 265 Mass 413, 164 NE 609, 62 ALR 525; Cooper v Cooper, 147 Mass 370, 17 NE 892; Sears v Wegner, 150 Mich 388, 114 NW 224; Blossom v Barrett, 37 NY 434; Morrill v Palmer, 68 Vt 1, 33 A 829; Pollock v Sullivan, 53 Vt 507.

This principle is particularly applicable in actions for deceit in inducing unlawful cohabitation by representations of a lawful marriage. See Annotation: 72 ALR2d 956.

8. Langley v Devlin, 95 Wash 171, 163 P 395, 4 ALR 32; Matta v Katsoulas, 192 Wis 212, 212 NW 261, 50 ALR 291.

9. Loughran v Loughran, 292 US 216, 78 L ed 1219, 54 S Ct 684, reh den 292 US 615, 78 L ed 1474, 54 S Ct 861.

10. Lancaster v Ames, 103 Me 87, 68 A 533; Stone v Freeman, 298 NY 268, 82 NE2d 571, 8 ALR2d 304.

Annotation: 8 ALR2d 314, § 3; 316, § 4.

11. Okeechobee County v Nuveen (CA5 Fla) 145 F2d 684, cert den 324 US 881, 89 L ed 1432, 65 S Ct 1028; Kearney v Webb, 278 Ill 17, 115 NE 844, 3 ALR 1631; Ware v Spinney, 76 Kan 289, 91 P 787.

Annotation: 8 ALR2d 312, § 3; 317, § 5.

The general principles stated above apply to the constitutions as well as to the laws of the several states insofar as they are repugnant to the Constitution and laws of the United States.[9] Moreover, a construction of a statute which brings it in conflict with a constitution will nullify it as effectually as if it had, in express terms, been enacted in conflict therewith.[10]

The Minnesota cases of *Cook v. Iverson* and *State v. Sutton* correctly set forth the binding effect of a constitutional provision.

L. O. COOKE v. SAMUEL G. IVERSON

108 Minnesota Reports

P. 388

Reported in 122 N.W. 251

"Every officer under a constitutional government must act according to law and subject to its restrictions, and every departure therefrom or disregard thereof must subject him to the restraining and controlling power of the people, acting through the agency of the judiciary; for it must be remembered that the people act through the courts, as well as through the executive or the legislature. One department is just as representative as the other, and the judiciary is the department which is charged with the special duty of determining the limitations which the law places upon all official action."

If a member of the executive department of the state is subject to the control of the judiciary in the discharge of purely ministerial duties, it logically follows that he is subject to such direction if he is threatening to execute an

[9] Gunn v Barry, 15 Wall (US) 610, 21 L ed 212; Cohen v Virginia, 6 Wheat (US) 264, 5 L ed 257.

[10] Flournoy v First Nat. Bank, 197 La. 1067, 3 So 2d 244; Gilkeson v Missouri P. R. Co. 222 Mo. 173, 121 SW 138; Peay v Nolan, 157 Tenn. 222, 7 SW 2d 815, 60 ALR 408.

unconstitutional statute, to the irreparable injury of a party in his person or property. Rippe v. Becker, 56 Minn. 100, 57 N.W. 331, 22 L.R.A. 857. If a statute be unconstitutional it is as if it never had been. Rights cannot be built up under it, and, if an executive officer attempts to enforce it, his act is his individual and not his official act, and he is subject to the control of the courts as would be a private individual. Cooley, Const. Lim. 250; Ex parte Young, 209 U.S. 123, 28 Sup. Ct. 441, 52 L. Ed. 714.

The pivotal question then is: Can the language of this constitutional prohibition be fairly construed as excepting therefrom the building by the state of free highways, including bridges? If it can be, it is our duty so to construe it. But it cannot be assumed that the framers of the constitution and the people who adopted it did not intend that which is the plain import of the language used. When the language of the constitution is positive and free from all ambiguity, all courts are not at liberty, by a resort to the refinements of legal learning, to restrict its obvious meaning to avoid the hardships of particular cases. We must accept the constitution as it reads when its language is unambiguous, for it is the mandate of the sovereign power. State v. Sutton, 63 Minn. 147, 65 N.W. 262, 30 L.R.A. 630, 56 Am. St. 459; Lindberg v. Johnson, 93 Minn. 267, 101 N.W. 74.

STATE ex rel. H. W. CHILDS, Attorney General v. JOHN B. SUTTON

63 Minnesota Reports

P. 147

Reported in 65 N.W. 262

In treating of constitutional provisions, we believe it is the general rule among courts to regard them as mandatory, and not to leave it to the will or pleasure of a legislature to obey or disregard them. Where the language of

the constitution is plain, we are not permitted to indulge in speculation concerning its meaning, nor whether it is the embodiment of great wisdom. A constitution is intended to be framed in brief and precise language, and represents the will and wisdom of the constitutional convention, and that of the people who adopt it. It stands, not only as the will of the sovereign power, but as security for private rights, and as a barrier against legislative invasion. It has been well said that "the constitution, which underlies and sustains the social structure of the state, must be beyond being shaken or affected by unnecessary construction, or by the refinements of legal reasoning." People v. Rathbone, 145 N.Y. 434, 40 N.E. 395.

The rule with reference to constitutional construction is also well stated by Johnson, J., in the case of Newell v. People, 7 N.Y. 9, 97, as follows: "If * * * the words embody a definite meaning, which involves no absurdity, and no contradiction between different parts of the same writing, then that meaning apparent upon the face of the instrument is the one which alone we are at liberty to say was intended to be conveyed. In such a case there is no room for construction. That which the words declare is the meaning of the instrument; and neither courts nor legislature have the right to add to or take away from that meaning. This is true of every instrument, but when we are speaking of the most solemn and deliberate of human writings, — those which ordain the fundamental law of states, — the rule arises to a very high degree of significance. It must be very plain — nay, absolutely certain — that the people did not intend what the language they have employed in its natural signification imports, before a court will feel itself at liberty to depart from the plain reading of a constitutional provision."

§ 394. Federal reserve banks as depositaries for and fiscal agents of Home Owners' Loan Corporation.

The Federal Reserve banks are authorized, with the approval of the Secretary of the Treasury, to act as depositaries, custodians, and fiscal agents for the Home Owners' Loan Corporation. (Apr. 27, 1934, ch. 168, § 6, 48 Stat. 646.)

ABOLISHMENT OF HOME OWNERS' LOAN CORPORATION

For dissolution and abolishment of the Home Owners' Loan Corporation, referred to in the section, by act June 30, 1953, ch. 170, § 21, 67 Stat. 126, see note under section 1463 of this title.

§ 395. Federal reserve banks as depositaries, custodians and fiscal agents for Commodity Credit Corporation.

The Federal Reserve banks are authorized to act as depositaries, custodians, and fiscal agents for the Commodity Credit Corporation. (July 16, 1943, ch. 241, § 3, 57 Stat. 566.)

TRANSFER OF FUNCTIONS

Administration of program of Commodity Credit Corporation was transferred to Secretary of Agriculture by 1946 Reorg. Plan No. 3, § 501, eff. July 16, 1946, 11 F. R. 7877, 60 Stat. 1100. See note under section 713 of Title 15, Commerce and Trade.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of the Corporations of the Department of Agriculture, the boards of directors and officers of such corporations; the Advisory Board of the Commodity Credit Corporation; and the Farm Credit Administration or any agency, officer or entity of, under, or subject to the supervision of the Administration were excepted from the functions of officers, agencies and employees transferred to the Secretary of Agriculture by 1953 Reorg. Plan No. 2, § 1, eff. June 4, 1953, 18 F. R. 3219, 67 Stat. 633, set out as a note under section 511 of Title 5, Executive Departments and Government Officers and Employees.

FEDERAL RESERVE NOTES

§ 411. Issuance to reserve banks; nature of obligation; redemption.

Federal reserve notes, to be issued at the discretion of the Board of Governors of the Federal Reserve System for the purpose of making advances to Federal reserve banks through the Federal reserve agents as hereinafter set forth and for no other purpose, are authorized. The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal reserve banks and for all taxes, customs, and other public dues. They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve bank. (Dec. 23, 1913, ch. 6, § 16, 38 Stat. 265; Jan. 30, 1934, ch. 6, § 2 (b) (1), 48 Stat. 337; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704.)

REFERENCES IN TEXT

Phrase "hereinafter set forth" is from section 16 of the Federal Reserve Act, act Dec. 23, 1913. Reference probably means as set forth in sections 17 et seq. of the Federal Reserve Act. For distribution of the sections in this code see note under section 226 of this title, and the Tables.

CODIFICATION

Section is comprised of first par. of section 16 of act Dec. 23, 1913. Para. 2—4, 5 and 6, 7, 8—11, 13 and 14 of section 16, and para. 16—18 of section 16, as added June 21, 1917, ch. 32, § 8, 40 Stat. 236, are classified to sections 412—414, 415, 416, 418—421, 360, 248 (o) and 467, respectively, of this title.

Par. 12 of section 16, formerly classified to section 422 of this title, was repealed by act June 26, 1934, ch. 756, § 1, 48 Stat. 1225.

AMENDMENTS

1934—Act Jan. 30, 1934, omitted provision permitting redemption in gold, from last sentence.

CHANGE OF NAME

Act Aug. 23, 1935, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

CROSS REFERENCES

Gold coinage discontinued, see section 316b of Title 31, Money and Finance.

§ 412. Application for notes; collateral required.

Any Federal Reserve bank may make application to the local Federal Reserve agent for such amount of the Federal Reserve notes hereinbefore provided for as it may require. Such application shall be accompanied with a tender to the local Federal Reserve agent of collateral in amount equal to the sum of the Federal Reserve notes thus applied for and issued pursuant to such application. The collateral security thus offered shall be notes, drafts, bills of exchange, or acceptances acquired under the provisions of sections 82, 342—347, 347c, and 372 of this title, or bills of exchange endorsed by a member bank of any Federal Reserve district and purchased under the provisions of sections 348a and 353—359 of this title, or bankers' acceptances purchased under the provisions of said sections 348a and 353—359 of this title, or gold certificates, or direct obligations of the United States. In no event shall such collateral security be less than the amount of Federal Reserve notes applied for. The Federal Reserve agent shall each day notify the Board of Governors of the Federal Reserve System of all issues and withdrawals of Federal Reserve notes to and by the Federal Reserve bank to which he is accredited. The said Board of Governors of the Federal Reserve System may at any time call upon a Federal Reserve bank for additional security to protect the Federal Reserve notes issued to it. (Dec. 23, 1913, ch. 6, § 16, 38 Stat. 265; Sept. 7, 1916, ch. 461, 39 Stat. 754; June 21, 1917, ch. 32, § 7, 40 Stat. 236; Feb. 27, 1932, ch. 58, § 3, 47 Stat. 57; Feb. 3, 1933, ch. 34, 47 Stat. 794; Jan. 30, 1934, ch. 6, § 2 (b) (2), 48 Stat. 338; Mar. 6, 1934, ch. 47, 48 Stat. 398; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704; Mar. 1, 1937, ch. 20, 50 Stat. 23; June 30, 1939, ch. 256, 53 Stat. 991; June 30, 1941, ch. 264, 55 Stat. 395; May 25, 1943, ch. 102, 57 Stat. 85; June 12, 1945, ch. 186, § 2, 59 Stat. 237.)

CODIFICATION

Section is comprised of second par. of section 16 of act Dec. 23, 1913. For classification to this title of other paragraphs of section 16, see note under section 411 of this title.

AMENDMENTS

1945—Act of June 12, 1945, substituted ", or direct obligations of the United States." for proviso following "gold certificates" in first sentence which limited period during which direct obligations of the United States could be accepted as collateral security.

1943—Act May 25, 1943, substituted "until June 30, 1945" for "until June 30, 1943," in proviso.

1941—Act June 30, 1941, substituted "until June 30, 1943" for "until June 30, 1941", in proviso.

1939—Act June 30, 1939, substituted "until June 30, 1941" for "until June 30, 1939" in proviso.

1937—Act Mar. 1, 1937, extended until June 30, 1939, the period within which direct obligations of the United

the Secretary of the Treasury under section 913 of Title 31. Federal Reserve notes so deposited shall not be reissued except upon compliance with the conditions of an original issue. (Dec. 23, 1913, ch. 6, § 16, 38 Stat. 267; June 21, 1917, ch. 32, § 7, 40 Stat. 236; Aug. 23, 1935, ch. 614, § 203(a), 49 Stat. 704; June 30, 1961, Pub. L. 87–66, § 8(b), 75 Stat. 147.)

CODIFICATION

Section is comprised of seventh par. of section 16 of act Dec. 23, 1913. For classification to this title of other paragraphs of section 16, see note under section 411 of this title.

AMENDMENTS

1961—Pub. L. 87–66 provided for recovery of collateral upon payment of notes of series prior to 1928 and removed requirement of reserve or redemption fund for such notes.

CHANGE OF NAME

Act Aug. 23, 1935, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4936, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

§ 417. Custody and safe-keeping of notes issued to and collateral deposited with reserve agent.

All Federal Reserve notes and all gold certificates and lawful money issued to or deposited with any Federal Reserve agent under the provisions of the Federal Reserve Act shall be held for such agent, under such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe, in the joint custody of himself and the Federal Reserve bank to which he is accredited. Such agent and such Federal Reserve bank shall be jointly liable for the safe-keeping of such Federal Reserve notes, gold certificates, and lawful money. Nothing herein contained, however, shall be construed to prohibit a Federal Reserve agent from depositing gold certificates with the Board of Governors of the Federal Reserve System, to be held by such Board subject to his order, or with the Treasurer of the United States, for the purposes authorized by law. (June 21, 1917, ch. 32, § 7, 40 Stat. 236; Jan. 30, 1934, ch. 6, § 2 (b) (8), 48 Stat. 339; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704.)

REFERENCES IN TEXT

For distribution of the Federal Reserve Act, referred to in the text, in this code, see section 226 of this title and note thereunder.

AMENDMENTS

1934—Act Jan. 30, 1934, dropped the word "gold" wherever it appeared before words "gold certificates."

CHANGE OF NAME

Act Aug. 23, 1935, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, 1281, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

CROSS REFERENCES

Gold coinage discontinued, see section 315b of Title 31, Money and Finance.

§ 418. Printing of notes; denomination and form.

In order to furnish suitable notes for circulation as Federal reserve notes, the Comptroller of the Currency shall, under the direction of the Secretary of the Treasury, cause plates and dies to be engraved in the best manner to guard against counterfeits and fraudulent alterations, and shall have printed therefrom and numbered such quantities of such notes of the denominations of $1, $2, $5, $10, $20, $50, $100, $500, $1,000, $5,000, $10,000 as may be required to supply the Federal reserve banks. Such notes shall be in form and tenor as directed by the Secretary of the Treasury under the provisions of this chapter and shall bear the distinctive numbers of the several Federal reserve banks through which they are issued. (Dec. 23, 1913, ch. 6, § 16, 38 Stat. 267; Sept. 26, 1918, ch. 177, § 3, 40 Stat. 969; June 4, 1963, Pub. L. 88–36, title I, § 3, 77 Stat. 54.)

REFERENCES IN TEXT

In the original "this chapter" reads "this Act," meaning the Federal Reserve Act, act Dec. 23, 1913. For distribution of the Federal Reserve Act in this code, see note under section 226 of this title.

CODIFICATION

Section is comprised of eighth par. of section 16 of act Dec. 23, 1913. For classification to this title of other paragraphs of section 16, see note under section 411 of this title.

AMENDMENTS

1963—Pub. L. 88–36 inserted "$1, $2," following "notes of the denominations of".

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Secretary of the Treasury, made by 1950 Reorg. Plan No. 26, § 1, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 419. Place of deposit of notes prior to delivery to banks.

When such notes have been prepared, they shall be deposited in the Treasury, or in the designated depositary or mint of the United States nearest the place of business of each Federal reserve bank and shall be held for the use of such bank subject to the order of the Comptroller of the Currency for their delivery, as provided by this chapter. (Dec. 23, 1913, ch. 6, § 16, 38 Stat. 267; May 29, 1920, ch. 214, § 1, 41 Stat. 654.)

REFERENCES IN TEXT

In the original "this chapter" reads "this Act," meaning the Federal Reserve Act, act Dec. 23, 1913. For distribution of the Federal Reserve Act in this code, see note under section 226 of this title.

CODIFICATION

Section is comprised of ninth par. of section 16 of act Dec. 23, 1913. For classification to this title of other paragraphs of section 16, see note under section 411 of this title.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Secretary of the Treasury, made by 1950 Reorg. Plan No. 26, § 1, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 420. Control and direction of plates and dies by comptroller; expense of issue and retirement of notes paid by banks.

The plates and dies to be procured by the Comptroller of the Currency for the printing of such circulating notes shall remain under his control and direction, and the expenses necessarily incurred in executing the laws relating to the procuring of such notes, and all other expenses incidental to their issue and retirement, shall be paid by the Federal reserve banks, and the Board of Governors of the Federal Reserve System shall include in its estimate of expenses levied against the Federal reserve banks a sufficient amount to cover the expenses provided for in sections 411—416 and 418—421 of this title. (Dec. 23, 1913, ch. 6, § 16, 38 Stat. 267; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704.)

REFERENCES IN TEXT

In the original "provided for in sections 411—416 and 418—421 of this title" reads "herein provided for."

CODIFICATION

Section is comprised of tenth par. of section 16 of act Dec. 23, 1913. For classification to this title of other paragraphs of section 16, see note under section 411 of this title.

CHANGE OF NAME

Act Aug. 23, 1935, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Secretary of the Treasury, made by 1950 Reorg. Plan No. 26, § 1, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 421. Examination of plates and dies.

The examination of plates, dies, bed pieces, and so forth, and regulations relating to such examination of plates, dies, and so forth, of national-bank notes provided for in section 108 of this title, is extended to include notes provided for in sections 411—416 and 418—421 of this title. (Dec. 23, 1913, ch. 6, § 16, 38 Stat. 267.)

REFERENCES IN TEXT

In the original "provided for in sections 411—416 and 418—421 of this title" reads "herein provided for."

CODIFICATION

Section is comprised of eleventh par. of section 16 of act Dec. 23, 1913. For classification to this title of other paragraphs of section 16, see note under section 411 of this title.

§ 422. Repealed. June 26, 1934, ch. 756, § 1, 48 Stat. 1225.

Section, act Dec. 23, 1913, ch. 6, § 16, 38 Stat. 267, made permanent appropriations for printing notes besides authorizing the use of certain printing stock on hand December 23, 1913. See section 726 (b) of Title 31, Money and Finance.

CIRCULATING NOTES AND BONDS SECURING SAME

§ 441. Retirement of circulating notes by member banks; application for sale of bonds securing circulation.

At any time during a period of twenty years from December 23, 1915, any member bank desiring to retire the whole or any part of its circulating notes may file with the Treasurer of the United States an application to sell for its account, at par and accrued interest, United States bonds securing circulation to be retired. (Dec. 23, 1913, ch. 6, § 18, 38 Stat. 268.)

CODIFICATION

Section is comprised of first par. of section 18 of act Dec. 23, 1913. Pars. 2 and 3, 4, 5, and 7—9 of section 18 are classified to sections 442, 443, 444, and 446—448 of this title, respectively. Par. 6 of section 18, which was classified to section 445 of this title, was repealed by act June 12, 1945, ch. 186, § 3, 59 Stat. 236.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

§ 442. Purchase of bonds by reserve banks.

The Treasurer shall, at the end of each quarterly period, furnish the Board of Governors of the Federal Reserve System with a list of such applications, and the Board of Governors of the Federal Reserve System may, in its discretion, require the Federal reserve banks to purchase such bonds from the banks whose applications have been filed with the Treasurer at least ten days before the end of any quarterly period at which the Board of Governors of the Federal Reserve System may direct the purchase to be made: *Provided*, That Federal reserve banks shall not be permitted to purchase an amount to exceed $25,000,000 of such bonds in any one year, and which amount shall include bonds acquired under sections 301—308 and 341 of this title by the Federal reserve bank.

Provided further, That the Board of Governors of the Federal Reserve System shall allot to each Federal reserve bank such proportion of such bonds as the capital and surplus of such bank shall bear to the aggregate capital and surplus of all the Federal reserve banks. (Dec. 23, 1913, ch. 6, § 18, 38 Stat. 268; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704.)

CODIFICATION

Section is comprised of second and third pars. of section 18 of act Dec. 23, 1913. For classification to this title of other paragraphs of section 18, see note under section 441 of this title.

DERIVATION

Act Feb. 21, 1857, ch. 56, § 3, 11 Stat. 163.

CROSS REFERENCES

All coins and currencies of the United States to be legal tender for all debts, see sections 462 and 821 of this title.

§ 457. Gold coins of United States.

The gold coins of the United States shall be a legal tender in all payments at their nominal value when not below the standard weight and limit of tolerance provided by law for the single piece, and, when reduced in weight below such standard and tolerance, shall be a legal tender at valuation in proportion to their actual weight. (R. S. § 3585.)

DERIVATION

Act Feb. 12, 1873, ch. 131, § 14, 17 Stat. 426.

CROSS REFERENCES

Acquisition and use of gold in violation of law to subject the gold to forfeiture and subject person to penalty equal to twice the value of the gold, see section 443 of this title.

All coins and currencies of United States as legal tender, see sections 462 and 821 of this title.

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Provisions requiring obligations to be payable in gold declared against public policy, see section 463 of this title.

§ 458. Standard silver dollars; paid in silver.

Silver dollars coined under the Act of February 28, 1878, ch. 20, 20 Stat. 25, 26, together with all silver dollars coined by the United States, of like weight and fineness prior to the date of such Act, shall be a legal tender, at their nominal value, for all debts and dues public and private, except where otherwise expressly stipulated in the contract. But nothing in this section shall be construed to authorize the payment in silver of certificates of deposit issued under the provisions of sections 428 and 429 of this title. (Feb. 28, 1878, ch. 20, § 1, 20 Stat. 25.)

CODIFICATION

Section is from the first section of the Bland-Allison Coinage of Silver Act.

Portions of the original text omitted here provided for the coinage of silver dollars of the weight of 412½ grains Troy of standard silver with the devices and superscriptions provided by act Jan. 18, 1837, ch. 3, 5 Stat. 137; and for the purchase of bullion to be coined into silver dollars. The provision for the purchase of bullion was repealed by act July 14, 1890, ch. 708, § 5, 26 Stat. 289. The provision for the coinage of silver dollars was omitted as superseded or obsolete.

CROSS REFERENCES

All coins and currencies of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 463 of this title.

Obligations payable in any coin or currency which at the time is a legal tender notwithstanding a provision for payment in a particular kind of coin or currency, see section 463 of this title.

§ 459. Subsidiary silver coins.

The silver coins of the United States in existence June 9, 1879, of smaller denominations than $1 shall be a legal tender in all sums not exceeding $10 in full payment of all dues public and private. (June 9, 1879, ch. 12, § 3, 21 Stat. 3.)

CODIFICATION

Prior to its incorporation into the Code, this section read as follows: "The present silver coins of the United States of smaller denominations than one dollar shall hereafter be a legal tender in all sums not exceeding ten dollars in full payment of all dues public and private."

The twenty-cent piece, the coinage of which was authorized by act Mar. 3, 1875, ch. 143, § 1, 18 Stat. 478, was made a legal tender at its nominal value for any amount not exceeding five dollars in any one payment, by section 2 of that act. The act was repealed by act May 2, 1878, ch. 79, 20 Stat. 47.

CROSS REFERENCES

All coins and currencies of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 821 of this title.

§ 460. Minor coins.

The minor coins of the United States shall be a legal tender, at their nominal value for any amount not exceeding 25 cents in any one payment. (R. S. § 3587.)

DERIVATION

Act Feb. 12, 1873, ch. 131, § 16, 17 Stat. 427.

CROSS REFERENCES

All coins and currencies of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 821 of this title.

§ 461. Commemorative coins.

CODIFICATION

Section, making certain enumerated commemorative coins legal tender, is omitted as executed in view of section 376a of this title discontinuing coinage and issuance of commemorative coins under acts enacted prior to Mar. 1, 1939.

Section was from acts Apr. 13, 1904, ch. 1253, § 6, 33 Stat. 178; June 1, 1918, ch. 91, § 1, 40 Stat. 594; May 10, 1920, ch. 176, § 1, 41 Stat. 595; May 10, 1920, ch. 177, § 1, 41 Stat. 595; May 12, 1920, ch. 182, § 1, 41 Stat. 597; Mar. 4, 1921, ch. 153, § 1, 41 Stat. 1363; Feb. 2, 1922, ch. 45, 42 Stat. 362; Jan. 24, 1923, ch. 38, § 1, 42 Stat. 1172; Feb. 26, 1923, ch. 113, § 1, 42 Stat. 1267; Mar. 17, 1924, ch. 58, § 1, 43 Stat. 23; Jan. 14, 1925, ch. 79, § 5, 43 Stat. 749; Feb. 24, 1925, ch. 302, §§ 1—3, 43 Stat. 965, 966; Mar. 3, 1925, ch. 462, § 4, 43 Stat. 1264; May 17, 1926, ch. 307, § 1, 44 Stat. 559; Mar. 7, 1928, ch. 138, § 1, 45 Stat. 198; June 15, 1933, ch. 82, § 1, 48 Stat. 149; May 9, 1934, ch. 265, §§ 1—4, 48 Stat. 679; May 14, 1934, ch. 286, §§ 1—3, 48 Stat. 776; May 26, 1934, ch. 365, §§ 1—4, 48 Stat. 807; June 21, 1934, ch. 696, §§ 1—4, 48 Stat. 1200; May 2, 1935, ch. 88, §§ 1—6, 49 Stat. 165, 166; May 3, 1935, ch. 90, §§ 1—4, 49 Stat. 174; June 6, 1935, ch. 176, 49 Stat. 324; Mar. 16, 1936, ch. 149, §§ 1—5, 49 Stat. 1165; Mar. 20, 1936, ch. 164, §§ 1—3, 49 Stat. 1187; Apr. 13, 1936, ch. 212, §§ 1—3, 49 Stat. 1205; May 5, 1936, ch. 300, §§ 1—3, 49 Stat. 1257; May 5, 1936, ch. 304, §§ 1—3, 49 Stat. 1259; May 6, 1936, ch. 331, §§ 1—3, 49 Stat. 1262, 1263; May 15, 1936, ch. 399, §§ 1—3, 49 Stat. 1276; May 15, 1936, ch. 402, §§ 1—3, 49 Stat. 1277, 1278; May 16, 1936, ch. 406, §§ 1—3, 49 Stat. 1352, 1353; May 23, 1936, ch. 466, §§ 1—3, 49 Stat. 1387, 1388; June 16, 1936, ch. 583, §§ 1—3, 49 Stat. 1522; June 16, 1936, ch. 584, §§ 1—3, 49 Stat. 1523; June 16, 1936, ch. 586, §§ 1—3, 49 Stat. 1524; June 24, 1936, ch. 760, §§ 1—3, 49 Stat. 1911; June 26, 1936, ch. 835, §§ 1—3, 49 Stat. 1972; June 26, 1936, ch. 837, §§ 1—3, 49 Stat. 1973; June 24, 1937, ch. 377, §§ 1—3, 50 Stat. 305; June 25, 1937, ch. 384, §§ 1—3, 50 Stat. 322, 323.

§ 462. Coins and currencies.

All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single

tions, or the application thereof to any person or circumstances, is held invalid, the remainder of said sections, and the application of such provision to other persons or circumstances, shall not be affected thereby. (Jan. 30, 1934, ch. 6, § 16, 48 Stat. 344.)

REPEALS

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

§ 446. Laws repealed.

All Acts and parts of Acts inconsistent with any of the provisions of sections 215b, 405b, 408a, 408b, 440—446, 733, 734, 752, 753, 754a, 754b, 767, 771, 821, 822a, 822b, and 824 of this title and sections 213, 411—415, 417, and 467 of Title 12 are repealed. (Jan. 30, 1934, ch. 6, § 17, 48 Stat. 344.)

SILVER PURCHASE

§§ 445—445e. Repealed. Pub. L. 88-36, title I, § 1, June 4, 1963, 77 Stat. 54.

Sections 445, 445a, act June 19, 1934, ch. 674, §§ 1, 9, 48 Stat. 1178, 1181, declared the short title for the silver provisions to be the "Silver Purchase Act of 1934" and authorized the issuance of rules and regulations, respectively.

Section 445b, acts June 19, 1934, ch. 674, § 10, 48 Stat. 1181; June 26, 1950, Pub. L. 86-70, § 26, 73 Stat. 147, defined "person", "the continental United States", "monetary value", "stocks of silver" and "stocks of gold".

Sections 445c—445e, act June 19, 1934, ch. 674, §§ 11—13, 48 Stat. 1181, authorized appropriations, reserved the right to amend or repeal the silver purchase provisions and provided for a separability clause, and repealed inconsistent laws and declared the authority of the President and the Secretary of the Treasury to be supplemental to other conferred authority, respectively.

Chapter 9.—LEGAL TENDER

§ 451. United States gold certificates.

Gold certificates of the United States payable to bearer on demand shall be legal tender in payment of all debts and dues, public and private. (Dec. 24, 1919, ch. 16, § 1, 41 Stat. 370.)

CROSS REFERENCES

All coins and currencies of the United States to be legal tender, see sections 462 and 821 of this title.

§ 452. United States notes.

United States notes shall be lawful money, and a legal tender in payment of all debts, public and private, within the United States, except for duties on imports and interest on the public debt. (R. S. § 3588.)

DERIVATION

Acts Feb. 25, 1862, ch. 33, § 1, 12 Stat. 345; July 11, 1862, ch. 142, § 1, 12 Stat. 532; Res. Jan. 17, 1863, No. 9, 12 Stat. 823; act Mar. 3, 1863, ch. 73, § 3, 12 Stat. 711.

CROSS REFERENCES

All coins and currencies of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 821 of this title.

§ 453. Treasury notes.

Demand Treasury notes authorized by the Act of July 17, 1861, chapter 5, 12 Stat. 259, and the Act of February 12, 1862, chapter 20, 12 Stat. 338, shall be lawful money and a legal tender in like manner as United States notes. Treasury notes issued under the Act of July 14, 1890, chapter 708; 26 Stat. 289, shall be a legal tender in payment of all debts, public and private, except where otherwise expressly stipulated in the contract, and shall be receivable for customs, taxes, and all public dues. (R. S. § 3589; July 14, 1890, ch. 708, § 2, 26 Stat. 289.)

DERIVATION

Act July 17, 1861, ch. 5, § 1, 12 Stat. 259; act Feb. 12, 1862, ch. 20, § 1, 12 Stat. 338; act Feb. 25, 1862, ch. 33, § 1, 12 Stat. 345; act Mar. 17, 1862, ch. 46, § 2, 12 Stat. 370.

CODIFICATION

The first sentence of section is from R. S. § 3589. The second sentence is from act July 14, 1890.

CROSS REFERENCES

All coins and currencies of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 821 of this title.

§ 454. Interest-bearing notes.

Treasury notes issued under the authority of the Acts of March 3, 1863, chapter 73, 12 Stat. 710, and June 30, 1864, chapter 172, 13 Stat. 218—222, shall be legal tender to the same extent as United States notes, for their face value, excluding interest: *Provided*, That Treasury notes issued under the Act June 30, 1864, ch. 172, 13 Stat. 218—222 shall not be a legal tender in payment or redemption of any notes issued by any bank, banking association, or banker, calculated and intended to circulate as money. (R. S. § 3590.)

DERIVATION

Acts Mar. 3, 1863, ch. 73, § 2, 12 Stat. 710; June 30, 1864, ch. 172, § 2, 13 Stat. 218.

CROSS REFERENCES

All coins and currencies of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 821 of this title.

§ 455. Legal-tender quality of money not affected by certain sections.

Nothing contained in sections 146, 313, 314, 320, 406, 408, 410, 411, 429, and 751 of this title, and sections, 51, 101, 177, and 178 of Title 12 shall be construed to affect the legal-tender quality as now provided by law of the silver dollar, or of any other money coined or issued by the United States. (Mar. 14, 1900, ch. 41, § 3, 31 Stat. 46.)

CROSS REFERENCES

All coins and currencies of the United States to be legal tender for all debts, see sections 462 and 821 of this title.

§ 456. Foreign coins.

No foreign gold or silver coins shall be a legal tender in payment of debts. (R. S. § 3584.)

42