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SUPREME COURT
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42174

State of Minnesota,

In Supreme Court.

IN RE JEROME DALY

RESPONDENTS' BRIEF

Appendix to

STATE BOARD OF LAW EXAMINERS
BY: HERBERT C. DAVIS
6100 Excelsior Boulevard
St. Louis Park, Minnesota
Attorney for Petitioner

JEROME DALY
28 East Minnesota Street
Savage, Minnesota 55378
Respondent

Service admitted 5/12/71
Herbert C. Davis - Attorney for the
State Board of Professional Responsibility

STATE OF MINNESOTA IN SUPREME COURT

IN RE JEROME DALY AFFIDAVIT OF PREJUDICE

STATE OF MINNESOTA
SS
COUNTY OF SCOTT

Jerome Daly, having been duly sworn deposes and states that he is the object of the above entitled proceedings.

That he has good reason to believe, does believe and so states that by reason of bias and prejudice on the part of Chief Justice Oscar R. Knutson, Associate Justices James C. Otis and Fallon Kelly, and Judge C.A. Rolloff, sitting as Associate Justice by assignment that a fair hearing in the above entitled matter cannot be obtained before said Justices and therefore, makes this affidavit to disqualify said Justices and Judges for all purposes.

Further, that all 6 members of the Minnesota State Board of Law Examiners, who are the nominal Petitioners herein, are either on the Boards of Directors of Banks or they are Attorneys and Counsel for various Banks. The names and addresses of the Banks represented by John W. Padden, Gerald S. Rufer, Donald D. Harries, C. Allan Dosland, Kenneth M. Anderson and James Reitz are set out on pages 55 and 56 of Respondent's brief filed herein. Upon information and belief Affiant states that the facts are true from an investigation of Polk's Bank Directory and from information obtained from these men

personally. That 28 out of 36 members of the Minnesota State Bar Association are on the Board of Directors or are Counsel for Banks. That 10 out of the 19 members on the State Board of Ethics are on the Board of Directors or are Counsel for Banks.

That affiant was candidate for election against Chief Justice Oscar R. Knutson in the last election; that your affiant has good reason to believe that Knutson solicited and obtained the support of the Banks in this State to support him. Said Banks are an enemy of the People of this State and more especially your affiant. That said Banks are stealing U.S. Securities all to the knowledge of the State Board of Law Examiners and their Counsel Herbert C. Davis. To use Davis' own words to affiant during the hearing held in February of 1970, after Miles Lord and Hubert Humphrey had finished testifying in the Courtroom in the Flour Exchange Building in Minneapolis, Davis volunteer the statment "The whole Bar Association is in trouble". I concluded that he meant because of the stealing that was going on by the Banks forging credit upon their books and in acquiring U.S. and State Securities and the action of the National and International Bankers in being both accessories both before and after the fact to the assination of John F. Kennedy. I ~~made~~ made no reply but thought to myself;"If you only knew the half of it". Later after Chief Justice Oscar R. Knutson testified, the Referee, C. Donald Odden related to affiant how Knutson had called Odden over the phone from St. Paul to Duluth to enlist Odden as Referee in this action after E.R.Selness had been disqualified by affidavit of prejudice and after Knutson

had been disqualified by affidavit of prejudice filed by affiant. When asked to be the Referee herein Odden related that he had objected to taking on the job because of press of other matters whereupon Knutson roared at Odden "You get down here and accept this appointment as Referee". Odden stated, "He didn't need a telephone for me to hear him." This only goes to show the violent and uncontrolable nature of Knutson's panic and prejudice. The Order appointing Odden was signed by Otis. That I have good reason to believe and suspect that James C. Otis is the go between in the treacherous liason between the Bankers and the members of the Supreme Court responsible for knowingly trafficking with these subversives who have been effectively able to overturn and resist the express prohibitions contained in the Constitution of the United States and the State of Minnesota.

That Fallon Kelley, Associate Justice, was before his appointment on the Baord of Directors of the American National Bank and the Drovers State Bank of So. St. Paul and was counsel for these Banks. Further he is one of the Defendants in a suit named by Alfred M. Joyce vs. Commodity Credit Corp which is a part of the subject matter herein. That affiant cannot obtain a fair trial with said Justice on the case.

That C.A.Rolloff has been prejudiced against affiant and affiant's friend Alfred M. Joyce ever since affiant has known Rolloff which is 17 years.

That affiant is satisfied that Richey B. Reaville, Chairman and Executive Director of the State Board of Ethics is also a part of this conspiracy. Reaville heads up a firm of Attorneys in Duluth which represents the First American National Bank of Duluth, Duluth's largest Bank. Affiant is satisfied that he was appointed to this position to keep the Lawyers of the State of Minnesota whipped into line so that they will be afraid to step out and support the Constitution of the United States and the State of Minnesota against the National and International Banking Establishment. Reaville is going around the State encouraging Lawyers to make complaints so that he can have a file on any one who steps out of line in order to dispose of him quickly.

That your affiant is satisfied that there is an express or implied understanding between Knutson, Otis, Kelley and Rolloff on the one side and this National and INternational Banking Mob on the other to overthrow the Constitution of the United States.

That therefore, a fair trial or hearing of any kind cannot result with these Justices participating.

Jerome Daly

Jerome Daly

Subscribed and sworn to before me
May 11, 1971

DAVID

Notary
My Com

TO:

WHEREAS, THE CONSTITUTION OF THE UNITED STATES PROVIDES AS FOLLOWS; AMENDMENT 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." AMENDMENT XIV. "---No State shall make or enforce any law which shall abridge the privileges or immunities or 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."

AND WHEREAS, the Judicial Branch of the Government, State and Federal, is a part and parcel of the Government, which is admitted by the Supreme Court of Minnesota, to wit:

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 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. 287, 101 N.W. 74.

Now therefore, we the undersigned, do hereby appoint _____

_____, as our lawful

Attorney at Law and in Fact and grant unto him our License to act in our behalf and in our stead before any department of the Government of the United States or any State whether it be Executive, Legislative or Judicial, including any Court, State or Federal and to appear for us with the same full force and effect as though we were personally present and acting on our own behalf.

_____ _____

_____ _____

STATE OF _____

SS

COUNTY OF _____

_____ having been first duly sworn deposes and states that _____ have read the foregoing instrument, knows the contents thereof and understands the same and that the grant of this exclusive license to _____ as our lawful Attorney at Law and in Fact is our free act and deed and is to remain in effect until Notice to the contrary from me in writing.

It is further my understanding that the case of Hoppe vs. Klapperich, 224 Minnesota Reports at page 240 sets forth the "nature of the office of Attorneys deriving their License from State and Federal Courts " is as follows and is a correct statment of their standing and duties in every Court, State and Federal:

What is the nature of the office of attorney? An attorney in the discharge of his professional duties is, in a restricted sense, an agent of his client, but this agency is distinguishable from other agencies, in that the lawyer as a professional representative of his client is vested with certain powers and duties entirely different from and superior to those of an ordinary agent, and these powers and duties are derived not from the agency relationship with his client, but from his quasi-judicial status as an officer of the court, who is charged with a definite responsibility in the administration of justice in the interest of the public welfare. Out of his status as an officer of the court arise duties that are public as distinguished from the purely private duties owed to his client.[10]

"An attorney at law is an officer of the court. The nature of his obligations is both public and private. His public duty consists in his obligation to aid the administration of justice; his private duty, to faithfully, honestly, and conscientiously represent the interests of his client. In every case that comes to him in his professional capacity he must determine wherein lies his obligations to the public and his obligations to his client, and to discharge this duty properly requires the exercise of a keen discrimination; and *wherever the duties to his client conflict with those he owes to the public as an officer of the court in the administration of justice, the former must yield to the latter.* He therefore occupies what may be termed a *quasi*-judicial office." Langen v. Borkowski, 188 Wis. 277, 301, 206 N. W. 181, 190, 43 A. L. R. 622. (Italics supplied.)

[10]See, Curtis v. Richards, 4 Idaho 434, 40 P. 57, 95 A. S. R. 134; Bergeron, Petitioner, 220 Mass. 472, 107 N. E. 1007, Ann. Cas. 1917A, 549; Langen v. Borkowski, 188 Wis. 277, 206 N. W. 181, 43 A. L. R. 622; Annotation, 17 L. R. A. 244; 5 Am. Jur., Attorneys at Law, § 6; 7 C. J. S., Attorney and Client, § 4; 1 Dunnell, Dig. & Supp. § 664; Weeks, Attorneys at Law (2 ed. Boone) § 39, pp. 81, 82, and note.

I further unequivocally state that I do not want any one representing me who is laboring under such a disability. This grant is for the express purpose of representing our interest exclusively pursuant to and consistent with the Law and for the protection of our individual natural and soverign rights.

Witness_____ _____

_____ _____

Subscribed and sworn to before me this_____

_____

Notary Public, My Commission expires---

TO WHOM IT MAY CONCERN:

I hereby accept said License and Appointment and do hereby notify all persons concerned of my appearance herein pursuant to the above granted limitations expressly set forth.

Dated_____ _____

From "The 6th Amendment to the Constitution of the United States" by Francis H. Heller.

In both parts of [New] Jersey, East and West, trial by jury found recognition in the early fundamental laws. In West Jersey, where Quakerism predominated and Penn's influence was strong, the charter provisions demonstrate clearly the popular aversion to the legal profession; thus chapter XXII of the Charter of Fundamental Laws of 1676 reads:

That the tryals of all causes, civil and criminal, shall be heard and decided by the virdict [*sic*] or judgment of twelve honest men of the neighborhood, only to be summoned and presented by the sheriff of that division, or propricty where the fact or trespass is committed;

and continues immediately:

that no person or persons shall be compelled to fee any attornev or councillor to plead his cause, but that all persons have free liberty to plead his [*sic*] own cause, if he please . . . .[25]

The trend toward popular, nontechnical administration of justice is also apparent in the terms of the provision in the same charter guaranteeing public trials,[26] and in the predominant position of the jury "in whom only the judgment resided," whose verdict was beyond control or direction by the judges, and who could themselves pronounce judgment if the judges should refuse to do so.[27] Provisions similar to those of West Jersey are to be found in the Fundamental Constitutions for the Province of East Jersey (1683):

That no person or persons within the said Province shall be taken and imprisoned, or be devised of his freehold, free custom or liberty, or be outlawed or exiled, or any other way destroyed; nor shall they be condemn'd or judgment pass'd upon them but by lawful judgment of their peers: neither shall justice nor right be bought or sold, defered [*sic*] or delayed, to any person whatsoever: in order to which by the laws of the land, all tryals shall be by twelve men, and as near as it may be, peers and equals, and of the neighborhood, and men without just exception. . . . And in all courts persons of all perswasions [*sic*] may freely appear in their own way, and according to their own manner, and there personally plead their own causes themselves, or if unable, by their

friends, no person being allowed to take money for pleading or advice in such cases.[28]

These articles reflect the same tenor as those of Pennsylvania, whose system of colonial codes showed from the first a desire for settled legal relations and a solicitude for fairness and stability. The "Laws agreed upon in England" for Penn's dominion (1682) decree public trials[29] by a jury of twelve,[30] and guarantee the defendant's right to have his case heard in court.[31] But it would be misleading to judge from this that the methods of criminal procedure in colonial Pennsylvania were more formally anchored than in the other colonies. Indeed, the very exercise of criminal jurisdiction appears to have been placed in dispute by the provision, which appears in the two earliest Frames of Government, that criminals might be tried by the General Assembly through impeachment proceedings.[32] And such trials as took place in the courts were most informal in nature. Juries numbered six or seven members, whose verdict was reached by majority decision. An informal statement of the matter at issue was made, and though some technical language was used, there was little discrimination, even the distinctions between civil and criminal cases not being clearly drawn. "The administration of justice was rather founded upon the ideas of the magistrate than on any rules of positive law."[33]

A similar informality and uncertainty of proceedings appears to have prevailed in the early period in the Carolinas,[34] until the proprietors undertook to impose their control through the celebrated Fundamental Constitutions.[35] The pertinent articles of this document are illustrative of the reactionary tendencies for which the instrument is noted. They included, e.g., a provision that "no landgrave or cazique shall be tried for any criminal cause in any but the chief justice's court, and that by a jury of his peers";[36] an elaborate, graduated scale of property qualifications for jury service;[37] discontinuance of the common law requirement of an unanimous verdict, thus easing the way for conviction of the accused;[38] and, as in other colonies, a prohibition against the

Mr. Justice **Burton**, with whom Mr. Justice **Reed** and Mr. Justice **Minton** join, dissents for the reasons

*[2]

*stated in the opinion announced by Mr. Chief Justice Vinson, April 6, 1953, in Re Isserman (US) supra.

Mr. Justice **Reed** also calls attention to his dissent in Sacher v. Association of the Bar, 347 US 388, 390, 98 L ed 790, 792, 74 S Ct 569.

The **Chief Justice** and Mr. Justice **Clark** did not participate in the consideration or decision of this matter.

---

*[3]

*WILLIAM C. CHANDLER, Petitioner,

v.

WARDEN FRETAG

(348 US 3, 99 L ed 4, 75 S Ct 1)

SUMMARY OF DECISION

Petitioner, who had been sentenced under the Tennessee Habitual Criminal Act, sought habeas corpus, contending that he had been denied an opportunity to obtain counsel on the habitual criminal charge. The evidence showed that petitioner had not been informed of the latter charge until the day of the trial of the felony which, as a fourth offense, brought the habitual criminal statute into operation; that he had then requested a continuance to enable him to obtain counsel; and that this request had been refused. The state courts denied relief, noting that there had been a waiver of counsel on the felony charge, and holding that such waiver extended to the habitual criminal charge.

WARREN, Ch. J., speaking for a unanimous Court, reversed the ruling of the court below. The waiver of counsel on the felony charge was held not to amount to a waiver with regard to the habitual criminal accusation, in view of the Tennessee Habitual Criminal Act's requirement that a hearing thereunder be conducted independently of the trial on the felony charge. And the denial to petitioner of an opportunity to obtain counsel was held to be a clear violation of the due process clause of the Fourteenth Amendment.

HEADNOTES

Classified to U.S. Supreme Court Digest, Annotated

Habeas Corpus § 61 — sentence as habitual criminal.

1. Under Tennessee law, a defendant sentenced on both a felony charge and a habitual criminal accusation must serve his term on the felony charge before he can attack the validity of his habitual criminal sentence in habeas corpus proceedings.

[*See annotation references* 1, 2.]

Criminal Law § 69 — habitual criminal — separate trial.

2. The Tennessee Habitual Criminal Act (Williams' Tenn Code, 1934 (1949 Supp) §§ 11863.1 et seq.), although merely enhancing punishment for a fourth-time felony offense, and not creating a separate offense, requires jury determination, in a judicial hearing, of its applicability to a defendant charged with being a habitual criminal; such hearing and the trial of the fourth-felony charge may be conducted in a single proceeding, but are essentially independent of each other, and a jury may find a defendant guilty on the felony charge but innocent of being a habitual criminal.

[*See annotation reference* 3.]

Criminal Law § 46.7 — right to counsel — waiver — habitual criminals.

3. A defendant who intends to plead guilty to a felony charge and to waive his right to counsel, but who, upon being informed at the time of the trial that he will also be tried, and subject to sentencing, as a habitual criminal, requests a continuance so that he may obtain an attorney's services, cannot be held to have waived counsel on the habitual criminal accusation, notwithstanding his waiver of counsel on the felony charge.

[*See annotation references* 4, 5.]

Criminal Law § 46.3 — right to counsel — due process.

4. The due process clause of the Fourteenth Amendment affords to one charged with crime in a state court the unqualified right to be heard through his own counsel, regardless of whether he is entitled to have the court appoint counsel for him.

[*See annotation reference* 5.]

Criminal Law § 46.3 — right to counsel — due process.

5. The due process clause of the Fourteenth Amendment requires that one charged with crime in a state court be given a reasonable opportunity to employ and consult with counsel.

[*See annotation references* 5, 6.]

Criminal Law § 46.6 — right to counsel — due process — habitual criminal charge.

6. The due process clause of the Fourteenth Amendment is violated by a conviction, in a state court, of one charged with being a habitual criminal, where the accused was not informed of that charge until the day of the trial of the felony alleged to bring the habitual criminal statute into operation, and his timely request for a continuance to enable him to obtain the assistance of counsel in defending against the habitual criminal charge was denied.

[*See annotation references* 5, 7.]

[No. 39.]

Argued October 18, 1954. Decided November 8, 1954.

ON WRIT of Certiorari to the Supreme Court of Tennessee to review a judgment affirming a denial by the Circuit Court of Knox County of a petition for habeas corpus. Reversed.

Earl E. Leming, of Knoxville, Tennessee, argued the cause, and, with James P. Brown, Carl A. Cowan, Warren R. Webster, and Rudolph V. McKamey, all of Knoxville, Tennessee, filed a brief for petitioner:

Petitioner was entitled to pretrial pleaded notice of the habitual criminal accusation against. Cole v. Arkansas, 333 US 196, 92 L ed 644, 68 S Ct 514; Powell v. Alabama, 287 US 45, 77 L ed 158, 53 S Ct 55, 84 ALR 527.

Petitioner was entitled to fair notice of the real accusation against him. Re Oliver, 333 US 257, 92 L ed 682, 68 S Ct 499; Smith v. O'Grady, 312 US 329, 85 L ed 859, 61 S Ct 572; Hawk v. Olson, 326 US 271, 90 L ed 61, 66 S Ct 116. And see Powell v. Alabama, 287 US 45, 77 L ed 158, 53 S Ct 55, 84 ALR 527; Art 1, §§ 9, 14, Tenn Const. Art 11, § 16, Tenn Const. Tenn Code §§ 11624; 11863.5 as modified in 1950.

Petitioner was entitled to counsel

ANNOTATION REFERENCES

1. Habeas corpus in United States Supreme Court upon ground of errors or irregularities in trial in criminal prosecution in state courts, 87 L ed 217.

2. Violation of accused's right to counsel as ground for habeas corpus, 93 L ed 144 and 146 ALR 369.

3. Constitutionality and construction of statute enhancing penalty for second or subsequent offenses, 58 ALR 20, 82 ALR 345, 116 ALR 209, 132 ALR 91, and 139 ALR 673.

4. Waiver of accused's constitutional right to assistance of counsel, 84 L ed 383, 93 L ed 137, 94 L ed 1193, 96 L ed 161.

5. Accused's constitutional right to assistance of counsel, 84 L ed 383, 93 L ed 137, 94 L ed 1193, and 96 L ed 161.

6. Brevity of time between assignment of counsel and trial as affecting question whether accused is denied right to assistance of counsel, 84 ALR 544.

7. Absence of counsel for accused at time of sentence as requiring vacation thereof or other relief, 20 ALR2d 1240.

337 US 241, 93 L ed 1337, 69 S Ct 1079.

The trial, conviction and sentencing of petitioner without the aid of counsel did not deprive him of his liberty in violation of rights secured by the Fourteenth Amendment to the Constitution of the United States. Cf. Betts v. Brady, 316 US 455, 86 L ed 1595, 62 S Ct 1252.

The petitioner had the burden of proving that the denial of counsel deprived him of the essentials of justice. Hawk v. Olson, 326 US 271, 90 L ed 61, 66 S Ct 116. Cf. Foster v. Illinois, 332 US 134, 91 L ed 1955, 67 S Ct 1716; Quicksall v. Michigan, 339 US 660, 94 L ed 1188, 70 S Ct 910.

It makes no difference that he requested on opportunity to get counsel and his request was refused. Betts v. Brady, 316 US 455, 86 L ed 1595, 62 S Ct 1252.

Neither does it make any difference that the conviction was under the Habitual Criminal Statute and that a sentence of life imprisonment was imposed. Gryger v. Burke, 334 US 728, 92 L ed 1683, 68 S Ct 1256.

Mr. Chief Justice **Warren** delivered the opinion of the Court.

Petitioner is held in the custody of respondent, Warden of the Tennessee State Penitentiary, under a sentence of life imprisonment as an habitual criminal. Challenging the validity of that sentence under the Fourteenth Amendment, he commenced this action in the Tennessee courts to obtain his freedom. We granted certiorari, 347 US 933, 98 L ed 1084, 74 S Ct 632, because of the substantial question presented by his constitutional claim.

The basic facts are undisputed. Petitioner is a middle-aged Negro of little education. He was indicted on March 10, 1949, for the offense of housebreaking and larceny, an offense punishable by a term of three to ten years. The indictment charged him with breaking and entering a business house and stealing therefrom sundry items of the aggregate value of $3. Following his arrest, petitioner was released on bond while awaiting trial set for May 17, 1949. On that day, without an attorney and without notice of any habitual criminal accusation against him, petitioner appeared in court intending to plead guilty to the indictment. He "felt that an attorney could do him no good on said charge [housebreaking and larceny]." When his case was called for trial, he was orally advised by the trial judge that he would also be tried as an habitual criminal because of three alleged

*[5]

prior felonies.[1] He *was informed that conviction under the Tennessee Habitual Criminal Act carries a mandatory sentence of life imprisonment with no possibility of parole.[2] Petitioner promptly asked for a continuance to enable him to obtain counsel on the habitual criminal accusation. His request was summarily denied, a jury was impaneled, and the case proceeded immediately to trial. Petitioner entered his plea of guilty to the housebreaking and larceny charge, and the prosecution introduced evidence in corroboration of the plea. At the conclusion of the trial, the judge instructed the jury to raise their right hands if they accepted petitioner's guilty plea on the housebreaking and larceny charge and if they approved of a three-year sentence on that charge. The jury responded by raising their right hands. The judge then instructed the jury to raise their right hands a second time if they found petitioner to be an habitual criminal. Once again the jury, without ever having left the jury box, raised their right hands. The entire proceeding—from the impaneling of the jury to the passing of sentence—consumed between five and ten minutes.

Three years later, having served

1. The Tennessee Habitual Criminal Act at the time of petitioner's trial, permitted an oral accusation. Williams' Tenn Code, 1934 (1949 Supp) § 11863.5. It was subsequently amended to require the inclusion of the accusation in the indictment on the substantive offense. Tenn Code, 1932 (1950 Supp) § 11863.5.

2. Williams' Tenn Code, 1934 (1949 Supp) § 11863.2.

his sentence on the housebreaking and larceny charge, petitioner applied to the Circuit Court of Knox County for habeas corpus relief.[3] He alleged that his sentence as an habitual criminal was invalid on the ground, among others, that he had been denied an opportunity to obtain

*[6]

counsel in his defense.[4] *At a hearing on the application, petitioner, his wife, his brother, a juror, and the prosecuting attorney testified as to their recollection of petitioner's trial.[5] All five witnesses were in full accord as to the above-stated facts. They differed only on whether petitioner had pleaded guilty to the habitual criminal accusation and whether the prosecution had introduced any evidence concerning petitioner's prior convictions. The prosecuting attorney, the only witness for the state, testified that petitioner had pleaded guilty to the habitual criminal accusation as well as the housebreaking and larceny charge, and that the record of petitioner's prior convictions had been read to the jury; the other four witnesses denied it. In all other respects, the testimony of the prosecuting attorney substantiated the testimony of the other four witnesses. Thus he conceded that petitioner had not been represented by counsel, that petitioner had not been given any pretrial notice of the habitual criminal accusation, that petitioner "said he wanted the case put off as he was advised by the Court that he was being tried as an habitual criminal in addition to housebreaking and larceny. He asked that the case be put off so he could get a lawyer and [the trial judge] told him he had had since January up to May to get a lawyer."

The Circuit Court, after hearing the case on the merits, accepted—as does the respondent here—petitioner's factual allegations as to the denial of counsel. The Circuit Court nevertheless upheld the validity of

*[7]

petitioner's *sentence and the Tennessee Supreme Court affirmed. Both courts emphasized that the Tennessee Habitual Criminal Act, like similar legislation in other states, does not create a separate offense but only enhances a defendant's punishment on being convicted of his fourth felony. Tipton v. State, 160 Tenn 664, 672–678, 28 SW2d 635, 637–639. See also McDonald v. Massachusetts, 180 US 311, 313, 45 L ed 542, 547, 21 S Ct 389; Graham v. West Virginia, 224 US 616, 623, 624, 56 L ed 917, 920, 921, 32 S Ct 583. From that premise, the courts below reasoned that petitioner had waived any right to counsel on the habitual criminal accusation by waiving counsel on the housebreaking and larceny charge. With this conclusion, we cannot agree.

Section 1 of the Act defines "habitual criminal" in considerable detail.[6] Section 7 prescribes standards for the admissibility of the

3. Under Tennessee law, a defendant sentenced on both a felony charge and an habitual criminal accusation must serve his term on the felony charge before he can attack the validity of his habitual criminal sentence in habeas corpus proceedings. See State ex rel. Grandstaff v. Gore, 182 Tenn 94, 98, 184 SW2d 366, 367.

Headnote 1

4. Petitioner also alleged, wholly apart from his claim of denial of counsel, that he was deprived of due process by the failure of the trial court to give him any pretrial notice of the habitual criminal accusation. We find it unnecessary to pass on this contention in view of our disposition of the case. We also note that in 1950, subsequent to petitioner's trial, the Tennessee Habitual Criminal Act was amended to require pretrial notice. Tenn Code, 1932 (1950 Supp) § 11863.5.

5. The record of petitioner's trial consists only of the indictment and the judgment of conviction. There was no stenographic transcript of the proceedings. The judgment recites that petitioner had "counsel present," but it is conceded that the recital is not true.

6. Williams' Tenn Code, 1934 (1949 Supp) § 11863.1:

"Any person who has either been three times convicted within this state of felonies, two of which, under section 11762

record of the prior convictions of a defendant charged with being an *[8] habitual criminal.[7] *This section, the Tennessee Supreme Court has held, clearly authorizes "(a)n issue of fact as to the verity of such record, or as to the identity of the accused with the person named in such record . . . ." Tipton v. State, 160 Tenn 664, 678, 28 SW2d 635, 639. Proof of the defendant's prior convictions is ". . . a condition precedent to the imposition of the increased punishment provided." Tipton v. State (Tenn) supra. Section 6 of the Act, moreover, provides that the increased punishment cannot be imposed unless the jury specially finds that the defendant is an habitual criminal as charged.[8] "Under section 6 of the Act," according to the Tennessee Supreme Court, "the question as to whether the defendant is an habitual criminal is one for the jury to decide." McCummings v. State, 175 Tenn 309, 311, 134 SW2d 151, 152. In short, even though the Act

Headnote 2

does not create a separate offense, its applicability to any defendant charged with being an habitual criminal must be determined by a jury in a judicial hearing. Compare Williams v. New York, 337 US 241, 93 L ed 1337, 69 S Ct 1079. That hearing and the trial on the felony charge, although they may be conducted in a single proceeding, are essentially independent of each other.[9] Thus, for example, it is possible that the jury in the instant case might have found petitioner guilty on the housebreaking and larceny charge and yet found him innocent of being an habitual criminal. Apparently recognizing this possibility, petitioner at the earliest possible moment affirmatively sought an opportunity to obtain counsel on the habitual criminal accusation. Immediately on being informed of the accusation and suddenly finding himself in danger of life imprisonment, he requested *[9] *a continuance so that he could engage the services of an attorney; but the trial court refused the request and forced him to stand immediate trial. On these undisputed facts, it is clear beyond

Headnote 3

question that petitioner did not waive counsel on the habitual criminal accusation. See Rice v. Olson, 324 US 786, 788, 789, 89 L ed 1367, 1369, 1370, 65 S Ct 989.

The Tennessee Attorney General denies, however, that petitioner had any federal constitutional right to counsel. He relies on the doctrine enunciated in Betts v. Brady, 316 US 455, 86 L ed 1595, 62 S Ct 1252. But that doctrine has no application here. Petitioner did not ask the trial judge to furnish him counsel; rather, he asked for a continuance

of the Code of Tennessee, rendered him infamous, or which were had under sections 10777, 10778, 10788, 10790 and 10797 of said Code, or which were for murder in the first degree, rape, kidnapping for ransom, treason or other crime punishable by death under existing laws, but for which the death penalty was not inflicted, or who has been three times convicted under the laws of any other state, government or country of crimes, two of which, if they had been committed in this state, would have rendered him infamous, or would have been punishable under said sections 10777, 10778, 10788, 10790 and 10797 of said code, or would have been murder in the first degree, rape, kidnapping for ransom, treason or other crime punishable by death under existing laws, but for which the death penalty was not inflicted, shall be considered, for the purposes of this act, and is hereby declared to be an habitual criminal, provided that petit larceny shall not be counted as one of such three convictions, but is expressly excluded, and provided further that each of such three convictions shall be for separate offenses, committed at different times, and on separate occasions."

7. Williams' Tenn Code, 1934 (1949 Supp) § 11863.7.

8. Williams' Tenn Code, 1934 (1949 Supp) § 11863.5.

9. Compare, e. g., the West Virginia procedure which provides for a separate hearing on the habitual criminal issue. See Graham v. West Virginia, 224 US 616, 56 L ed 917, 32 S Ct 583.

so that he could obtain his own. The distinction is well established in this Court's decisions. Powell v. Alabama, 287 US 45, 71, 77 L ed 158, 171, 53 S Ct 55, 84 ALR 527; Betts v. Brady, 316 US 455, 466, 468, 86 L ed 1595, 1603, 1604, 62 S Ct 1252; House v. Mayo, 324 US 42, 46, 89 L ed 739, 742, 65 S Ct 517.

Headnote 4 Regardless of whether petitioner would have been entitled to the appointment of counsel, his right to be heard through his own counsel was unqualified.[10] See Palko v. Connecticut, 302 US 319, 324, 325, 82 L ed 288, 291, 292, 58 S Ct 149. As this Court stated over 20 years ago in Powell v. Alabama, supra (287 US at 68, 69):

"What, then, does a hearing include? Historically and in practice, in our own country at least, it has always included the right to the aid of counsel when desired and provided by the party asserting the right. The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he

*[10]

is incapable, *generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. *He requires the guiding hand of counsel at every step in the proceedings against him.* Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect. *If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense.*" (Italics added.)

A necessary corollary is that a defendant must be given a reasonable

Headnote 5 opportunity to employ and consult with counsel; otherwise, the right to be heard by counsel would be of little worth. Avery v. Alabama, 308 US 444, 446, 84 L ed 377, 379, 60 S Ct 321; House v. Mayo, 324 US 42, 46, 89 L ed 739, 742, 65 S Ct 517; White v. Ragen, 324 US 760, 764, 89 L ed 1348, 1352, 65 S Ct 978; Hawk v. Olson, 326 US 271, 277, 278, 90 L ed 61, 66, 67, 66 S Ct 116. By

Headnote 6 denying petitioner any opportunity whatever to obtain counsel on the habitual criminal accusation, the trial court deprived him of due process of law as guaranteed by the Fourteenth Amendment.

It follows that petitioner is being held by respondent under an invalid sentence. The judgment below, sustaining the denial of habeas corpus relief, is accordingly reversed.

Judgment reversed.

10. Tennessee statutes appear to confer both rights on a defendant in a criminal case. Tenn Code, 1932, §§ 11733, 11734, 11547, 11548. See also Art I, § 9, of the Declaration of Rights in the Tennessee Constitution.

*[371 US 415]

*NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, etc., Petitioner,

v

ROBERT Y. BUTTON, Attorney General of Virginia, et al.

371 US 415, 9 L ed 2d 405, 83 S Ct 328

[No. 5]

Reargued October 9, 1962. Decided January 14, 1963.

SUMMARY

In a suit brought by the National Association for the Advancement of Colored People, Inc. (NAACP) and another complainant in the United States District Court for the Eastern District of Virginia to restrain the enforcement of Chapters 31, 32, 33, 35, and 36 of the Virginia Acts of Assembly, 1956 Extra Session, a three-judge court struck down Chapters 31, 32, and 35, but abstained from passing on the validity of Chapters 33 and 36 pending an authoritative interpretation of the statutes by the Virginia courts. (159 F Supp 503.) The two complainants thereupon petitioned the Circuit Court of the City of Richmond to declare Chapters 33 and 36 inapplicable to their activities, or if applicable, unconstitutional, the NAACP making no reservation to the disposition of the entire case by the state court, and seeking a permanent injunction and a binding adjudication of all its claims. The Circuit Court held the statutes both applicable and constitutional. On appeal the Virginia Supreme Court of Appeals held Chapter 36 unconstitutional, but upheld Chapter 33, which expanded the definition of improper solicitation of legal business as described hereinafter. (202 Va 142, 116 SE2d 55.)

On certiorari filed by the NAACP, the Supreme Court reversed. In an opinion by BRENNAN, J., expressing the views of five members of the Court, it was held that (1) the judgment of the Virginia Supreme Court of Appeals was a "final" judgment subject to review under 28 USC § 1257; and (2) Chapter 33, as construed by the Virginia Supreme Court of Appeals to make criminal (a) advising another that his legal rights have been infringed and referring him to a particular attorney or group of attorneys for assistance and (b) knowingly rendering legal assistance to the person thus referred, could not be justified under the state's interest in regulating barratry, champerty and maintenance, and unconstitutionally restricted the NAACP's freedom of expression and association.

DOUGLAS, J., while concurring in the Court's judgment and opinion, stated that the statute was discriminatory against the NAACP.

WHITE, J., concurring in part and dissenting in part, agreed that the

statute was unconstitutional but expressed the view that a narrowly drawn statute would be constitutional if it proscribed only the actual day-to-day management and dictation of the tactics, strategy, and conduct of litigation by a lay entity such as the NAACP.

HARLAN, J., joined by CLARK and STEWART, JJ., dissented on the ground that the statute constitutionally regulated the litigating activities of the NAACP.

HEADNOTES

Classified to U. S. Supreme Court Digest, Annotated

Appeal and Error § 1262.5 — certiorari — failure to cross petition — scope of review.

1. In certiorari proceeding to review a judgment of a state court declaring a state statute constitutional, the United States Supreme Court will not review the state court's decision declaring another state statute unconstitutional, where no cross petition for certiorari to review the latter decision is filed.

[*See annotation reference* 1]

Courts § 757.5 — federal — awaiting decision of state court.

2. A three-judge Federal District Court's abstention from a passing on the validity of a state statute, pending an authoritative interpretation of the statute by the state courts, does not involve the abdication of federal jurisdiction, but only the postponement of its exercise.

[*See annotation reference* 2]

Appeal and Error § 383; Courts § 757.5 — federal court awaiting state court decision — Supreme Court review of state court judgment.

3. Where a three-judge Federal District Court case involves the validity of a state statute, and the District Court abstains from passing on the statute's validity pending an authoritative interpretation of the statute by state courts, the District Court properly retains jurisdiction of the case, but if the party remitted to the state courts elects to seek a complete and final adjudication of his rights in the state courts, the District Court's reservation of jurisdiction is purely formal and does not impair the United States Supreme Court's jurisdiction to review directly an otherwise final judgment of the highest court of the state.

[*See annotation reference* 2]

ANNOTATION REFERENCES

1. Failure to cross appeal as affecting scope of appellate review. 1 L ed 2d 1820.

2. Discretion of federal court to remit relevant state issues to state court in which no action is pending. 94 L ed 879; 3 L ed 2d 1827; 8 ALR2d 1228.

3. When judgment of state court in civil cases is final for purpose of review by Supreme Court of United States. 89 L ed 1186; 97 L ed 208.

4. Constitutionality of statute against solicitation of business by or for attorney. 53 ALR 279.

5. The Supreme Court and the right of free speech and press. 93 L ed 1151; 2 L ed 2d 1706.

6. Suspension or revocation of medical or legal professional licenses as violating due process. 98 L ed 851.

7. Barratry, what is; acts constituting. 28 L ed 809.

8. Offense of barratry; criminal aspects of champerty and maintenance. 139 ALR 620.

9. Law as to champerty and maintenance as applied to agreements with respect to bringing and prosecution of claims against government or agencies of government. 106 ALR 1494.

10. Vagueness or indefiniteness of statute as rendering it unconstitutional or inoperative. 70 L ed 322.

11. Indefiniteness of language as affecting validity of criminal legislation. 96 L ed 374; 97 L ed 203.

12. Illustrations as to when statute defining criminal offense is subject to attack as vague, indefinite, or uncertain. 83 L ed 893.

Appeal and Error § 83; Courts § 757.5 — "final" judgment.

4. A party in a three-judge Federal District Court who is remitted to the state courts for an authoritative interpretation of a state statute, and who seeks in the state courts a binding adjudication of all his claims, making no reservation to the disposition of the entire case by the state courts, asking for injunctive as well as declaratory relief, and appealing from the lower courts to the highest court of the state, thereby elects to seek a complete and final adjudication of his rights in the state courts, and the judgment of the highest court of the state is a "final" judgment within the meaning of 28 USC § 1257, which permits review by the United States Supreme Court of certain "final" judgments or decrees.

[*See annotation reference* 3]

Statutes §§ 26, 30 — corporation — standing to assail statute.

5. A corporation which claims that a state statute unconstitutionally infringes its rights, and the rights of its members and lawyers, to associate for the purpose of assisting persons who seek legal redress for infringement of their rights, has standing to assert its rights and the corresponding rights of its members.

Constitutional Law §§ 925, 940 — NAACP — freedom of speech and of association.

6. The First and Fourteenth Amendments protect, and a state under its power to regulate the legal profession may not prohibit, the activities of the National Association for the Advancement of Colored People (NAACP), its affiliates, and its legal staff in defraying the expense of and conducting litigation for litigants whom it decides to assist, even though the NAACP distributes printed forms for signature by persons designating the NAACP as their representative in desegregation cases and the NAACP will not underwrite suits in which the plaintiff seeks separate but equal rather than fully desegregated public school facilities.

[*See annotation references* 4–9]

States § 12 — constitutional rights — form of infringement.

7. A state cannot foreclose the exercise of federal constitutional rights by mere labels.

Constitutional Law § 927 — free speech — advocacy against government.

8. The First Amendment protects not only abstract discussion but also vigorous advocacy, certainly of lawful ends, against governmental intrusion.

[*See annotation reference* 5]

Constitutional Law § 940 — freedom of association.

9. The First and Fourteenth Amendments protect certain forms of orderly group activity, including the right to engage in association for the advancement of beliefs and ideas.

Courts § 805 — state statute — following state court interpretation.

10. A full and authoritative construction of a state statute by the highest court of a state, in a detailed factual context, binds the United States Supreme Court, for which the words of the state's highest court are in effect the words of the statute.

Constitutional Law § 925; Evidence § 99(1) — vague statute — presumption of constitutionality.

11. Since standards of permissible statutory vagueness are strict in the area of free expression, the United States Supreme Court will not presume that an ambiguous line between permitted and prohibited activities curtails constitutionally protected activity as little as possible, or that in subsequent enforcement of the statute, ambiguities will be resolved in favor of adequate protection of First Amendment rights.

[*See annotation references* 5, 10–12]

Constitutional Law § 925 — First Amendment rights — statutes inhibiting.

12. A state court decree upholding

the validity of a state statute may be invalid if it prohibits privileged exercises of First Amendment rights whether or not the record discloses that the party challenging the statute has engaged in privileged conduct, for in appraising a statute's inhibitory effect upon such rights the United States Supreme Court will not hesitate to take into account possible applications of the statute in other factual contexts besides that at bar.

Statutes § 18 — vagueness — constitutionality.

13. The objectionable quality of vagueness and overbreadth in a statute does not depend upon absence of fair notice to a criminally accused or upon unchanneled delegation of legislative powers, but upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application.

[*See annotation references* 5, 10–12]

Constitutional Law § 925; Statutes § 17 — First Amendment — statutory vagueness.

14. Because First Amendment freedoms need breathing space to survive, and the threat of sanctions may deter their exercise almost as potently as actual application of sanctions, government may regulate in the area only with narrow specificity.

[*See annotation references* 5, 10–12]

Statutes § 17 — vagueness — lack of prosecution.

15. A state statute which has so broad and uncertain a meaning that it can be applied to deprive persons of First Amendment rights is unconstitutional whether or not such prosecutions or proceedings would actually be commenced, and whether or not the highest court of the state expressly confirms the right to advocate civil rights litigation.

[*See annotation references* 5, 10–12]

Barratry § 2; Champerty and Maintenance § 1; Constitutional Law § 925 — referrals to attorneys.

16. A state statute which makes it a crime (1) to advise another that his legal rights have been infringed and to refer him to a particular attorney or group of attorneys for assistance, or (2) knowingly to render legal assistance to the person thus referred, cannot be justified under the state's interest in regulating the traditionally illegal practices of barratry, maintenance, and champerty, and such a statute limits First Amendment freedoms and violates the Fourteenth Amendment by unduly inhibiting protected freedoms of expression and association.

[*See annotation references* 4–12]

Constitutional Law § 925 — freedom to persuade to action.

17. Free trade in ideas means free trade in the opportunity to persuade to action, not merely to describe facts.

[*See annotation reference* 5]

Constitutional Law § 925 — state regulation — First Amendment freedoms.

18. Only a compelling state interest in the regulation of a subject within the state's constitutional power to regulate can justify limiting First Amendment freedoms.

Constitutional Law § 881 — professional misconduct — prohibitions.

19. A state may not, under the guise of prohibiting professional misconduct, ignore constitutional rights.

Barratry § 2 — elements — malicious intent.

20. Malicious intent is of the essence of the common-law offenses of fomenting or stirring up litigation, and as a matter of law the exercise of First Amendment rights for enforcement of constitutional rights through litigation cannot be deemed malicious.

[*See annotation references* 4, 6–9]

Constitutional Law §§ 925, 940 — minority groups — protection of.

21. The Constitution protects expression and association without regard to the race, creed, or political or religious affiliation of the members of the group which invokes its shield, or to the truth, popularity, or social

utility of the ideas and beliefs which are offered.

[*See annotation reference* 5]

Point from Separate Opinion

Civil Rights § 7.5; Constitutional Law §§ 370, 408 — discriminatory statute — practice of law — corporations.

22. A state statute making it a crime (1) to advise another that his legal rights have been infringed and to refer him to a particular attorney or group of attorneys for assistance, or (2) knowingly to render legal assistance to the person thus referred, is unconstitutional as discriminatory against the National Association for the Advancement of Colored People, Inc. (NAACP), where it makes no distinction between an organization which has no pecuniary right or liability in a judicial proceeding and one which does, and where the statute's application reflects a legislative purpose to penalize the NAACP because the NAACP promotes desegregation of the races. [From separate opinion by Douglas, J.]

[*See annotation references* 4–9]

APPEARANCES OF COUNSEL

Robert L. Carter reargued the cause for petitioner.

Henry T. Wickham reargued the cause for respondents.

Briefs of Counsel, p 1132, infra.

OPINION OF THE COURT

*[371 US 417]

*Mr. Justice **Brennan** delivered the opinion of the Court.

This case originated in companion suits by the National Association for the Advancement of Colored People, Inc. (NAACP), and the NAACP Legal Defense and Educational Fund, Inc. (Defense Fund), brought in 1957 in the United States District Court for the Eastern District of Virginia. The suits sought to restrain the enforcement of Chapters 31, 32, 33, 35 and 36 of the Virginia Acts of Assembly, 1956 Extra Ses-

*[371 US 418]

sion, on the ground that the *statutes, as applied to the activities of the plaintiffs, violated the Fourteenth Amendment. A three-judge court convened pursuant to 28 USC § 2281, after hearing evidence and making fact findings, struck down Chapters 31, 32 and 35 but abstained from passing upon the validity of Chapters 33 and 36 pending an authoritative interpretation of these statutes by the Virginia courts.[1] The complainants thereupon petitioned in the Circuit Court of the City of Richmond to declare Chapters 33 and 36 inapplicable to their activities, or, if applicable, unconstitutional. The record in the Circuit Court was that made before the three-judge court supplemented by additional evidence. The Circuit Court held the chapters to be both applicable and constitutional. The holding was sustained by the Virginia Supreme Court of Appeals as to Chapter 33, but reversed as to Chapter 36, which was held unconstitutional under both state and federal law.[2] Thereupon

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1. National Asso. for Advancement of Colored People v Patty, 159 F Supp 503 (DCED Va 1958). On direct appeal under 28 USC § 1253, from the judgment striking down Chapters 31, 32 and 35, this Court reversed, remanding with instructions to permit the complainants to seek an authoritative interpretation of the statutes in the Virginia courts. Harrison v National Asso. for Advancement of Colored People, 360 US 167, 3 L ed 2d 1152, 79 S Ct 1025. In ensuing litigation, the Circuit Court of the City of Richmond held most of the provisions of the three chapters unconstitutional. NAACP v Harrison, Chancery causes No. B–2879 and No. B–2880, Aug. 31, 1962.

2. National Asso. for Advancement of

the Defense Fund returned to the Federal District Court, where its case is presently pending, while the NAACP filed the instant petition. We granted certiorari. 365 US 842, 5 L ed 2d 807, 81 S Ct 803.[3] We heard argument in the 1961 Term

*[371 US 419]

*and ordered reargument this Term. 369 US 833, 7 L ed 2d 841, 82 S Ct 863. Since no cross-petition was filed to review the Su-

Headnote 1

preme Court of Appeals' disposition of Chapter 36, the only issue before us is the constitutionality of Chapter 33 as applied to the activities of the NAACP.

There is no substantial dispute as to the facts; the dispute centers about the constitutionality under the Fourteenth Amendment of Chapter 33, as construed and applied by the Virginia Supreme Court of Appeals to include NAACP's activities within the statute's ban against "the improper solicitation of any legal or professional business.

The NAACP was formed in 1909 and incorporated under New York law as a nonprofit membership corporation in 1911. It maintains its headquarters in New York and presently has some 1,000 active unincorporated branches throughout the Nation. The corporation is licensed to do business in Virginia, and has 89 branches there. The Virginia branches are organized into the Virginia State Conference of NAACP Branches (the Conference), an unincorporated association, which in 1957 had some 13,500 members. The activities of the Conference are financed jointly by the national organization and the local branches from contributions and membership dues. NAACP policy, binding upon local branches and conferences, is set by the annual national convention.

The basic aims and purposes of NAACP are to secure the elimination of all racial barriers which deprive Negro citizens of the privileges and burdens of equal citizenship rights in the United States. To this end the Association engages in extensive educational and lobbying activities. It also devotes much of its funds and energies to an extensive

*[371 US 420]

*program of assisting certain kinds of litigation on behalf of its declared purposes. For more than 10 years, the Virginia Conference has concentrated upon financing litigation aimed at ending racial segregation in the public schools of the Commonwealth.

The Conference ordinarily will finance only cases in which the assisted litigant retains an NAACP staff lawyer to represent him.[4] The Conference maintains a legal staff of 15 attorneys, all of whom are Negroes and members of the NAACP. The staff is elected at the Conference's annual convention. Each legal staff member must agree to abide by the policies of the NAACP, which, insofar as they pertain to

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Colored People v Harrison, 202 Va 142, 116 SE2d 55 (1960). Chapter 36, which is codified in §§ 18.1–394 et seq., Code of Virginia (1960 Repl Vol), prohibits the advocacy of suits against the Commonwealth and the giving of any assistance, financial or otherwise, to such suits.

3. Certiorari was first granted sub nom. NAACP v Gray. The litigation began sub nom. NAACP v Patty, Attorney General of Virginia. During the course of the litigation the names of successive holders of that office have been substituted as party respondent. See Supreme Court Rule 48, par. 3, as amended. 366 US 979, 6 L ed 2d lxii, 81 S Ct xv.

4. However, the record contains two instances where Negro litigants had retained attorneys, not on the legal staff, prior to seeking financial assistance from the Conference. The Conference rendered substantial financial assistance in both cases. In one case the Conference paid the attorney's fee.

*[377 US 1]

*BROTHERHOOD OF RAILROAD TRAINMEN, Petitioner,

v

VIRGINIA EX REL. VIRGINIA STATE BAR

377 US 1, 12 L ed 2d 89, 84 S Ct 1113, reh den
377 US 960, 12 L ed 2d 505, 84 S Ct 1625

[No. 34]

Argued January 13, 1964. Decided April 20, 1964.

SUMMARY

The Virginia State Bar obtained an injunction against the Brotherhood of Railroad Trainmen in the Chancery Court of the City of Richmond, Virginia, enjoining it from maintaining a plan whereby it advised injured members to obtain legal advice and recommended specific lawyers, approved by the brotherhood, the state bar having charged that such activities constituted the solicitation of legal business and the unauthorized practice of law. The Supreme Court of Appeals of Virginia affirmed, over the objection that the injunction abridged the brotherhood's rights under the First and Fourteenth Amendments, guaranteeing freedom of speech, petition, and assembly.

On certiorari, the Supreme Court of the United States vacated the judgment and decree, and remanded the case. In an opinion by BLACK, J., expressing the views of six members of the Court, it was held that the First and Fourteenth Amendments protected the right of the members, through their brotherhood, to maintain and carry out such plan, and that any part of the decree forbidding such activities could not stand.

CLARK, J., joined by HARLAN, J., dissented on the ground that the brotherhood's activities constituted patent violations of the cardinal ethics of the legal profession and flagrant disobedience to the law of most of the states regulating the legal profession.

STEWART, J., took no part in the disposition of the case.

HEADNOTES

Classified to U. S. Supreme Court Digest, Annotated

Constitutional Law §§ 925.7, 940 — railroad workers' right to advise each other — freedom of speech and assembly

1. The First Amendment's guaranties of free speech, petition, and assembly give railroad workers the right to gather together for the lawful purpose of helping and advising one another in asserting their rights under

ANNOTATION REFERENCES

1. The Supreme Court and the right of free speech and press. 93 L ed 1151, 2 L ed 2d 1706.

2. Constitutionality of statute against solicitation of business by or for attorney. 53 ALR 279.

the Safety Appliance Act (45 USC §§ 1–43) and the Federal Employers Liability Act (45 USC §§ 51–60); the right of the workers personally, or through a special department of their brotherhood, to advise concerning the need for legal assistance and, most importantly, what lawyer a member could confidently rely on, is an inseparable part of the constitutionally guaranteed right to assist and advise each other.

[*See annotation references* 1, 2]

Constitutional Law §§ 925.7, 940 — members of fraternal organization — freedom of speech and assembly

2. Under the First Amendment's guaranties of free speech, petition, and assembly, the right of members to consult with each other in a fraternal organization necessarily includes the right to select a spokesman from their number who could be expected to give the wisest counsel.

[*See annotation reference* 1]

States § 7 — practice of law — state regulation

3. Although a state has broad powers to regulate the practice of law within its borders, in so doing it cannot ignore the rights of individuals secured by the Constitution.

States § 12 — constitutional rights — form of infringement

4. A state cannot foreclose the exercise of federal constitutional rights by mere labels.

States § 36 — practice of law — federal suits — state regulation

5. A state cannot, by invoking the power to regulate the professional conduct of attorneys, infringe in any way the right of individuals and the public to be fairly represented in lawsuits authorized by Congress to effectuate a basic public interest, and the associating together of laymen, who cannot be expected to know how to protect their rights when dealing with practiced and carefully counseled adversaries, to help one another to preserve and enforce rights granted them under federal laws cannot be condemned by a state as a threat to legal ethics, no more than a state can interfere with the right to petition the courts by using more direct means to bar the individuals from resorting to the courts to vindicate their legal rights.

Constitutional Law §§ 925.7, 940 — railroad workers' brotherhood — freedom of speech and assembly

6. The First and Fourteenth Amendments protect, and a state under its power to regulate the practice of law within its borders may not infringe, the right of railroad workers, through their brotherhood, to maintain and carry out their plan for advising workers who are injured to obtain legal advice and for recommending specific lawyers, notwithstanding that the result of the plan is to channel legal employment to the lawyers approved by the brotherhood, where the state fails to show any appreciable public interest in preventing the brotherhood from carrying out its plan; lawyers accepting employment under such constitutionally protected plan have a like protection which a state cannot abridge.

[*See annotation references* 1, 2]

APPEARANCES OF COUNSEL

Beecher E. Stallard and **John J. Naughton** argued the cause for petitioner.

Aubrey R. Bowles, Jr., argued the cause for respondent.

Briefs of Counsel, p 1077, infra.

OPINION OF THE COURT

Mr. Justice **Black** delivered the opinion of the Court.

The Virginia State Bar brought this suit in the Chancery Court of the City of Richmond, Virginia,

*[377 US 2]

*against the Brotherhood of Railroad Trainmen, an investigator employed by the Brotherhood, and an attorney

UNITED MINE WORKERS OF AMERICA, DISTRICT 12, Petitioner,

v.

ILLINOIS STATE BAR ASSOCIATION et al.

No. 33.

Argued Oct. 17, 1967.

Decided Dec. 5, 1967.

Complaint by Illinois State Bar Association and others to enjoin union from engaging in practices alleged to constitute unauthorized practice of law. The Circuit Court of Sangamon County entered a decree adverse to union which appealed. The Illinois Supreme Court, 35 Ill.2d 112, 219 N.E.2d 503, affirmed and certiorari was granted. The Supreme Court, Mr. Justice Black, held that freedom of speech, assembly, and petition guaranteed by First and Fourteenth Amendments gave union right to hire attorney on a salary basis to assist its members in assertion of their legal rights with respect to processing of workmen's compensation claims.

Judgment and decree vacated and case remanded.

Mr. Justice Harlan dissented.

1. Courts ⇐397½

United States Supreme Court granted certiorari to consider whether holding that union in hiring attorney on a salary basis to represent its members in workmen's compensation claims was engaged in unauthorized practice of law conflicted with prior United States Supreme Court decisions.

2. Constitutional Law ⇐90, 91, 274

Freedom of speech, assembly, and petition guaranteed by First and Fourteenth Amendments gave union right to hire attorney on a salary basis to assist its members in assertion of their legal rights with respect to processing of workmen's compensation claims. U.S.C.A. Const. Amends. 1, 14.

3. Constitutional Law ⇐274

Freedoms protected against federal encroachment by First Amendment are entitled under Fourteenth Amendment to same protection from infringement by the States. U.S.C.A.Const. Amends. 1, 14.

4. Constitutional Law ⇐91

Constitutional rights to assemble peaceably and to petition for redress of grievances are intimately connected both in origin and in purpose with other First Amendment rights of free speech and free press, and all these rights, though not identical, are inseparable. U.S.C.A. Const. Amend. 1.

5. Constitutional Law ⇐91

Laws which actually affect exercise of rights to assemble peaceably and to petition for redress of grievances cannot be sustained merely because they were enacated for purpose of dealing with some evil within State's legislative competence, or even because laws do in fact provide a helpful means of dealing with such an evil. U.S.C.A.Const. Amend. 1.

6. Attorney and Client ⇐32

States have broad power to regulate practice of law.

7. Constitutional Law ⇐90, 91

First Amendment does not protect speech and assembly only to extent it can be characterized as political, and rights of free speech and press are not confined to any field of human interest. U.S.C.A. Const. Amend. 1.

8. Constitutional Law ⇐90, 91, 274

Freedoms of speech, petition and assembly under the First and Fourteenth Amendments are as extensive with respect to assembly and discussion relating to matters of local as to matters of federal concern. U.S.C.A.Const. Amends. 1, 14.

9. Constitutional Law ⇐274

In view of First Amendment rights, decree prohibiting arrangment whereby

attorney was hired by union on a salary basis for processing of workmen's compensation claims on behalf of its members and prohibiting any financial connection between attorney and union could not stand, and to the extent that any other part of the decree forbids this type of arrangement it too must fall. U.S.C.A. Const. Amends. 1, 14.

Harrison Combs, Washington, D. C., for petitioner.

Bernard H. Bertrand, East St. Louis, Ill., for respondent.

Mr. Justice BLACK delivered the opinion of the Court.

[1] The Illinois State Bar Association filed this complaint to enjoin the United Mine Workers of America, District 12, from engaging in certain practices alleged to constitute the unauthorized practice of law. The essence of the complaint was that the Union had employed a licensed attorney on a salary basis to represent any of its members who wished his services to prosecute workmen's compensation claims before the Illinois Industrial Commission. The trial court found from facts that were not in dispute that employment of an attorney by the association for this purpose did constitute unauthorized practice and permanently enjoined the Union from, "[e]mploying attorneys on salary or retainer basis to represent its members with respect to Workmen's Compensation Claims and any and all other claims which they may have under the statutes and laws of Illinois." [1] The Illinois Supreme Court rejected the Mine Workers' contention that this decree abridged their freedom of speech, petition, and assembly under the First and Fourteenth Amendments and affirmed. We granted certiorari, 386 U.S. 941, 87 S.Ct. 973, 17 L.Ed.2d 872 (1967), to consider whether this holding conflicts with our decisions in Broth. of Railroad Trainmen v. Virginia ex rel. Virginia State Bar, 377 U.S. 1, 84 S.Ct. 1113, 12 L.Ed.2d 89 (1964), and NAACP v. Button, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963).

As in the *Trainmen* case, we deal here with a program that has been in successful operation for the Union members for decades. Shortly after enactment of the Illinois Workmen's Compensation Statute [2] in 1912, the mine workers realized that some form of mutual protection was necessary to enable them to enjoy in practice the many benefits that the statute promised in theory. At the Union's 1913 convention the secretary-treasurer reported that abuses had already developed: "the interests of the members were being juggled and even when not, they were required to pay forty or fifty per cent of the amounts recovered in damage suits, for attorney fees." In response to this situation the convention instructed the Union's incoming executive board to establish the "legal department" which is now attacked for engaging in the unauthorized practice of law.

The undisputed facts concerning the operation of the Union's legal department

1. In addition to the portion just quoted, the court's decree enjoins the Union from:
"1. Giving legal counsel and advice
"2. Rendering legal opinions
"3. Representing its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the laws and statutes of the State of Illinois.
"4. [Quoted above]
"5. Practicing law in any form either directly or indirectly."

It is conceded that the Union's employment of an attorney was the basis for these other provisions of the injunction, and it was not claimed that the Union was otherwise engaged in the practice of law. Our opinion and holding is therefore limited to this one aspect of the Union's activities.

2. Ill.Rev.Stat. c. 48, § 138.1 et seq. (1963).

are guarded. The grievances for redress of which the right of petition was insured, and with it the right of assembly, are not solely religious or political ones. And the rights of free speech and a free press are not confined to any field of human interest." Thomas v. Collins, supra, 323 U.S. at 531, 65 S.Ct. at 323. And of course in *Trainmen*, where the litigation in question was, as here, solely designed to compensate the victims of industrial accidents, we rejected the contention made in dissent, see 377 U.S., at 10, 84 S.Ct. at 1118 (Clark, J.), that the principles announced in *Button* were applicable only to litigation for political purposes. See 377 U.S., at 8, 84 S.Ct. at 1117.

[8] Nor can the case at bar be distinguished from the *Trainmen* case in any persuasive way.[5] Here, to be sure, the attorney is actually paid by the Union, not merely the beneficiary of its recommendations. But in both situations the attorney's economic welfare is dependent to a considerable extent on the good will of the union, and if the temptation to sacrifice the client's best interests is stronger in the present situation, it is stronger in a virtually imperceptible degree. In both cases, there was absolutely no indication that the theoretically imaginable divergence between the interests of union and member ever actually arose in the context of a particular lawsuit; indeed in the present case the Illinois Supreme Court itself described the possibility of conflicting interests as, at most, "conceivabl[e]."

[9] It has been suggested that the Union could achieve its goals by referring members to a specific lawyer or lawyers and then reimbursing the members out of a common fund for legal fees paid. Although a committee of the American Bar Association, in an informal opinion, may have approved such an arrangement,[6] we think the view of the Illinois Supreme Court is more relevant on this point. In the present case itself the Illinois court stressed that where a union recommends attorneys to its members, "any 'financial connection of any kind' " between the union and such attorneys is illegal.[7] It cannot seriously be argued, therefore, that this alternative arrangement would be held proper under the laws of Illinois.

The decree at issue here thus substantially impairs the associational rights of the mine workers and is not needed to protect the State's interest in high standards of legal ethics. In the many years the program has been in operation, there has come to light, so far as we are aware, not one single instance of abuse, of harm to clients, of any actual disadvantage to the public or to the profession, resulting from the mere fact of the financial connection between the Union and the at-

5. It is irrelevant that the litigation in *Trainmen* involved statutory rights created by Congress, while the litigation in the present case involved state-created rights. Our holding in *Trainmen* was based not on State interference with a federal program in violation of the Supremacy Clause but rather on petitioner's freedom of speech, petition, and assembly under the First and Fourteenth Amendments, and this freedom is, of course, as extensive with respect to assembly and discussion related to matters of local as to matters of federal concern.

6. American Bar Association, Standing Committee on Professional Ethics, Informal Opinion No. 469 (December 26, 1961). The ABA committee did not in fact consider the problem presented where the union not only pays the fee but also recommends the specific attorney, and it strongly implied that it would reach a different result in such a situation: "there is nothing unethical in the situations which you describe so long as the participation of the employer, association or union is confined to payment of or reimbursement for legal expenses only."

7. 35 Ill.2d 112, 117, 219 N.E.2d 503, 506 (1966), quoting In re Brotherhood of RR Trainmen, 13 Ill.2d 391, 150 N.E. 2d 163 (1958).

torney who represents its members. Since the operative portion of the decree prohibits any financial connection between the attorney and the Union, the decree cannot stand; and to the extent any other part of the decree forbids this arrangement it too must fall.

The judgment and decree are vacated and the case is remanded for proceedings not inconsistent with this opinion. It is so ordered.

Judgment and decree vacated and case remanded.

Mr. Justice STEWART concurs in the result upon the sole ground that the disposition of this case is controlled by Brotherhood of Railroad Trainmen v. Virginia State Bar, 377 U.S. 1, 84, S.Ct. 1113, 12 L.Ed.2d 89.

Mr. Justice HARLAN, dissenting.

This decision cuts deeply into one of the most traditional of state concerns, the maintenance of high standards within the state legal profession. I find myself unable to subscribe to it.

The Canons of Professional Ethics of the Illinois State Bar Association forbid the unauthorized practice of law by any lay agency.[1] The Illinois Supreme Court, acting in light of these canons and in exercise of its common-law power of supervision over the Bar,[2] prohibited the United Mine Workers of America, District 12, from employing a salaried lawyer to represent its members in workmen's compensation actions before the Illinois Industrial Commission. I do not believe that this regulation of the legal profession infringes upon the rights of speech, petition, or assembly of the Union's members, assured by the Fourteenth Amendment.

I.

As I stated at greater length in my dissenting opinion in NAACP v. Button, 371 U.S. 415, 448, 452–455, 83 S.Ct. 328, 345, 347, 349, 9 L.Ed.2d 405, the freedom of expression guaranteed against state interference by the Fourteenth Amendment includes the liberty of individuals not only to speak but also to unite to make their speech effective. The latter right encompasses the right to join together to obtain judicial redress. However, litigation is more than speech; it is conduct. And the States may reasonably regulate conduct even though it is related to expression. The pivotal point is how these competing interests should be resolved in this instance.

My brethren are apparently in accord. The majority begins by noting that this activity of the Union is related to expression and therefore of a type which may be sheltered from state regulation by the Constitution. But the majority's inquiry does not stop there; it goes on to examine the state concerns and concludes that the decree "is not needed to protect the State's interest in high standards of legal ethics." See p. 8, ante.[3] I agree,

1. Canons 35, 47, Canons of Ethics of the Illinois State Bar Association. These canons are identical to the corresponding canons of the American Bar Association.

2. Even in the absence of applicable statutes, state courts have held themselves empowered to promulgate and enforce standards of professional conduct drawn from the common law and the closely related prohibitions of the Canons of Ethics. See, e. g., In re Maclub of America, Inc., 295 Mass. 45, 3 N.E.2d 272, 105 A.L.R. 1360, and cases therein cited. See generally Drinker, Legal Ethics 26–30, 35–48.

3. This weighing of the competing interests involved is the same approach as that used in NAACP v. Button, 371 U.S. 415, 83 S.Ct 328, 9 L.Ed.2d 405, and in Railroad Trainmen v. Virginia State Bar, 377 U.S. 1, 84 S.Ct. 1113, 12 L.Ed.2d 89. However, since a new balance must be struck whenever the competing interests are significantly different, this decision is not controlled by those cases. The union members in this case are not asserting legal rights which stem either from

of course, with this "balancing" approach. See, e. g., NAACP v. Button, supra, 371 U.S. at 452–455, 83 S.Ct. at 347–349 (dissenting opinion); Konigsberg v. California Bar, 366 U.S. 36, 49–51, 81 S.Ct. 997, 1005–1007, 6 L.Ed.2d 105; Talley v. State of California, 362 U.S. 60, 66, 80 S.Ct. 536, 539, 4 L.Ed.2d 559 (concurring opinion). Indeed, I cannot conceive of any other sound method of attacking this type of problem. For if an "absolute" approach were adopted, as some members of this Court have from time to time insisted should be so with "First Amendment" cases,[4] and the state interest in regulation given no weight, there would be no apparent reason why, for example, a group might not employ a layman to represent its members in court or before an agency because it felt that his low fee made up for his deficiencies in legal knowledge. Cf. Hackin v. Arizona, 388 U.S. —, 88 S.Ct. 325, 19 L.Ed.2d — (Douglas, J., dissenting).

II.

Although I agree with the balancing approach employed by the majority, I find the scales tip differently. I believe that the majority has weighed the competing interests badly, according too much force to the claims of the Union and too little to those of the public interest at stake. As indicated previously, the interest of the Union stems from its members' constitutionally protected right to seek redress in the courts or, as here, before an agency. By the plan at issue, the Union has sought to make it easier for members to obtain benefits under the Illinois Workmen's Compensation Act.[5] The plan is evidently designed to help injured union members in three ways: (1) by assuring that they will have knowledge of and access to an attorney capable of handling their claims; (2) by guaranteeing that they will not be charged excessive legal fees; and (3) by protecting them from crippling, even though reasonable, fees by making legal costs payable collectively through union dues. These are legitimate and laudable goals. However, the union plan is by no means necessary for their achievement. They all may be realized by methods which are proper under the laws of Illinois.

The Illinois Supreme Court in this case repeated its statement in a prior case that a union may properly make known to its members the names of attorneys it deems capable of handling particular types of claims.[6] Such union notification would serve to assure union members of access to competent lawyers.

As regards the protection of union members against the charging of unreasonable fees, a fully efficient safeguard would seem to be found in the Illinois Workmen's Compensation Act itself. An amendment to the Act in 1915, shortly

the Constitution or from a federal statute, sources of origin stressed respectively in *Button*, see 371 U.S., at 429–431, 441–444, 83 S.Ct. at 335–337, 342–343 and in *Railroad Trainmen*, see 377 U.S., at 3–6, 84 S.Ct. at 1115–1116. Furthermore, the union plan at issue here differs from the referral practice involved in *Railroad Trainmen* because it involves the services of a union-salaried lawyer.

Similarly, the interests in this case are very different from those in cases involving legal aid to the indigent. The situation of a salaried lawyer representing indigent clients was expressly distinguished by the court below. See 35 Ill.2d 112, 121, 219 N.E.2d 503, 508.

4. See, e. g., Lathrop v. Donohue, 367 U.S. 820, 865, 871–874, 81 S.Ct. 1826, 1849, 1852–1854, 6 L.Ed.2d 1191 (dissenting opinion); Konigsberg v. California Bar, 366 U.S. 36, 56, 60–71, 81 S.Ct. 997, 1009, 1011–1017, 6 L.Ed.2d 105 (dissenting opinion).

5. Ill.Rev.Stat. c. 48, § 138.1 et seq. (1963).

6. See 35 Ill.2d, at 117–119, 219 N.E.2d, at 506–507. The earlier Illinois decision referred to was In re Brotherhood of R. R. Trainmen, 13 Ill.2d 391, 150 N.E. 2d 163.

after its initial passage,[7] provided that the Industrial Commission

> "shall have the power to determine the reasonableness and fix the amount of any fee or compensation charged by any person for any service performed in connection with this Act, or for which payment is to be made under this Act or rendered in securing any right under this Act." [8]

In 1927, the words "including attorneys, physicians, surgeons and hospitals" were added following the phrase "or compensation charged by any person." [9] Thus, there would now appear to be no reasonable grounds for fearing that union members will be subjected to excessive legal fees.

The final interest sought to be promoted by the present plan is in the collective payment of legal fees. That objective could presumably be realized by imposing assessments on union members for the establishment of a fund out of which injured members would be reimbursed for their legal expenses.[10] There is no reason to believe that this arrangement would be improper under Illinois law since the union's obligation would run only to the member and there would be no financial connection between union and attorney.

The regulatory interest of the State in this instance is found in the potential for abuse inherent in the union plan. The plan operates as follows. The union employs a licensed lawyer on a salary basis [11] to represent members and their dependents in connection with their claims under the Workmen's Compensation Act. Members are told that they may employ another attorney if they wish. The attorney is selected by the Executive Board of District 12, and the terms of employment specify that the attorney's sole obligation is to the person represented and that there will be no interference by the Union. Injured union members are furnished by the Union with a form which advises them to send the form to the Union's legal department. Upon receipt of the form, the attorney assumes it to constitute a request that he file on behalf of the injured member a claim with the Industrial Commission, though no such explicit request is contained in the form. The application for compensation is prepared by secretaries in the union offices, and when complete it is sent directly to the Industrial Commission. In most instances, the attorney has neither seen nor talked with the union member at this stage, though the attorney is available for consultation at specified times. After the filing of the claim and prior to the hearing before the Commission, the attorney prepares for its presentation by resorting to his file and to the application, usually without conferring with the injured member. Ordinarily the member and this attorney first meet at the time of the hearing before the Commission.

The attorney determines what he thinks the claim to be worth and attempts to settle with the employer's attorney during prehearing negotiations. If agreement is reached, the attorney recommends to the injured member that he accept the result. If no settlement occurs, a hearing on the merits is held before the Industrial Commission. The full amount of the settlement or award is paid to the injured member. The attorney retains for himself no part of the

7. It may be significant that the union plan was instituted in 1913, prior to this amendment of the Act. See p. 354, ante.

8. Ill.Laws p. 400 (1915).

9. Ill.Laws p. 497 (1927).

10. Cf. American Bar Association, Committee on Professional Ethics, Informal Opinion No. 469 (December 26, 1961) (union may reimburse member client for legal expenses).

11. The salary paid at the time of this action was $12,400 per annum.

amount received, his sole compensation being his annual salary paid by the Union.

This union plan contains features which, in my opinion, Illinois may reasonably consider to present the danger of lowering the quality of representation furnished by the attorney to union members in the handling of their claims. The union lawyer has little contact with his client. He processes the applications of injured members on a mass basis. Evidently, he negotiates with the employer's counsel about many claims at the same time. The State was entitled to conclude that removed from ready contact with his client, insulated from interference by his actual employer, paid a salary independent of the results achieved, faced with a heavy caseload,[12] and very possibly with other activities competing for his time,[13] the attorney will be tempted to place undue emphasis upon quick disposition of each case. Conceivably, the desire to process forms rapidly might influence the lawyer not to check with his client regarding ambiguities or omissions in the form, or to miss facts and circumstances which face-to-face consultation with his client would have brought to light. He might be led, so the State might consider, to compromise cases for reasons unrelated to their own intrinsic merits, such as the need to "get on" with negotiations or a promise by the employer's attorney of concessions relating to other cases. The desire for quick disposition also might cause the attorney to forgo appeals in some cases in which the amount awarded seemed unusually low.[14]

III.

Thus, there is solid support for the Illinois Supreme Court's conclusion that the union plan presents a danger of harm to the public interest in a regulated bar. The reasonableness of this result is further buttressed by the numerous prior decisions, both in Illinois and elsewhere, in which courts have prohibited the employment of salaried attorneys by groups for the benefit of their members.[15]

The majority dismisses the State's interest in regulation by pointing out that there have been no proven instances of abuse or actual disadvantage to union members resulting from the operation of the union plan. See pps. 357, 358, ante. But the proper question is not whether this particular plan has in fact caused any harm.[16] It is, instead, settled that in the absence of any dominant opposing interest a State may enforce prophylactic

12. The attorney employed by the Union in this case handled more than 400 workmen's compensation claims a year.

13. The attorney employed by the Mine Workers was also an Illinois state senator and had a private practice other than the Mine Workers' representation.

14. Of 351 workmen's compensation cases, from all sources, which were appealed to the Illinois courts during the period 1936–1967, only one was appealed by a miner affiliated with District 12. No such miner has appealed since 1942. See Respondent's Brief, pp. 17–18.

15. See, e. g., People ex rel. Courtney v. Association of Real Estate Tax-payers' 354 Ill. 102, 187 N.E. 823; In re Maclub of America, Inc., 295 Mass. 45, 3 N.E. 2d 272, 150 A.L.R. 1360, and cases therein cited; Richmond Assn. of Credit Men, Inc. v. Bar Assn. of Richmond, 167 Va. 327, 189 S.E. 153. The Canons of Ethics of the American Bar Association have also been interpreted as forbidding arrangements of the kind at issue here. See American Bar Association, Committee on the Unauthorized Practice of Law, Informative Opinion No. A of 1950, 36 A.B.A.J. 677.

16. It is possible that the operation of the plan did result in union members' receiving a lower quality of legal representation than they otherwise would have had. For example, the Mine Workers' present attorney recovered an average of $1,160 per case, while his predecessor secured an advantage of $1,350, even though the permissible rates of recovery were lower during the predecessor's tenure. See Record, at 53–54, 58–60; Brief for Respondent, p. 18. See also n. 14, supra.

measures reasonably calculated to ward off foreseeable abuses, and that the fact that a specific activity has not yet produced any undesirable consequences will not exempt it from regulation. See, e. g., Hoopeston Canning Co. v. Cullen, 318 U.S. 313, 321–322, 63 S.Ct. 602, 607, 87 L.Ed. 777; Daniel v. Family Sec. Life Ins. Co., 336 U.S. 220, 222–225, 69 S.Ct. 550, 551–553, 93 L.Ed. 632.

It is also irrelevant whether we would proscribe the union plan were we sitting as state judges or state legislators. The sole issue before us is whether the Illinois Supreme Court is forbidden to do so because the plan unduly impinges upon rights guaranteed to the Union's members by the Fourteenth Amendment. Since the finding that the union plan presents dangers to the public and legal profession is not an arbitrary one, and since the limitation upon union members is so slight, in view of the permissible alternatives still open to them, I would hold that there has been no denial of constitutional rights occasioned by Illinois' prohibition of the plan.

IV.

This decision, which again manifests the peculiar insensitivity to the need for seeking an appropriate constitutional balance between federal and state authority that in recent years has characterized so many of the Court's decisions under the Fourteenth Amendment, puts this Court more deeply than ever in the business of supervising the practice of law in the various States. From my standpoint, what is done today is unnecessary, undesirable, and constitutionally all wrong. In the absence of demonstrated arbitrary or discriminatory regulation, state courts and legislatures should be left to govern their own Bars, free from interference by this Court.[17] Nothing different accords with longstanding and unquestioned tradition and with the most elementary demands of our federal system.

I would affirm.

17. It has been suggested both in this case and elsewhere, cf. Hackin v. Arizona, 388 U.S. ——, 88 S.Ct. 325, 19 L.Ed.2d —— (Douglas, J., dissenting), that prevailing Canons of Ethics and traditional customs in the legal profession will have to be modified to keep pace with the needs of new social developments, such as the Federal Poverty Program. That may well be true, but such considerations furnish no justification for today's heavy-handed action by the Court. The American Bar Association and other bodies throughout the country already have such matters under consideration. See, e. g., 1964 ABA Reports 381–383 (establishment of Special Committee on Ethical Standards); 1966 ABA Reports 589–594 (Report of Special Committee on Availability of Legal Services); 39 Calif.State Bar Journal 639–742 (Report of Committee on Group Legal Services). Moreover, the complexity of these matters makes them especially suitable for experimentation at the local level. And, all else failing, the Congress undoubtedly has the power to implement federal programs by establishing overriding rules governing legal representation in connection therewith.

Minnie E. NASH, Petitioner,

v.

FLORIDA INDUSTRIAL COMMISSION et al.

No. 48.

Argued Nov. 9, 1967.

Decided Dec. 5, 1967.

The District Court of Appeal of Florida, Third District, 191 So.2d 99, denied petitioner's application for writ of certiorari to review determinations of Florida Industrial Commission Unemployment Compensation Board of Review. Certiorari was granted. The Su-

STATE OF MINNESOTA
COUNTY OF RAMSEY

IN JUSTICE OF THE PEACE COURT
WILLIAM E. DREXLER
JUSTICE OF THE PEACE

Carol M. Zurn, Plaintiff,

vs.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Val Bjornson, Treasurer,
State of Minnesota, Defendant.

The above entitled action came on before the Court before the undersigned pursuant to a Summons and Complaint on April 24, 1971 at 10:00 A.M.

A copy of the Summons and Complaint and the Ramsey County Sheriff's Return are attached hereto and made a part of these findings the same as though herein set out in full. The Summons and Complaint was served upon Defendant on April 16, 1971.

At the time and place set out in the Summons Plaintiff appeared by and on her own behalf. Although the Court waited for one hour for Defendant, no appearance was made by or in behalf of Defendant.

Plaintiff appeared on her own behalf, was sworn and offered oral and documentary evidence in support of the allegations set forth in her Complaint.

NOW THEREFORE, the Court being fully advised in the premise, upon all the files, records and proceedings herein, makes the following findings of fact;

1. That at all times herein Defendant Val Bjornson is Treasurer of the State of Minnesota and is one of the elected Officials of the State of Minnesota.

2. That Plaintiff endorsed and presented a Check numbered H120284 in the amount of $60.80 signed by Defendant, drawn upon the Treasury of the State of Minnesota to Robert Torvick, Cashier, working in the Office of Defendant under his direction, and demanded payment in gold and silver Coin pursuant to Law, which payment was refused by the said Torvick by reason of the inability of the Office of the Treasurer to produce and satisfy payment of said check in gold and silver Coin.

3. That Plaintiff is entitled to recieve payment in gold and silver Coin in satisfaction of said check.

4. That pursuant to Law One Dollar is equal to 23.22 grains of pure gold or 371.25 grains of pure Silver.

5. That pursuant to Law neither this Court nor the Treasurer of the State of Minnesota, the Defendant herein, can make any Thing but gold and silver Coin a Tender in Payment of Debts.

CONCLUSIONS OF LAW

1. Plaintiff is entitled to Judgment against Defendant in the sum of Sixty Dollars and Eighty Cents.

2. That Thing which is Tendered to Plaintiff to satisfy the Judgment rendered herein must be a Coin which contains some portions of both pure gold and pure silver and no other metals or elements in the following ratio, to-wit: 1/10 of a Dollar shall equal .2322 grains of pure gold for the gold portion of the Coin and 1/100 part of a Dollar shall equal 3.7125 grains of pure Silver for the Silver portion of the Coin. (For instance, a 2 Dollar Coin that would comply with Article One Section 10 of the Constitution of the United States could consist of 23.22 grains of pure gold and 371.25 grains of pure silver for the

for the silver portion of the Coin, and the Coin is to contain no other elements.

3. That Defendant may contract with any private person to Coin money to satisfy this Judgment.

4. That Title 12, Sections 95a and Title 31 Section 443 making it a criminal offense to buy and sell gold and providing for penalties and confiscation of gold by reason of the possession thereof is unconstitutional and void.

5. That the Sheriff or constable cannot accept any Thing but gold and silver Coin in satisfaction of this Judgment.

6. That this Court retains Jurisdiction to determine if the content of the Coin which is tendered conforms to the Judgment rendered herein.

JUDGMENT

1. Plaintiff is granted Judgment against the Defendant in the Sum of Sixty Dollars and Eighty Cents.

2. That Thing which is Tendered to Plaintiff to satisfy the Judgment rendered herein must be a Coin which contains some portions of both pure gold and pure silver and no other metals or elements in the following ratio, to-wit: 1/10 of a Dollar shall equal .2322 grains of pure gold for the gold portion of the Coin and 1/100 part of a Dollar shall equal 3.7125 grains of pure Silver for the Silver portion of the Coin. (For instance, a 2 Dollar Coin that would comply with Article One Section 10 of the Constitution of the United States could consist of 23.22 grains of pure gold and 371.25 grains of pure silver

for the silver portion of the Coin, and the Coin is to contain no other elements.

3. That Defendant may contract with any private person to Coin money to satisfy this Judgment.

4. That Title 12, Sections 95a and Title 31 Section 443 making it a criminal offense to buy and sell gold and providing for penalties and confiscation of gold by reason of the possession thereof is unconstitutional and void.

5. That the Sheriff or constable cannot accept any Thing but gold and silver Coin in satisfaction of this Judgment.

6. That this Court retains Jurisdiction to determine if the content of the Coin which is tendered conforms to the Judgment rendered herein.

7. The memorandum attached hereto is made a part hereof.

Given under my hand and Seal this 24th day of April, 1971 at 1602 Selby Ave. St. Paul, Minnesota.

BY THE COURT

William E. Drexler

William E. Drexler
Justice of the Peace
County of Ramsey
State of Minnesota, U.S.A.

WILLIAM E. DREXLER
JUSTICE OF THE PEACE
1602 Selby Avenue
ST. PAUL, MINN. 55104
645-5829

MEMORANDUM

The Constitution of the United States is directly applicable in this Case. Article One Section 8 Clause 5 states " Congress shall have the Power To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;" Article One Section 10 Paragraph 1 states in part "No State shall make any Thing but gold and silver Coin a Tender in Payment of Debts or pass any Law impairing the Obligation of Contracts"

These are absolute prohibitions against the States and State Officials. The Treasurer of the State of Minnesota cannot Tender any Thing except gold and silver Coin as a payment of the check if demanded. Such demand was made in this case. This Court has no alternative. The Constitutions of the United States and of the State of Minnesota are absolutely binding upon this Court and the undersigned who is bound by solemn oath to support the same. To do otherwise would be revolutionary. The Congress has set the grain content of pure silver that equals One Dollar. Likewise Congress has set the grain content of pure gold that equals One Dollar. When the congressional statutes are sifted down to their parts that square with the Constitution the issues presented here are simple.

A copy of "The Daly Eagle" of May 1, 1971 containing 72 pages and setting forth the complete decision of Justices of the Peace Robert L. Mahoney of the Credit River Township, Scott County, Minn. Justice Court and of George J. Kelzer of Jackson Township, Scott County, Minn. Justice Court in the case of Jerome Daly vs. Savage State Bank, which decision, is refered to as though herein set out in full and the holding therein is adopted by the undersigned.

A copy of this decision is being forwarded to the U.S.District Attorney, the Minnesota State Public Examiner and the Minnesota Attorney General.

This Court is bound by Statute to take special care that the

Laws be upheld and supported to the end that the peace and dignity of the State of Minnesota be preserved along with the peace and dignity of the United States and of the individual citizens as is guaranteed by the Declaration of Independence, The Northwest Ordinance of 1787 and the Constitution of the United States.

Solemn oath to support the Constitution of the United States has also, or should have been taken, by the above named Officials. Failure on their part to act after having been fully advised of the facts and the Law in this Case could constitute malfeasance in office and misprison of Treason resulting in punishment as provided by Law.

These Officials are to take Notice and govern themselves accordingly.

William E. Drexler

William E. Drexler
Justice of the Peace
County of Ramsey
State of Minnesota

WILLIAM E. DREXLER
JUSTICE OF THE PEACE
1602 Selby Avenue
ST. PAUL, MINN. 55104
645-5829

ADDITIONAL MEMORANDUM

Copy of news article "W. European banks halt trading in U.S. Dollars" on the front page of "The Minneapolis Star" on May 5, 1971 is attached hereto to show the destructive effect of fiat paper money which is not fully backed up by gold and silver Coin. It is readily seen that non-compliance with Article One Section 10 of the U.S. Constitution and Article 9 Section 13 of the Minnesota Constitution has already destroyed public credit and confidence on an International and National scale. Morals and honest dealing among the people is all but destroyed.

The spread of this economic chaos is directly attributable to the over all unconstitutional activity on the part of the officials of the Government of the United States and the State of Minnesota; all to the detriment of the farmers, mechanics and the laboring class for the enrichment of the National and International Bankers sitting in the back rooms of their counting houses rubbing their hands.

No longer does any sentiment of honor influence the governing power of this Nation.

Given under my hand and seal this 5th day of May, 1971 as an additional memorandum to be attached to the Judgment rendered herein on April 24, 1971.

BY THE COURT

William E. Drexler
Justice of the Peace
1602 Selby Ave.
County of Ramsey
City of St. Paul
State of Minnesota
United States of America

WILLIAM E. DREXLER
JUSTICE OF THE PEACE
1602 Selby Avenue
ST. PAUL, MINN. 55104
645-5829

Almighty Dollar Loses Its Power in Europe

By JOSEPH W. GRIGG

LONDON (UPI) -- For years known as the "almighty dollars" and the symbol of financial power and stability, the U.S. dollar is in crisis and under attack in the chief money centers of Europe. The question is why.

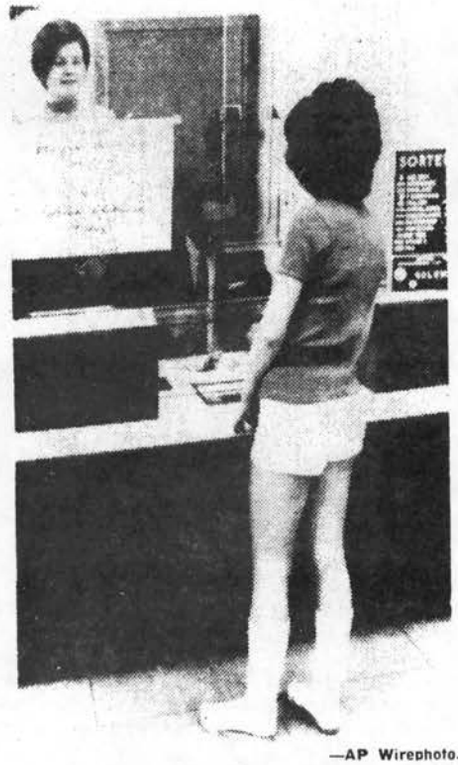
Basically, people want to sell their dollars and buy something else—German marks, Swiss francs or Japanese yen.

It might mean little to most Americans—except in national prestige. However, if the uneasiness in Europe produces a higher value for other currencies, it would result in higher prices in the United States for European imports.

That has not happened yet. But tourists in Europe are already feeling the effects.

Washington is under increasing pressure from international financiers to devalue the dollar, which would mean it would buy less abroad and be worth less in exchange for other currencies. The U.S. has refused.

U.S. Treasury Secretary John Connally said Tuesday the United States is prepared to defend its money by borrowing dollars in Europe to ease the glut of them there. He reiterated the statement Wednesday, a Treasury spokesman said.



—AP Wirephoto.

POSTER GOES UP IN FRANKFORT BANK

West German Bank Quits Buying Dollars

Behind the present crisis in Europe is the fact that bankers, businessmen and speculators have been betting against the dollar and for the West German mark. They have confidence in the booming German economy and the country's high reserves of gold and currencies.

They began to sell their dollars and buy marks in such quantities that the West German and several other European governments put a stop to it Wednesday.

The West German Bundesbank (federal bank) announced it would stop buying dollars after purchasing an estimated $2.2 billion this week from those wanting marks in exchange. Banks in Austria, Belgium, the Netherlands and Switzerland followed suit. Portugal halted all monetary dealings. The banks of England and France continued to support the dollar.

The value of the dollar is pegged to gold for which the U.S. Treasury has set a price of $35 an ounce. Technically, foreign governments have the right to convert their dollar holdings into gold at that rate, but the total dollar holdings of European central banks far exceeds the United States' monetary gold stock of somewhat less than $11 billion.

International bankers say the reason for the present turmoil is what they call the chronic weakness in the United States' balance of payments.

That means the United States and its companies and citizens are spending more and investing more abroad than they earn. In addition, when the U.S. government recently reduced banking interest rates in an effort to spur the American economy, millions of U.S. dollars flowed into Europe, where they can be invested more profitably at higher interest rates.

The world money market has been flooded with dollars for some time. Most of them are known as "Eurodollars" -- that is, dollars that circulate abroad but over which the U.S. government has no direct control.

Financial experts have estimated their total amount at between $35 and $50 billion.

NEW YORK (AP) —

Wednesday, May 5, 1971

THE MINNEAPOLIS STAR

W. European banks halt trading in U.S. dollars

FRANKFURT, West Germany (AP) — The government banks of West Germany and four other nations suspended trade in dollars today, trying to check speculators who are swapping American currency for West German marks in expectation the mark will be revalued upward.

International monetary authorities began consulting on ways to stem the flow of U.S. dollars to Europe,, creating the worst European financial crisis since 1969.

One way to stop this is to revise upward the value of the mark, and this may be considered at a meeting of the West German Cabinet in Bonn on Friday.

The U.S. Treasury was ready to help. The government will offer special securities for purchase by holders of dollars in Europe, thus soaking up excess American currency.

Informants in London said consultations already were under way and they involved British, French, West German and other European monetary authorities and the U.S. Federal Reserve System in Washington.

In Brussels, the European Common Market went into secret session to consider the crisis. Decision on money matters must be submitted in advance to the Common Market by its members.

West Germany's Central Bank was the first to suspend trading in dollars. Government banks of **Switzerland, The Netherlands, Austria, Belgium** and **Portugal** followed.

Some, including the West German bank, halted all trading in foreign currencies. Others stopped dealing in marks.

There were several factors in the weakness of the dollar — the current recession in the United States, the growing U.S. national debt of $396.6 billion, the $10.7 billion deficit in the balance of foreign trading last year.

West Germany was under pressure to stop buying dollars because Frankfurt financial experts said the move was creating inflation in West Germany. Balancing this was the fear that upward revaluation of the mark would increase the cost of German exports abroad and upset long-range efforts toward a common West European currency.

The first immediate effects on today's developments were on American tourists in West Germany where they could no longer trade dollars for marks. Some of West Germany's bigger banks imposed a ceiling of 500 marks on such transactions — about $112 at the current rate of 3.58 marks to the dollar.

The American Express in Geneva said it would accept only its own travelers checks and no dollars unless "a traveler really is in trouble."

STATE OF MINNESOTA
COUNTY OF RAMSEY ss.

I hereby certify and return, that at Ramsey County, and State aforesaid, on the 16th day of April A.D., 1971, I served the Summons and Complaint hereto attached, upon the within named Val Bjornson, Treasurer, State of Minnesota PERSONALLY, by handing to and leaving with him a true and correct copy thereof.

Dated this 16th day of April A.D. 1971.

Sheriff's Fee Service $ 3.00
Levy $
Copy $
Travel $ .30

Total $ 3.30

KERMIT HEDMAN,
Sheriff of Ramsey County, Minn.

By Walter Krogh
Deputy

STATE OF MINNESOTA
COUNTY OF RAMSEY

IN JUSTICE OF THE PEACE COURT
WILLIAM E. DREXLER,
JUSTICE OF THE PEACE

Carol M. Zurn, Plaintiff,

vs. SUMMONS

Val Bjornson, Treasurer,
State of Minnesota. Defendant.

THE STATE OF MINNESOTA TO THE SHERIFF OR ANY CONSTABLE OF SAID COUNTY OF RAMSEY:

GREETINGS:

You are hereby Commanded to Summon the Defendant, Val Bjornson, Treasurer of the State of Minnesota, if the Defendant shall be found in your County, to be and appear before the undersigned, one of the Justices of the Peace in and for said County on the 24th day of April, 1971 at 10:00 A.M. in my office located at 1602 Selby Ave.,St.Paul,Minnesota to answer or otherwise plead to the Complaint of the Plaintiff, Carol M. Zurn, in a Civil Action wherein the Plaintiff claims and demands Judgment against Defendant in the sum of $60.80 in Legal Tender Coin; and have you then and there this Writ of Summons.

You are further Commanded to read this Summons to the Defendant and deliver a copy of the Complaint attached to the Summons to the Defendant.

Given under my hand and Seal this 16th day of April, 1971 at St. Paul, Minnesota.

WILLIAM E. DREXLER
JUSTICE OF THE PEACE
1602 Selby Avenue
ST. PAUL, MINN. 55104
645-5829

William E. Drexler
Justice of the Peace
1602 Selby Ave.
St. Paul, Minnesota

STATE OF MINNESOTA
COUNTY OF RAMSEY

IN JUSTICE OF THE PEACE COURT
WILLIAM E. DREXLER, JUSTICE

Carol M. Zurn, Plaintiff,

vs. COMPLAINT

Val Bjornson, Treasurer,
State of Minnesota Defendant.

Plaintiff, for her cause of action herein states and alleges:

I.

That Defendant Val Bjornson is Treasurer of the State of Minnesota and is one of the elected Officials of the State of Minnesota

II.

That Plaintiff is the person in whose favor check No. H120284 in the amount of $60.80 is drawn upon and is made payable out of the Treasury of the State of Minnesota, which check is subscribed to by Defendant as Treasurer of the State of Minnesota.

III.

That a true and correct copy of said check is attached hereto as Exhibit "A", which check was endorsed and presented to Robert Torvick, Cashier in the office of the Defendant, for payment in gold and silver Coin on April 15, 1971. Along with Tendering the said check for payment to said Torvick, Plaintiff demanded payment in gold and silver Coin pursuant to Law.

IV.

That said Robert Torvick, who was acting then and there as agent of Defendant, refused to make payment on demand in gold

and silver Coin stating that he had nothing like that.

V.

That Plaintiff is entitled to receive payment in gold and silver Coin.

Wherefore Plaintiff demands Judgment against Defendant in the sum of $60.80 in Legal Tender Coin.

April 16, 1971

Carol M. Zurn
Box 1, Savage, Minn.

VERIFICATION

STATE OF MINNESOTA
SS
COUNTY OF RAMSEY

Carol M. Zurn, having been first duly sworn deposes and states that she is Plaintiff herein. That she has read the foregoing Complaint, knows the contents thereof, and that the same is true and correct to the best of her knowledge, information and belief.

Subscribed and sworn to beforem
me this 16th day of April, 1971

William E. Drexler
Justice of the Peace
Ramsey County, Minnesota

Carol M. Zurn

WILLIAM E. DREXLER
JUSTICE OF THE PEACE
1602 Colby Avenue
ST. PAUL, MINN. 55104
645-5829

Exhibit "A"

261 INCOME TAX
SCHOOL-REFUNDS

STATE AUDITOR

STATE OF MINNESOTA.
ST. PAUL.

STATE TREASURER

22-96
960

PAY TO THE ORDER OF

No. H120284

ZURN CAROL M
BX 1
SAVAGE MN 55378

YR.	ACCT. NO.	DATE			WARRANT NO.	AMOUNT
70	[redacted]	04	06	71	120284	$*****60.80

Val Bjornson
STATE TREASURER

STATE AUDITOR

[redacted]

DO NOT FOLD, STAPLE OR SPINDLE

STATE AUDITORS FORM MSA 104-R

IDENTIFICATION PROCEDURE

WHEN CASHING THIS CHECK FOR THE INDIVIDUAL PAYEE YOU SHOULD REQUIRE FULL IDENTIFICATION AND ENDORSEMENT IN YOUR PRESENCE AS CLAIMS AGAINST ENDORSERS MAY OTHERWISE RESULT

THIS CHECK MUST BE ENDORSED IN INK OR INDELIBLE PENCIL BY THE PERSON IN WHOSE FAVOR IT IS DRAWN AND THE NAME MUST BE SPELLED EXACTLY THE SAME AS IT APPEARS ON THE FACE OF THE CHECK.

IMPORTANT- PRESENT FOR PAYMENT WITHIN 30 DAYS

ENDORSE HERE Carol M Zurn

THE DALY EAGLE

BY JEROME DALY

Box 177 - Savage, Minnesota 55378

MAY 1, 1971

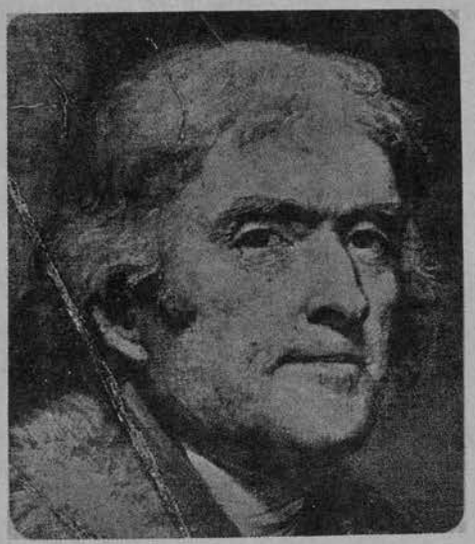
PRICE: $4.00 in Silver Dollars
$10.00 in Paper Dollars

IN THIS ISSUE

"JUDGMENT AT CREDIT RIVER"

COMPLETE DECISION OF MINNESOTA TRIAL COURT'S HOLDING THAT A MINNESOTA STATE BANK CANNOT MAKE ANY THING BUT GOLD AND SILVER COIN A TENDER IN PAYMENT OF DEBTS.

Well Known Quotations Follow



THOMAS JEFFERSON

TO THE SECRETARY OF THE TREASURY, U. S.
from PRESIDENT JEFFERSON (1803)

"This institution (The United States Bank) is one of the most deadly hostilities existing against the principles and form of our Constitution.

"The nation is, at this time, so strong and united in its sentiments, that it cannot be shaken at this moment. But suppose a series of untoward events should occur sufficient to bring into doubt the competency of a Republican Government to meet a crisis of great danger, or to unhinge the confidence of the people in the public functionaries, an institution like this, *penetrating by its branches every part of the Union, acting by command and in phalanx, may in a critical moment upset the government.*

"I deem no government safe which is under the vassalage of any self-constituted authorities, or any other authority than *that of the nation,* or its regular functionaries.

"What an obstruction could not this bank of the United States with all its branch banks be in time of war? *It might dictate the peace we should accept or withdraw its aid.* Ought we then to give further growth to an institution so powerful, so hostile? That it is hostile we know:

1.—From a knowledge of the principles of the persons composing the body of directors in every bank, principle or branches, and those of most of the stockholders;

2.—From their opposition to the measures and principles of government, and to the election of those friendly to them; and

3.—From the sentiments of the newspapers they support.

"Now, while we are strong, it is the greatest duty we have to the safety of our Constitution, *to bring this powerful enemy to a perfect subordination under its authorities."*

Note following solution of Jefferson in transferring the power of the private United States Bank to the Government.

"The first thing would be to . 'duce them to an equal footing only with other banks, as to the favors of the government. But *in order to be able to meet a general combination of the banks* against us, in a critical emergency, could we not make a beginning toward an independent use of our own money, towards holding in our

own bank all the deposits where it is received, and letting the treasurer give his draft or note, for payment at any particular place, which, *in a well conducted government, ought to have as much credit as any private draft, or bank note, or bill, and would give us the same facilities which we derive from the banks.*"—Thomas Jefferson.

From G. G. McGéer's *Conquest of Poverty*. Page 208.

Thomas Jefferson said:

"If the American people ever allow the banks to control the issuance of their currency, first by inflation and then by deflation, the banks and corporations that will grow up around them will deprive the people of all property until their children will wake up homeless on the continent their fathers occupied. *The issuing power of money should be taken from the banks and restored to Congress and the people to whom it belongs.* I sincerely believe the banking institutions (having the issuing power of money—Jefferson's parentheses) are more dangerous to *liberty* than standing armies. My zeal against these institutions was so warm and open at the establishment of the Bank of the United States (Hamilton's foreign sysem), that *I was derided as a maniac by the tribe of bank mongers who were seeking to filch from the public.*"

Woodrow Wilson said: "The greatest monopoly in this country is the money monopoly. * * * A great industrial nation is *controlled* by its credit system. Our system of credit is concentrated. The growth of the nation, therefore, *and all our activities are in the hands of a few men.*"

From Brandeis' *Other People's Money.*" Page 1.

"To use Lincoln's own words, the bankers and credit dealers of this age have placed the American citizen in this position:

'They have him in his prison house. They have searched his person and have left no prying instrument with him. One after another, they have closed the heavy iron doors upon him and now they have him, as it were, bolted in with a lock of one hundred keys which can never be unlocked without the concurrence of every key; the keys in the hands of a hundred different men, and they scattered to a hundred different places; and they stand musing as to what invention in all the dominion of mind and matter can be produced to make the impossibility of his escape more complete than it is.'

ANDREW JACKSON

PRESIDENT JACKSON'S VETO MESSAGE, 1832, ON RECHARTERING THE UNITED STATES BANK BILL

(In Part)

The President of the bank has told us that most of the state banks exist by its forbearance. Should its influence become concentrated, 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 * * * 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 war with that country, what would be our condition? * * * All its operations * * * would be in aid of the hostile fleets and armies without."*

"Controlling our currency, receiving our public monies and holding thousands of our citizens in dependence, it would be more formidable and dangerous than the naval and military power of the enemy."

"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;

(Continued on inside of back cover)

INDEX

FORWARD

ON August 15, 1966 the writer took possession of 71.60 in Silver Coin,(90%) Silver, which was involved in a Lawsuit and deposited it for safekeeping in the Savage State Bank at Savage, Minnesota. The suit was finally settled, the writer acquiring all right, title and interest in and to the Coin in the settlement. On march 11, 1971 the writer appeared at the Savage State Bank and made demand for the return of the same kind of Silver Coin that was deposited. The Bank could only come up with the Silver clad, copper sandwich Coins, which were refused. Suit was started in the Justice of the Peace Court in Credit River and the Judgment set forth herein was obtained.

The Judgment and the memorandums of Justices Mahoney and Kelzer are set forth in full.

The decision speaks for itself.

May 1, 1971

Jerome Daly

Jerome Daly
28 East Minnesota Street
Savage, Minnesota

STATE OF MINNESOTA
COUNTY OF SCOTT
TOWNSHIP OF CREDIT RIVER

UNITED STATES OF AMERICA
ROBERT L. MAHONEY
JUSTICE OF THE PEACE

Jerome Daly, Plaintiff,

vs.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Savage State Bank, a
Minnesota Corporation,
Savage, Minnesota, Defendant.

Pursuant to a Summons and Complaint served upon Defendant on March 15, 1971 the above entitled action came on before the Court on March 22, 1971 at 11:00 A.M. On March 16, 1971 Defendant appeared by itself and thru its Attorneys Fredrickson, Byron and Colborn and served a demand for removal to the Municipal Court in and for the City of Shakopee, Minnesota presided over by Kermit Lindmeyer, Municipal Judge pursuant to MSA 531.115 which Section is entitled "Proceedings commenced before fee basis Judge". A copy of the demand for removal was not served upon Plaintiff.

Plaintiff appeared and filed an objection to the demand for removal upon the grounds that MSA 531.115 is not applicable to the undersigned because the undersigned does not charge fees or collect fees as a part of the discharge of the undersigned's duties as Justice of the Peace. Plaintiff also objected to the removal upon the grounds that he was not served with a copy of the demand for removal.

On March 22, 1971 the Court waited for 1 hour from 11:00 A.M. to 12:00 noon. No appearance was made on behalf of the Defendant.

Plaintiff appeared on his own behalf, was sworn and testified in support of the allegations set forth in his Complaint and in opposition to Defendant's demand for removal.

NOW THEREFORE, the Court being fully advised in the premise, upon all the files, records and proceedings herein, makes the following; FINDINGS OF FACT

1. That the undersigned Justice of the Peace does not charge and collect fees for performing the duties of the office of Justice of the Peace.

2. That MSA 357.14 Subdivision 1. " Justice of the Peace shall be entitled to the following fees, and may tax them in cases when applicable: etc." is unconstitutional and void as being in violation of Article One Section 8 of the Constitution of Minnesota.

3. That Plaintiff was not served with a copy of the demand for removal.

4. That at all times herein material Defendant is a Banking Corporation organized, created and existing under and by virtue of the Laws of the State of Minnesota.

5. That on August 15, 1966, Plaintiff, as trustee for Harvey Perkins deposited Silver Coin in Account No. 3001 in the Defendant Bank in the total sum of $71.60 and received a Savings Account pass book from the Bank crediting him with the amount of $71.60.

6. On March 11, 1971 Plaintiff demanded the return in kind of the Silver Coin he had deposited from cashier Donna B. Carlson who refused stating that all she had was nickles and the silver clad copper coins.

7. In this action Plaintiff demands lawful legal tender in

the sum of $71.60 pursuant to the Constitution of the United States.

8. That pursuant to Law One Dollar is equal to 23.22 grains of pure gold or 371.25 grains of pure Silver.

9. That pursuant to Law this Court cannot make any Thing but gold and silver Coin a Tender in Payment of Debts.

CONCLUSIONS OF LAW

1. That this Court has jurisdiction of the above entitled action.

2. That Plaintiff is entitled to Judgment against the Defendant in the sum of Seventy One Dollars and Sixty Cents.

3. That the Judgment rendered herein cannot be satisfied with any Thing but gold and silver Coin.

4. That Thing which is Tendered to Plaintiff to satisfy the Judgment rendered herein must be a Coin which contains some portions of both pure gold and pure silver and no other metal or elements in the following ratio, to-wit: 1/100 of a Dollar shall equal .2322 grains of pure gold for the gold portion of the Coin and 1/100 part of a Dollar shall equal 3.7125 grains of pure Silver for the Silver portion of the Coin. (For instance, a 2 Dollar Coin that would comply with Article One Section 10 of the Constitution of the United States could consist of 23.22 grains of pure gold and 371.25 grains of pure Silver, and no other metals or elements.)

5. That Defendant may obtain the services of any private person to Coin Money in order to satisfy this Judgment.

6. That Title 12 Sections 95a and Title 31 Section 443 making it a criminal offense to buy and sell gold and providing for penalties and consfication of gold by reason of the possession thereof is unconstitutional and void.

7. That the Sheriff or Constable cannot accept any Thing but gold and silver Coin in satisfaction of this Judgment.

8. That this Court retains Jurisdiction for the purpose of further hearing to determine if the Thing or Things which are Tendered to satisfy this Judgment contain only both gold and silver and in the amounts above determined.

JUDGMENT

IT IS ORDERED, ADJUDGED AND DECREED:

1. That this Court has jurisdiction in the above entitled action notwithstanding the demand for removal.

2. That Plaintiff is entitled to Judgment against the Defendant in the sum of Seventy One Dollars and Sixty Cents.

3. That the Judgment rendered herein cannot be satisfied with any Thing but gold and silver Coin.

4. That the "Thing" which is Tendered to Plaintiff to satisfy the Judgment rendered herein must be Coin which contains some portions of both pure gold and silver and no other metal or elements in the following ratio, to-wit: 1/100 of a Dollar shall equal .2322 grains of pure gold for the gold portion of the Coin and 1/100 part of a Dollar shall equal 3.7125 grains of pure silver for the silver portion of the Coin. (For instance, a 2 Dollar Coin that would comply with Article One Section 10 of the Constitution of the United States could consist of 23.22 grains of pure gold and 371.25 grains of pure silver, and no other metals or elements.)

5. That Defendant may obtain the services of any private person to Coin Money in order to satisfy this Judgment.

6. That Title 12 Sections 95a and Title 31 Section 443

making it a criminal offense to buy and sell gold and providing for penalties and consfication of gold and imprisonment by reason of the sale or purchase or possession of gold is unconstitutional and void.

7. That the Sheriff or Constable cannot accept any Thing but gold and silver Coin in satisfaction of this Judgment.

8. That this Court retains Jurisdiction for the purpose of further hearing to determine if the Thing or Things which are Tendered to satisfy this Judgment contain only both gold and silver and in the amounts above set out.

9. The memorandum attached hereto is made a part hereof.

Given under my hand and Seal this 26th day of March, 1971 at Credit River Township, Scott County, Minnesota.

BY THE COURT

George J. Kelzer
George J. Kelzer
Justice in Assistance
Justice of the Peace
Township of Jackson
County of Scott
State of Minnesota
U.S.A.

Robert L Mahoney
Robert L. Mahoney
Justice of the Peace
Township of Credit River
County of Scott
State of Minnesota
United States of America

MEMORANDUM

On March 16, 1971 Defendant, pursuant to MSA 531.115 filed a demand for removal from this Court to a Court that is presided over by a salaried Judge and designated the Municipal Court of the City of Shakopee presided over by Judge Kermit Lindmeyer.

MSA 531.115 Proceedings commenced before fee basis Judge is as follows:

> **Subd. 2. In civil matters.** Whenever a civil action is commenced in which jurisdiction is in a justice court or a court in which the judge is paid upon a fee basis, any defendant may at any time before trial demand in writing that the case be removed to another court having jurisdiction within the county and presided over by a salaried judge.
>
> When such justice of the peace or such judge is furnished with a demand for change of venue, he shall forthwith transmit such files and proceedings to the court in the county to which transfer is requested by a defendant. Thereafter such proceedings will be had in such court to which the case has been transferred as if such proceedings had been originally commenced therein.
>
> **Subd. 3. Exceptions.** No criminal proceedings or civil matter shall be transferred to the district court under this section and the provisions of this section shall not apply in any county wherein there is no court of appropriate jurisdiction presided over by a salaried judge other than the district court. Laws 1959, c. 450, § 1.

MSA 357.14 on Fees, "Justice of the Peace Sub. 1. provides; "Justice of the Peace shall be entitled to the following fees, and may tax them in cases when applicable: For a summons, warrant or subpoena, 25 cents; (6) Entering Judgment, $1.00 and so forth. Most of the fees allowed to be charged are from 10 to 25 cents. These fees are paid directly to the Justice of the Peace.

Article One Section 8 of the Constitution of Minnesota provides as follows: "Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property or character; he ought to obtain justice freely and without purchase; completely and without denial; promptly and without delay, conformable to the laws."

This provision of the Minnesota Constitution finds basis in Magna Carta issued by King John on June 15, 1215 at Runneymead England. Sec. 29 of Magna Carta provides "We will sell to no man, we will not deny or defer to any man either Justice or Right"

The principle that Justice is not for sale and that a Judge ought not to place himself in any position where there is the slightest suspicion that he is or can be bought is a principle that pervades the whole common law since 1215 A.D.

See Payne vs. Lee, 222 Minnesota Reports 269 where it is stated as follows:

A concept of judicial administration which leads one to assume that justice can be obtained "completely and without denial" before a tribunal that is partial, biased, or hostile is certainly one alien to our institutions. If we were to assume that complete justice could with any likelihood be so dispensed, it would be a justice which commanded neither the respect nor the confidence of the citizen. Mr. Justice Dunbar in State ex rel. Barnard v. Board of Education, 19 Wash. 8, 17, 52 P. 317, 320, 40 L. R. A. 317, 67 A. S. R. 706, in pointing out the necessity of an impartiality, free of all suspicion, said:

"* * * The principle of impartiality, disinterestedness, and fairness on the part of the judge is as old as the history of courts; in fact, the administration of justice through the mediation of courts is based upon this principle. It is a fundamental idea, running through and pervading the whole system of judicature, and it is the popular acknowledgment of the inviolability of this principle which gives credit, or even toleration, to decrees of judicial tribunals. Actions of courts which disregard this safeguard to litigants would more appropriately be termed the administration of injustice, and their proceedings would be as shocking to our private sense of justice as they would be injurious to the public interest. The learned and observant Lord Bacon well said that the virtue of a judge is seen in making inequality equal, that he may plant his judgment as upon even ground. Caesar demanded that his wife should not only be virtuous, but beyond suspicion; and the state should not be any less exacting with its judicial officers, in whose keeping are placed not only the financial interests, but the honor, the liberty and the lives of its citizens, and it should see to it that the scales in which the rights of the citizen are weighed should be nicely balanced, for, as was well said by Judge Bronson in People v. Suffolk Common Pleas, 18 Wend. 550:

"'Next in importance to the duty of rendering a righteous judgment, is that of doing it in such a manner as will beget no suspicion of the fairness and integrity of the judge.'"

See the case of Ed Tumey vs. State of Ohio attached hereto and made a part hereof. 71 Led Ed. 749; 273 U.S. 510. This case holds that at Common Law there was the greatest sensitiveness over the existence of any pecuniary interest however small or infinitesimal in the Justice of the Peace. For hundreds of years in England the Justices of the Peace seem not to have received compensation for Court work. Instead of that they were required, upon entering upon office to pay certain fees.

The duty to keep the stream of justice flowing crystal clear from even the slightest clouding of prejudice is upon this Court. The provisions of the Minnesota Constitution and the principle of the Common Law that Justice ought to be obtained freely and without purchase are self executing. There ought to be no consideration existing, however slight, which would prevent any Judge from upholding his oath to support the Constitution of the United States and administering justice in conformance thereto.

This Court, from the entrance upon the duties of the office of Justice of the Peace has not charged nor accepted fees of any kind or nature for any duty incumbent to this office.

Since MSA 357.14 provides that the fees be paid directly to the Justice of the Peace, who is to decide the case, it is in violation of Article 1 Section 8 of the Minnesota Constitution and Amendment 14 of the Constitution of the United States, is unconstitutional and void and I so hold.

Since this Court does not charge nor accept any fees the provisions of MSA 531.115 Sub 2,providing for removal from a justice court or a court in which the judge is paid upon a fee basis to a Court presided over by a salaried Judge, is not applicable.

Therefore the demand for removal is denied.

Further, this Court is also not paid a salary. The undersigned considers it an honor to pay for the necessary incidental expenses out of his own pocket to operate this Court for the express purpose of administering the Constitution of the United States as written, without pay, fear or favor, as one of the priviledges of American Citizenship.

Plaintiff in his complaint states that on August 15, 1966 he deposited $71.60 in silver Coin in a savings account in the Savage State Bank as trustee for one Harvey Perkins in Account No. 3001. The Defendant Bank opened an account and delivered a savings pass book to Plaintiff in the sum of $71.60. On March 11, 1971 Plaintiff demanded the return of the silver coin and Defendant was unable to deliver.

For relief in this Court Plaintiff asks for the tender allowed by Law from the Bank.

When the bank accepted the deposit, credited its books and delivered to Plaintiff a savings pass book as a receipt for the deposit of $71.60, it does not make any difference what plaintiff deposited with the Bank. The character of the money which was deposited is not material. See 10 Am Jur on Banks Section 499 which is as follows:

§ 499. Medium of payment; payment at par or face value.

In the case of a special deposit the depositor may rightfully demand the identical thing deposited with the bank,[15] but where the deposit is general, the transaction is, in the absence of any special agreement, unaffected by the character of the money in which the deposit was made, and the bank becomes liable for it as a debt, which liability can be discharged by such money as is by law legal tender.[16] Such a deposit is payable in money, without discount, even though the deposit was made in bank bills which subsequently became depreciated.[17] This means, in the absence of a statute modifying the rule or a contract changing it in a particular instance, that the payment must be at par; to deduct exchange would make the payment less than par. However, statutes may provide for the deduction of an exchange.[18] In fact, banks have been held liable for the face value of banknotes received and credited to the depositor at their face value, which notes were, at the time, depreciated in value.[19] Even prior to the time of the withdrawal of gold coin from circulation, the mere fact that a general deposit was of gold coin did not entitle the depositor to be repaid in gold; no distinction was made between a debt springing from a deposit of gold and one springing from a deposit of other money.[20] Undoubtedly, however, a bank is bound by a special agreement with its depositor with respect to the medium of payment of the fund deposited with the bank, and must repay the deposit accordingly[1] unless the agreement is contrary to public policy or is declared to be so by valid legislation. Thus, while Congress has now declared obligations requiring the payment of gold coin to be against public policy,[2] there would seem to be no doubt that in the absence of statutory restriction, if a bank should specially agree to repay a deposit in gold bullion or coin, it must do so or be answerable for the equivalent value of such gold bullion or coin.[3]

15. §§ 341, 360, supra.

16. Thompson v Riggs, 5 Wall (US) 663, 18 L ed 704.

17. Marine Bank v Fulton County Bank, 2 Wall (US) 252, 17 L ed 785; Bank of Kentucky v Wister, 2 Pet (US) 318, 7 L ed 437; Marine Bank v Chandler, 27 Ill 525.

18. Lawson v Citizens Bank, 185 Ga 527, 195 SE 742, holding, however, that a statute providing that a bank shall have the right to pay checks drawn upon it when presented by any bank, banker, trust company, or any agent thereof, either in money or in exchange drawn on its approved reserve agents, and to charge for such exchange a certain percentage of the aggregate amount of the checks so presented and paid, does not apply to a private banker, since the term bank as used in the statute did not include private bankers.

19. Bank of Kentucky v Wister, 2 Pet (US) 318, 7 L ed 437; Corbit v Bank of Smyrna, 2 Harr (Del) 235.

Where a deposit was made in Confederate currency, however, it was held that the depositor was entitled to receive good money only to the value of the currency at the time of the deposit. Dabney v Bank of State, 3 SC 124, affd Baring v Dabney (US) 19 Wall 1, 22 L ed 90.

20. Thompson v Riggs, 5 Wall (US) 663, 18 L ed 704; Gumbel v Abrams, 20 La Ann 568.

Annotation: 29 ALR 523.

1. Thompson v Riggs, 5 Wall (US) 663, 18 L ed 704 (holding that if a banker agrees to pay in depreciated paper, the tender of that paper is a good tender, and in default of payment, the promisee can recover only its market, and not its nominal, value); Iselin v Farrow, 115 Okla 218, 242 P 528.

2. As to validity, see Norman v Baltimore & O. R. Co. 294 US 240, 79 L ed 885, 55 S Ct 407, 95 ALR 1352; Compania De Inversiones Internacionales v Industrial Mortg. Bank, 269 NY 22, 198 NE 617, 101 ALR 1313.

3. Thompson v Riggs, 5 Wall (US) 663, 18 L ed 704.

Prior to the enactment of the Legal Tender Act, where a depositor deposited gold coin, which was at a premium, under an agreement that he should be repaid in gold, it was held that the depositor was entitled, if he was paid in currency at a discount, to have the amount of that discount allowed to him, or, in other words, he was entitled to receive of the bank the premium at which gold was sold over currency, and this for the whole amount deposited, unless he agreed to receive currency as coin; the bank had no right to make the depositor's check for currency a charge against this deposit of gold. Kupfer v Bank of Galena, 34 Ill 328.

Banks are to be treated no different than any other private person. They are estopped from denying their own records in the absence of fraud on the part of the depositor.

In this case the critical date is the date of deposit, which was August 15, 1966. IN the absence of an agreement to the contrary the Bank must pay back in legal Tender Coin that squares with and complies with the Constitution of the United States as of that date.

The applicable provisions of the fundamental law of the land as of that date are as follows:

THE DECLARATION OF INDEPENDENCE *

(July 4, 1776)

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.

MASSACHUSETTS BILL OF RIGHTS *

(1780)

The end of the institution, maintenance, and administration of government, is to secure the existence of the body-politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquillity their natural rights, and the blessings of life: and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity, and happiness.

The body-politic is formed by a voluntary association of individuals; it is a social compact by which the whole people covenants with each citizen and each citizen with the whole people that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation and a faithful execution of them; that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the great Legislator of the universe, in affording us, in the course of His Providence, an opportunity, deliberately and peaceably, without fraud, violence, or surprise, of entering into an original, explicit, and solemn compact with each other; and of forming a new constitution of civil government, for ourselves and posterity; and devoutly imploring His direction in so interesting a design, do agree upon, ordain, and establish, the following Declaration of Rights, and Frame of Government, as the Constitution of the Commonwealth of Massachusetts.

Part the First

A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts

Article I. All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

THE NORTHWEST ORDINANCE *

(July 13, 1787)

An Ordinance for the government of the Territory of the United States northwest of the River Ohio

Be it ordained by the United States in Congress assembled, That the said territory, for the purposes of temporary government, be one district, subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

It is hereby ordained and declared by the authority aforesaid, That the following articles shall be considered as articles of compact between the original States and the people and States in the said territory and forever remain unalterable, unless by common consent, to wit:

Art. 1. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

Art. 2. The inhabitants of the said territory shall always be entitled to the benefits of the writ of *habeas corpus*, and of the trial by jury; of a proportionate representation of the people in the legislature; and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers or the law of the land; and, should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, *bona fide*, and without fraud, previously formed.

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 Tranquility, 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

[cl. 5] To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

[cl. 17] 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

[cl. 18] 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 9

[cl. 7] No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

Section 10

[cl. 1] 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.

Cross References: Bill of attainder or ex post facto law, see also Art. 1, § 9(3). Attainder of treason, see Art. III, § 3(2).

RESEARCH REFERENCE: See Am Jur 2d CONSTITUTIONAL LAW; STATES, TERRITORIES AND DEPENDENCIES.

[cl. 2] No State shall, without the Consent of the 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 the Congress.

Article IV

SECTION 2

[cl. 1] The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Article V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; *Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article;* and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Italics indicate matter superseded or modified by amendment, or by the elapse of time

RESEARCH REFERENCE: See Am Jur 2d, CONSTITUTIONAL LAW.

Article VI

[cl. 1] 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.

[cl. 2] 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.

AMENDMENT V.

" No person shall be deprived of life, liberty or property without due process of law;"

Amendment IX.

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

Amendment 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.

Amendment XIV.

" ---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 Treaty of Cession of Lousiana of April 30, 1803 between France and the United States provides--- " The inhabitants of said Territory shall be entitled to all the rights, privileges and immunities of Citizens of the United States." Without further, this Treaty extended all of the rights securred by the Constitution of the United States and the N.W. Ordinance into all of the Lousiana Territory West of the River Mississippi and East of the Continental Divide.

Section 12 of the Act of Congress of March 3, 1849 organizing the Territory of Minnesota; 9 U.S. Statutes at Large 403 extended the Laws in effect in the Territory of Wisconsin to the Territory of Minnesota, which included the N.W.Ordinance.

MINNESOTA CONSITUTION
BILL OF RIGHTS
Article I.

Sec. 1. Object of Government. "Government is instituted for the security, benefit and protection of the people, in whom all political power is inherent, together with the right to alter, modify or reform such government, whenever the public good may require it."

Sec. 7. "No person shall be deprived of life, liberty or property without due process of Law."

STATE FINANCES; BANKS AND BANKING Art. 9, § 13

§ 13. General banking law; provision and restrictions

Sec. 13. The legislature may, by a two-thirds 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.

Second—The legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money, and shall require ample security in United States stock or State stocks for the redemption of the same in specie; and in case of a depreciation of said stocks, or any part thereof, to the amount of ten per cent or more on the dollar, the bank or banks owning said stocks shall be required to make up said deficiency by additional stocks.

Third—The stockholders in any corporation and joint association for banking purposes, issuing bank notes, shall be individually liable in an amount equal to double the amount of stock owned by them for all the debts of such corporation or association; and such individual liability shall continue for one year after any transfer or sale of stock by any stockholder or stockholders.

Fourth—In case of the insolvency of any bank or banking association, the bill holders thereof shall be entitled to preference in payment over all other creditors of such bank or association.

(Note See Black's Law Dictionary for the Definition of Specie)

SPECIE. 1. Coin of the precious metals, of a certain weight and fineness, and bearing the stamp of the government, denoting its value as currency. Trebilcock v. Wilson, 12 Wall. 695, 20 L. Ed. 460; Walkup v. Houston, 65 N. C. 501; Henry v. Bank of Salina, 5 Hill (N. Y.) 536.

Fifth—Any general banking law which may be passed in accordance with this Article shall provide for recording the names of all stockholders in such corporation, the amount of stock held by each, the time of transfer, and to whom transferred.

What, exactly, can this Court make as a legal Tender in satisfaction of the Judgment rendered herein?

Article 1, Section 10 set out above states " No State shall make any Thing but gold and silver Coin a Tender in Payment of Debts"

It is not possible to make a prohibition absolute against State action in language more simple, certain and direct.

It is to be observed in this provision that the words "State", "Thing","Coin", "Tender", "Payment" and "Debts" are all capitalized. See "Websters New World Dictionary" on the English Language. When a word is capitalized it makes it a proper noun giving it a Special objective significance. See page 882 "A capital is used as the initial letter in the names of abstract or inaminate things that are personified".

Throughout the Constitution certain words are capitalized. This is to give them a special objective significance. In Article one Section 10 the word "Thing" is capitalized. This is to emphasize that the "Thing" that is to be made a legal Tender in Payment of Debts has to be a gold and silver Coin.

In construing the Constitution all of its provisions must be read together. The Constitution does not say"gold or silver Coin or Coins", or gold, and, or silver Coin or Coins" It does not say,"gold, silver and copper Coin or Coins". It does not say, " silver and copper Coin". It does not say,"nickel and copper-Coin". It does not say, "Platinum, Iridium and Osimum Coin", all of which are more precious and valuable than gold and silver. The Constitution is plain and simple. It states gold and silver Coin. "Coin" is in the singular. The Coin that is refered to has to be the Dollar. "Dollar" is used twice in the Constitution. Once in Article One Section 9 and again in Amendment 7; it is also used in the first Coinage Act of April 12, 1792 and in every Coinage act after that.

It is to be noted that the prohibitions against State activity in Article I Section X. are absolute in the first paragraph. In clauses 2 and 3 of Art.1, Sec. 10 it is intersting to note that the following language is used "No State shall, without the Consent of Congress---etc". It is intended that the prohibitions in the first clause are to be made absolute against the States. Congress cannot give its consent or authorize a State to violate these absolute prohibitions. See Volumes I thru VI. "Debates on the Adoption of the Federal Constitution". These are debates in the Federal Convention at Philadelphia and in the State Conventions. See Vol V. page 131; Mr. C. Pinckney of South Carolina presented the first draft of the Federal Constitution to the Convention. Article XI. of the first draft provided "No State shall, without the consent of the legislature of the United States---emit bills of credit; nor make any thing but gold, silver, or copper, a tender in payment of debts;" This was submitted to the convention on May 28, 1787. On August 6, 1787 a new draft of the Constitution was submitted to the Convention and Article XI above was changed to Article XIII.; however, it contained the same language with

reference to Tender except that the word "specie" was substituted for "gold, silver and copper" On Tuesday, August 28, 1787 it appears in Vol V., pages 484 and 485 that the following took place:

Mr. WILSON and Mr. SHERMAN moved to insert, after the words, " coin money," the words, " nor emit bills of credit, nor make any thing but gold and silver coin a tender in payment of debts; " making these prohibitions absolute, instead of making the measures allowable, as in the 13th article, *with the consent of the legislature of the United States.*

Mr. GORHAM thought the purpose would be as well secured by the provision of article 13, which makes the consent of the general legislature necessary; and that, in that mode, no opposition would be excited; whereas, an absolute prohibition of paper money would rouse the most desperate opposition from its partizans.

Mr. SHERMAN thought this a favorable crisis for crushing paper money. If the consent of the legislature could authorize emissions of it, the friends of paper money would make every exertion to get into the legislature in order to license it.

The question being divided, — on the first part, " nor emit bills of credit," —

New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, North Carolina, South Carolina, Georgia, ay, 8; Virginia, no, 1; Maryland, divided.

The remaining part of Mr. Wilson's and Mr. Sherman's motion was agreed to, *nem. con.*[239]

They thus made the prohibition absolute against the States and placed it beyond the authority of any State or Federal Dept. of Government or its officials to make any Thing but gold and silver Coin a Tender in Payment of Debts; nor pass any Law impairing the obligation of Contracts. The ratifying Conventions in the States adopted these absolute prohibitions without a dissenting State.

It cannot be doubted that this absolute prohibition is binding upon this Court and the undersigned personally in his capacity as a Justice of the Peace. See U.S.Supreme Court case of Briscoe vs. Bank of Kentucky, 11 Peters reports 319, "A State can only act 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". See also 15 Am Jur 2d Section 8 which is as follows:

2. What Constitutes State Action

§ 8. Generally.

The Fourteenth Amendment of the United States Constitution places restraints only on the action of the states, and adds nothing to the rights of one citizen as against another.[7] Wrongful acts of individuals, unsupported by state authority in the form of laws, customs, or judicial or executive proceedings, are merely private wrongs or crimes to be vindicated by state law.[8]

State action within the inhibitions of the Fourteenth Amendment includes all state action infringing the rights secured thereby, whatever the state agency taking the action and whatever the guise in which it is taken.[9] It includes action by a state legislature, state courts, or state executive or administrative officers,[10] municipal ordinances,[11] the actions in office of municipal officials,[12] and the acts of a state's political subdivisions and administrative agencies.[13] Even if a law is fair on its face and impartial in appearance, the Fourteenth Amendment is violated if the law is administered "with an evil eye and an unequal hand" so as to make unjust and illegal discriminations between persons in similar circumstances.[14]

Fourteenth Amendment, see CONSTITUTIONAL LAW (1st ed §§ 476 et seq.).

2. Snowden v Hughes, supra.

3. State laws discriminating against Negroes as a class were the evil to be remedied by the equal protection of the laws clause of the Fourteenth Amendment, and by it such laws are forbidden. Slaughter-House Cases, 83 US 36, 21 L ed 394.

4. Snowden v Hughes, 321 US 1, 88 L ed 497, 64 S Ct 397, reh den 321 US 804, 88 L ed 1090, 64 S Ct 778.

5. Snowden v Hughes, supra.

6. Civil Rights Cases, 109 US 3, 27 L ed 835, 3 S Ct 18.

7. Hodges v United States, 203 US 1, 51 L ed 65, 27 S Ct 6; Civil Rights Cases, 109 US 3, 27 L ed 835, 3 S Ct 18; United States v Harris, 106 US 629, 27 L ed 290, 1 S Ct 601; Virginia v Rives, 100 US 313, 25 L ed 667; Younger v Judah, 111 Mo 303, 19 SW 1109; Colbert v Coney Island, Inc. 97 Ohio App 311, 56 Ohio Ops 106, 121 NE2d 911; Ross v Ebert, 275 Wis 529, 82 NW2d 315.

8. Civil Rights Cases, 109 US 3, 27 L ed 835, 3 S Ct 18.

9. Cooper v Aaron, 358 US 1, 3 L ed 2d 5, 78 S Ct 1401.

10. Cooper v Aaron, supra; Martin v Texas, 200 US 316, 50 L ed 497, 26 S Ct 338; Rogers v Alabama, 192 US 226, 48 L ed 417, 24 S Ct 257; Carter v Texas, 177 US 442, 44 L ed 839, 20 S Ct 687; Gibson v Mississippi, 162 US 565, 40 L ed 1075, 16 S Ct 904; Neal v Delaware, 103 US 370, 26 L ed 567.

11. McCoy v Providence Journal Co. (CA1 RI) 190 F2d 760, cert den 342 US 894, 96 L ed 669, 72 S Ct 200; Browder v Gayle (DC Ala) 142 F Supp 707, affd 352 US 903, 1 L ed 2d 114, 77 S Ct 145, reh den 352 US 950, 1 L ed 2d 245, 77 S Ct 323.

12. McCoy v Providence Journal Co. (CA1 RI) 190 F2d 760, cert den 342 US 894, 96 L ed 669, 72 S Ct 200.

13. Henry v Greenville Airport Com. (CA4 SC) 279 F2d 751.

14. Yick Wo v Hopkins, 118 US 356, 30 L ed 220, 6 S Ct 1064; Reynolds v Board of Public Instruction (CA5 Fla) 148 F2d 754, cert den 326 US 748, 90 L ed 446, 66 S Ct 53.

The undersigned is bound by solemn oath to support the Constitution of the United States. The meaning of the Constitutional provision, "No State shall make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Law impairing the Obligation of Contracts, or grant any Title of Nobility", is direct, clear, unambigious and without any qualification. This Court is without any authority to interpolate any exception. My duty is simply to execute it as written and to pronounce the legal result. See Edwards vs. Kearzey, 96 U.S. 595 a copy of which is attached hereto.

The representatives of the People deliberated together and used the words "establish, insure, provide, promote, secure, ratify ordain and establish". The words "adopt, grant and vest"are also used. After the People having done so, it would be strange indeed if the undersigned could begin the exercise of the duties of this office as a part of the Judicial Branch of the Government of the State of Minnesota with a perjury. It would have to be shown that the undersigned has a right, upon whim and caprice, to reverse what has been ordained, to unsettle and overthrow what has been established, to reject what the people have adopted, and to break up what they have ratified; because these are the terms which express the transactions which have actually taken place. In other words, it must be shown, that the undersigned has a right to make a revolution. If this is the case then Minnesota can make a Treaty with Canada. This Court could then grant a Title of Nobility. Any State or part of a State would have the right to secede from the Union. Such a situation would leave the people of the United States in a complete state of Anarchy and lawlessness. The people would be in a worse state than if there was no government at all. It would follow, that if this Court could declare null and void

Article One Section 10 of the Constitution of the United States it could declare null and void any other Rule or Regulation contained in the Constitution or in any law passed by Congress in Pursuance thereof. This would have to be revolutionary. Revolution is that which overturns, or controls, or successfully resists the existing public authority; that which arrests the application of the Supreme Law and the exercise of the Supreme power, which is the People. It is that which introduces a new paramount authority into the rule of the State. It would be revolution if I were to nullify any part of the Constitution of the United States. This can only be done by an amendment of the Constitution in the manner provided by the People, not otherwise.

The cases on what can be made a legal Tender are in a hopeless state of confusion. This stems from, in a large degree, in not knowing, considering or recognizing where soverignty ultimately resides. In declaring independence from the British Monarchy on July 4, 1776 the people assumed "among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitled them", and held "these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that amoung 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,". On July 4, 1776 the whole people of the United States became one Nation. The Declaration affirms that soverignty resides in the individual. This was reasserted in the Massachusetts Bill of Rights in the Preamble in 1780. It is obvious that if soverignty is traced back to the moment of the creation of the first man by God, soverignty had to reside in the individual. He was the only one on the face of the earth. When there were two individuals here and each had his own separate territory or nation there were two separate soverigns. There are as many separate soverigns in the United States as there are individuals. The Government of the United States is only granted certain soverign legislative powers. This grant of legislative powers is only exclusive in Article One Section 8, Clause 17 where it is stated that Congress shall have the power to exercise exclusive legislation in all cases whatsoever over U.S.Property and Buildings. Otherwise the grants of legislative powers are not exclusive. See Amendment X. The powers not delegated to the U.S., nor prohibited to the States are reserved to the States respectively or to the people.

Under our form of government every American, individually or by representation is the high and supreme soverign 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 poeple, 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 of 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,with or without reservation, or exclusively, reserved or witheld 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 without authority, revolutionary, null and void from the beginning.

When considering the Constitution of the United States or of any State, one must absolutely and completly clear his mind of all British, Monarchial, Papal, Clerical, 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 engagments entered into before the adoption and ratification of it, including the Declaration of the Resolves of the First Continental Congress of October 1774; The Declaration of the Causes and Necessity of taking up Arms of July 6, 1775 and the Declaration of Independence along with the Articles of Confederation, The Treaty of Peace with England of 1783, The N.W. Ordinance of 1787 and the privileges and immunities secured by Common Law, confirmed by Magna Charta and other English Charters securring the rights of free men, of course, 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 soverignty 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 Goergia, 60 Georgia Reports 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 the 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."

To the same effect, see also the Minnesota case of L.O.Cooke vs. Samuel G. Iverson; 108 Minnesota Reports P. 388; 122 NW 251

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 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.

The People who adopted the Constitution in 1787 to 1789 and the People of America today, by the express words of the Supreme Law of the Land, which is the U.S.Constitution, have declared in plain language which cannot be misunderstood, that between soverign American Individuals No State shall make any Thing but gold and silver Coin a Tender in Payment of Debts; nor pass any Law impairing the Obligation of Contracts.

Since the beginning of recorded history, between Soverigns, gold and silver has been the ultimate medium for the settlement and payment of debts. The value of the gold and silver Coin is determined by the weight of the precious metals that it contains. The weight is measured in grains. The exchange rate of foreign Coin and the currency of Foreign Nations is determined by the amount of the pure Metal contained in the Foreign Coin as compared to the weight of the pure Metal in the Money of Account Coins of the United States. See Title 31 Sections 371 and 372 which are set forth as follows:

§ 371. Decimal system established

The money of account of the United States shall be expressed in dollars or units, dimes or tenths, cents or hundredths, and mills or thousandths, a dime being the tenth part of a dollar, a cent the hundredth part of a dollar, a mill the thousandth part of a dollar; and all accounts in the public offices and all proceedings in the courts shall be kept and had in conformity to this regulation. R.S. § 3563.

Historical Note

Derivation. Act Apr. 2, 1792, c. 16, § 20, 1 Stat. 250.

§ 372. Conversion of currency—Value of foreign coin proclaimed by Secretary of Treasury

(a) The value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint and be proclaimed by the Secretary of the Treasury quarterly on the 1st day of January, April, July, and October in each year.

Proclaimed value basis of conversion

(b) For the purpose of the assessment and collection of duties upon merchandise imported into the United States on or after June 17, 1930, wherever it is necessary to convert foreign currency into currency of the United States, such conversion, except as provided in subsection (c) of this section, shall be made at the values proclaimed by the Secretary of the Treasury under the provisions of subsection (a) of this section, for the quarter in which the merchandise was exported.

Market rate when no proclamation

(c) If no such value has been proclaimed, or if the value so proclaimed varies by 5 per centum or more from a value measured by the buying rate in the New York market at noon on the day of exportation, conversion shall be made at a value measured by such buying rate. If the date of exportation falls upon a Sunday or holiday, then the buying rate at noon on the last preceding business day shall be used. For the purposes of this subsection such buying rate shall be the buying rate for cable transfers payable in the foreign currency so to be converted; and shall be determined by the Federal Reserve Bank of New York and certified daily to the Secretary of the Treasury, who shall make it public at such times and to such extent as he deems necessary. In ascertaining such buying rate such Federal Reserve bank may in its discretion (1) take into consideration the last ascertainable transactions and quotations, whether direct or through exchange of other currencies, and (2) if there is no market buying rate for such cable transfers, calculate such rate from actual transactions and quotations in demand or time bills of exchange. June 17, 1930, c. 497. Title IV, § 522, 46 Stat. 739.

The Constitution excludes any Thing but a gold and silver Coin as a Tender in Payment of Debts. It is obvious that the only Thing this Court can make as a Tender in satisfaction of the Judgment rendered herein is a gold and silver Coin. The Coin cannot contain any other element but gold and silver. If the people intended that the Coin that a creditor could be compelled to accept in satisfaction of a Judgment should be a gold,silver and copper Coin or a silver and copper Coin or paper Notes or Bills of Credit, the people would have said so in their Constitution, but all else is excluded as a Tender in payment of Debts except gold and silver Coin. This Court holds, therefore, that the Coin must contain both gold and silver and only gold and silver. The word"and"is used which means,"also", "In addition" "plus". The word "or", which is a cordinating conjunction introducing

an alternative is not used. The Constitution does not say either gold or silver Coin may be made a Tender in Payment of Debts. This Court must assume that the people said what they meant and meant what they said.

This Court holds that the Coin that is made a legal Tender must be a Coin that Contains both gold and Silver and only Gold and Silver.

It therefore follows that Title 31, U.S.Code Section 392 Pub. L. 89-81, Title I, Sec. 102, July 23, 1965, 79 Stat. 255 which states, "All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve Banks and National Banking Associations), regardless of when coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues." is in direct violation of Article One Section 10 of the U.S. Constitution and is therefore unconstitutional and void,

The constitution contains a direct prohibition directed to the undersigned. Congress is granted no power to authorize me to violate it. I therefore must follow the Constitution and not the Act of Congress.

The next issue to be decided is; what exactly may the gold and silver Coin contain and in what amounts and in what porportions of the precious metals?

The first Coinage Act of April 2, 1792 provides as follows:

STATUTE I.

April 2, 1792. CHAP. XVI.—*An Act establishing a Mint, and regulating the Coins of the United States.(a)*

Mint established at the seat of government. SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, and it is hereby enacted and declared,* That a mint for the purpose of a national coinage be, and the same is established; to be situate and carried on at the seat of the government of the United States, for the time being: And that for the well conducting of the business of the said mint, there shall be the following officers and persons, namely,—a Director, an Assayer, a Chief Coiner, an Engraver, a Treasurer.

Species of the coins to be struck. Eagles. Half Eagles. Quarter Eagles. Dollars or Units. Half Dollars. Quarter Dollars. Dismes. SEC. 9. *And be it further enacted,* That there shall be from time to time struck and coined at the said mint, coins of gold, silver, and copper, of the following denominations, values and descriptions, viz. EAGLES—each to be of the value of ten dollars or units, and to contain two hundred and forty-seven grains and four eighths of a grain of pure, or two hundred and seventy grains of standard gold. HALF EAGLES—each to be of the value of five dollars, and to contain one hundred and twenty-three grains and six eighths of a grain of pure, or one hundred and thirty-five grains of standard gold. QUARTER EAGLES—each to be of the value of two dollars and a half dollar, and to contain sixty-one grains and seven eighths of a grain of pure, or sixty-seven grains and four eighths of a grain of standard gold. DOLLARS or UNITS—each to be of the value of a Spanish milled dollar as the same is now current, and to contain three hundred and seventy-one grains and four sixteenth parts of a grain of pure, or four hundred and sixteen grains of standard silver. HALF DOLLARS—each to be of half the value of the dollar or unit, and to contain one hundred and eighty-five grains and ten sixteenth parts of a grain of pure, or two hundred and eight grains of standard silver. QUARTER DOLLARS—each to be of one fourth the value of the dollar or unit, and to contain ninety-two grains and thirteen sixteenth parts of a grain of pure, or one hundred and four grains of standard silver. DISMES

—each to be of the value of one tenth of a dollar or unit, and to contain thirty-seven grains and two sixteenth parts of a grain of pure, or forty-one grains and three fifth parts of a grain of standard silver. HALF DISMES—each to be of the value of one twentieth of a dollar, and to contain eighteen grains and nine sixteenth parts of a grain of pure, or twenty grains and four fifth parts of a grain of standard silver. CENTS—each to be of the value of the one hundredth part of a dollar, and to contain eleven penny-weights of copper. HALF CENTS—each to be of the value of half a cent, and to contain five penny-weights and half a penny-weight of copper.(*a*)

Half Dismes.

Cents.

Half Cents. Act of May 8, 1792.

Of what devices.

SEC. 10. *And be it further enacted*, That, upon the said coins respectively, there shall be the following devices and legends, namely: Upon one side of each of the said coins there shall be an impression emblematic of liberty, with an inscription of the word Liberty, and the year of the coinage; and upon the reverse of each of the gold and silver coins there shall be the figure or representation of an eagle, with this inscription, "UNITED STATES OF AMERICA" and upon the reverse of each of the copper coins, there shall be an inscription which shall express the denomination of the piece, namely, cent or half cent, as the case may require.

SEC. 11. *And be it further enacted*, That the proportional value of gold to silver in all coins which shall by law be current as money within the United States, shall be as fifteen to one, according to quantity in weight, of pure gold or pure silver; that is to say, every fifteen pounds weight of pure silver shall be of equal value in all payments, with one pound weight of pure gold, and so in proportion as to any greater or less quantities of the respective metals.(*a*)

Proportional value of gold to silver.

SEC. 12. *And be it further enacted*, That the standard for all gold coins of the United States shall be eleven parts fine to one part alloy; and accordingly that eleven parts in twelve of the entire weight of each of the said coins shall consist of pure gold, and the remaining one twelfth part of alloy; and the said alloy shall be composed of silver and copper, in such proportions not exceeding one half silver as shall be found convenient; to be regulated by the director of the mint, for the time being, with the approbation of the President of the United States, until further provision shall be made by law. And to the end that the necessary information may be had in order to the making of such further provision, it shall be the duty of the director of the mint, at the expiration of a year after commencing the operations of the said mint, to report to Congress the practice thereof during the said year, touching the composition of the alloy of the said gold coins, the reasons for such practice, and the experiments and observations which shall have been made concerning the effects of different proportions of silver and copper in the said alloy.(*b*)

Standard for gold coins, and alloy how to be regulated.

Director to report the practice of the mint touching the alloy of gold coins.

SEC. 13. *And be it further enacted*, That the standard for all silver coins of the United States, shall be one thousand four hundred and eighty-five parts fine to one hundred and seventy-nine parts alloy; and accordingly that one thousand four hundred and eighty-five parts in one thousand six hundred and sixty-four parts of the entire weight of each of the said coins shall consist of pure silver, and the remaining one hundred and seventy-nine parts of alloy; which alloy shall be wholly of

Standard for silver coins—alloy how to be regulated.

Alloy.

Sec. 16. AND BE IT FURTHER ENACTED, That all gold and silver coins which shall have been struck at, and issued from the said mint, shall be a lawful tender in all payments whatsoever, those of full weight according to the respective values herein before declared, and those of less than full weight at values proportional to their respective weights.

Penalty on debasing the coins.

SEC. 19. *And be it further enacted*, That if any of the gold or silver coins which shall be struck or coined at the said mint shall be debased or made worse as to the proportion of fine gold or fine silver therein contained, or shall be of less weight or value than the same ought to be pursuant to the directions of this act, through the default or with the connivance of any of the officers or persons who shall be employed at the said mint, for the purpose of profit or gain, or otherwise with a fraudulent intent, and if any of the said officers or persons shall embezzle any of the metals which shall at any time be committed to their charge for the purpose of being coined, or any of the coins which shall be struck or coined at the said mint, every such officer or person who shall commit any or either of the said offences, shall be deemed guilty of felony, and shall suffer death.

Money of account to be expressed in dollars, &c.

SEC. 20. *And be it further enacted*, That the money of account of the United States shall be expressed in dollars or units, dismes or tenths, cents or hundredths, and milles or thousandths, a disme being the tenth part of a dollar, a cent the hundredth part of a dollar, a mille the thousandth part of a dollar, and that all accounts in the public offices and all proceedings in the courts of the United States shall be kept and had in conformity to this regulation.

APPROVED, April 2, 1792.

The Act of June 28, 1834, 23rd Congress Sess I. Ch 96. changed the content of the gold Dollar or Unit to 23.2 grains of pure gold and made it receivable in payment of Contracts entered into before its effective date at the rate of 94.8 per cent. The Act is in full as follows:

STATUTE I.

June 28, 1834.

CHAP. XCV.—*An Act concerning the gold coins of the United States, and for other purposes.*

Standard and weight of coins.

Vol. ii. 51.

Vol. ii. 111.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the gold coins of the United States shall contain the following quantities of metal, that is to say: each eagle shall contain two hundred and thirty-two grains of pure gold, and two hundred and fifty-eight grains of standard gold; each half eagle one hundred and sixteen grains of pure gold, and one hundred and twenty-nine grains of standard gold; each quarter eagle shall contain fifty-eight grains of pure gold, and sixty-four and a half grains of standard gold; every such eagle shall be of the value of ten dollars; every such half eagle shall be of the value of five dollars; and every such quarter eagle shall be of the value of two dollars and fifty cents; and the said gold coins shall be receivable in all payments, when of full weight, according to their respective values; and when of less than full weight, at less values, proportioned to their respective actual weights.

Gold and silver deposited for coinage to be paid for within five days.

Proviso.

SEC. 2. *And be it further enacted*, That all standard gold or silver deposited for coinage after the thirty-first of July next, shall be paid for in coin under the direction of the Secretary of the Treasury, within five days from the making of such deposit, deducting from the amount of said deposit of gold and silver one-half of one per centum: *Provided*, That no deduction shall be made unless said advance be required by such depositor within forty days.

Rate at which gold coin shall be receivable.

SEC. 3. *And be it further enacted*, That all gold coins of the United States, minted anterior to the thirty-first day of July next, shall be receivable in all payments at the rate of ninety-four and eight-tenths of a cent per pennyweight.

Gold coins to be set apart for assay.

SEC. 4. *And be it further enacted*, That the better to secure a conformity of the said gold coins to their respective standards as aforesaid, from every separate mass of standard gold which shall be made into coins at the said mint, there shall be taken, set apart by the treasurer and reserved in his custody, a certain number of pieces, not less than three, and that once in every year the pieces so set apart and reserved shall be assayed under the inspection of the officers, and at the time, and in the manner now provided by law, and, if it shall be found that the gold so assayed, shall not be inferior to the said standard hereinbefore declared, more than one part in three hundred and eighty-four in fineness, and one part in five hundred in weight, the officer or officers of the said mint whom it may concern, shall be held excusable; but if any greater inferiority shall appear, it shall be certified to the President of the United States, and if he shall so decide, the said officer or officers shall be thereafter disqualified to hold their respective offices: *Provided*, That if, in making any delivery of coin at the mint in payment of a deposit, the weight thereof shall be found defective, the officer concerned shall be responsible to the owner for the full weight, if claimed at the time of delivery.

Proviso.

Act to be in force after July 31, 1834.

SEC. 5. *And be it further enacted*, That this act shall be in force from and after the thirty-first day of July, in the year one thousand eight hundred and thirty-four.

APPROVED, June 28, 1834.

The Congress passed another coinage act in January 18, 1837 which left the gold content of the Gold Dollar the same at 23.22 grains of pure gold. It did change the alloy to 1/10th of the whole coin 9/10th to be pure gold and the alloy of the Silver Coin was to be 1/10th copper with 9/10ths of the Coin to be pure Silver. It stated "the alloy of the gold coins shall be of copper and silver,provided that the silver do not exceed one-half of the whole alloy. Up to February 12, 1873 pursuant to Acts of Congress the Mints of the U.S. Coined and distributed for circulation coins that contained gold, silver and copper; and also coins that contained both silver and copper and copper pennies. By an Act of February 12, 1873 Congress passed an Act revising and amending the Laws of the United States relative to Mints, Assay Offices and Coinage of the United States. This Act did not change the weight of the gold Dollar or Unit but left it at 23.22 grains of pure gold. It did, however change the composition or the required composition of the alloy of the gold Dollar and the Act states, "Sec. 13, "And the alloy of the gold coins shall be of copper, or of copper and silver; but the silver shall in no case exceed one-tenth of the whole alloy." This Act changed the content of the Silver Dollar to 420 grains Troy weight of Standard Silver or 378 grains of pure silver. The Act suspended the Coinage of Silver into coins. By the Act of February 28, 1878 the Silver Dollar was returned to 371.25 grains of pure silver and coinage of Silver Dollars was again authorized by Congress.

It should also be noted that private persons operated private mints in Georgia, Denver and San Fransisco between 1820 and 1900. These mints stamped out gold and silver Coins. The exact composition of these coins is not known to this Court.

See the Act of March 14,1900 which is attached hereto where the standard unit of value of the "dollar" is defined by law. It is attched hereafter in full and the pertinant part is as follows:

CHAP. 41.—An Act To define and fix the standard of value, to maintain the parity of all forms of money issued or coined by the United States, to refund the public debt, and for other purposes. March 14, 1900.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the dollar consisting of twenty-five and eight-tenths grains of gold nine-tenths fine, as established by section thirty-five hundred and eleven of the Revised Statutes of the United States, shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the Secretary of the Treasury to maintain such parity. Standard of value fixed. R.S., sec. 3511, p. 696.

SEC. 2. That United States notes, and Treasury notes issued under the Act of July fourteenth, eighteen hundred and ninety, when presented to the Treasury for redemption, shall be redeemed in gold coin of the standard fixed in the first section of this Act, and in order to secure the prompt and certain redemption of such notes as herein provided it shall be the duty of the Secretary of the Treasury to set apart in the Treasury a reserve fund of one hundred and fifty million dollars in gold coin and bullion, which fund shall be used for such redemption purposes only, and whenever and as often as any of said notes shall be redeemed from said fund it shall be the duty of the Secretary of the Treasury to use said notes so redeemed to restore and maintain such reserve fund in the manner following, to wit: First, by exchanging the notes so redeemed for any gold coin in the general fund of the Treasury; second, by accepting deposits of gold coin at the Treasury or at any subtreasury in exchange for the United States notes so redeemed; third, by procuring gold coin by the use of said notes, in accordance with the provisions of section thirty-seven hundred of the Revised Statutes of the United States.

United States notes redeemable in gold. Vol. 26, p. 289.

Redemption fund.

—how maintained.

—by legal issue.

K. PARTIAL UNCONSTITUTIONALITY OF STATUTES

1. IN GENERAL

§ 152. Generally.—It is a fundamental principle that a statute may be constitutional in one part and unconstitutional in another part and that if the invalid part is severable from the rest, the portion which is constitutional may stand while that which is unconstitutional is stricken out and rejected.[19]

It is entirely fitting and proper to take Note of the following Statutes in Title 31, United States Code:

§ 311. Policy of United States as to bimetallism

It is declared to be the policy of the United States to cont. the use of both gold and silver as standard money, and to coi gold and silver into money of equal intrinsic and excha value, such equality to be secured through international agr or by such safeguards of legislation as will insure the mair of the parity in value of the coins of the two metals, and t power of every dollar at all times in the markets and in the payment of debts. And it is further declared that the efforts of the Government should be steadily directed to the establishment of such a safe system of bimetallism as will maintain at all times the equal power of every dollar coined or issued by the United States, in the markets and in the payment of debts. Nov. 1, 1893, c. 8, 28 Stat. 4.

§ 314. Standard unit of value

The dollar of gold nine-tenths fine consisting of the weight determined under the provisions of section 821 of this title shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the Secretary of the Treasury to maintain such parity. R.S. § 3511; Mar. 14, 1900, c. 41, § 1, 31 Stat. 45; May 12, 1933, c. 25, Title III, § 43, 48 Stat. 51; June 5, 1933, c. 48, § 2, 48 Stat. 113; Jan. 30, 1934, c. 6, § 12, 48 Stat. 342; Aug. 23, 1935, c. 614, § 203(a), 49 Stat. 704; Jan. 23, 1937, 2 p. m., c. 5, § 2, 50 Stat. 4; July 6, 1939, c. 260, § 3, 53 Stat. 998.

Historical Note

Codification. Words "consisting of twenty-five and eight tenths grain", appearing in original enactment, have been omitted in view of provisions of section 821 of this title authorizing the President to fix the weight of the gold dollar within certain limitations, and words "consisting of the weight determined under the provisions of section 821 of this title" give effect to this provision.

Section was the first section of the Parity Act of March 14, ... and superseded a provision on the subject contained in R.S. § 3511.

For other sections of the Act of March 14, 1900, c. 41, see the sections enumerated in section 313 of this title, and also section 542 of Title 12, Banks and Banking.

Weight of Gold. Weight of gold dollar reduced to 15 21/25 grains nine-tenths fine, see note under section 821 of this title.

§ 315b. Gold coinage discontinued; existing gold coins withdrawn from circulation; coins and gold to be formed into bars

No gold shall after January 30, 1934, be coined, and no gold coin shall after January 30, 1934, be paid out or delivered by the United States: *Provided, however*, That coinage may continue to be executed by the mints of the United States for foreign countries in accordance with section 367 of this title. All gold coin of the United States shall be withdrawn from circulation, and, together with all other gold owned by the United States, shall be formed into bars of such weights and degrees of fineness as the Secretary of the Treasury may direct. Jan. 30, 1934, c. 6, § 5, 48 Stat. 340.

§ 443. Acquisition and use of gold in violation of law; penalties

Any gold withheld, acquired, transported, melted or treated, imported, exported, or earmarked or held in custody, in violation of sections 315b, 405b, 408a, 408b, 440–446, 752, 754a, 754b, 767, 821, 822a, 822b, and 824 of this title and sections 213, 411–415, 417, and 467 of Title 12 or of any regulations issued hereunder, or licenses issued pursuant thereto, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law; and in addition any person failing to comply with the provisions of said sections or of any such regulations or licenses, shall be subject to a penalty equal to twice the value of the gold in respect of which such failure occurred. Jan. 30, 1934, c. 6, § 4, 48 Stat. 340.

§ 316b. Same; means of regulation; penalties

Whenever in his judgment such action is necessary to effectuate the policy of sections 311a, 316a, 316b, 405a, 448–448e, 734a, and 734b of this title, the Secretary of the Treasury is authorized, with the approval of the President, to investigate, regulate, or prohibit, by means of licenses or otherwise, the acquisition, importation, exportation, or transportation of silver and of contracts and other arrangements made with respect thereto; and to require the filing of reports deemed by him reasonably necessary in connection therewith. Whoever willfully violates the provisions of any license, order, rule, or regulation issued pursuant to the authorization contained in this section shall, upon conviction, be fined not more than $10,000 or, if a natural person, may be imprisoned for not more than ten years or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. June 19, 1934, c. 674, § 6, 48 Stat. 1178.

Also it is worthy to take Note that Title 12 Section 95a. makes is a Crime to buy, possess or sell Gold. It is as follows:

§ 95a. Embargo on bullion or coin; hoarding; requirement of disclosure; penalties

(1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest.

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term "United States" means the United States and any place subject to the jurisdiction thereof, including the Philippine Islands, and the several courts of first instance of the Commonwealth of the Philippine Islands shall have jurisdiction in all cases, civil or criminal, arising under this subdivision in the Philippine Islands and concurrent jurisdiction with the district courts of the United States of all cases, civil or criminal, arising upon the high seas: *Provided, however,* That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term "person" means an individual, partnership, association, or corporation. Oct. 6, 1917, c. 106, § 5(b), 40 Stat. 415; Sept. 24, 1918, c. 176, § 5, 40 Stat. 966; Mar. 9, 1933, c. 1, § 2, 48 Stat. 1; May 7, 1940, c. 185, § 1, 54 Stat. 179; Dec. 18, 1941, c. 593; Title III, § 301, 55 Stat. 839.

Section 95a has been kept in effect since 1933 right down to date by the President declaring National Emergencies by Executive Order. Executive Order No. 10348, April 28, 1952, 17 F.R. 3769, set out as a note under this section, which continued in force Ex Order No. 8389, was superseded by Ex Order No. 11281, May 13, 1966, 31 F.R. 7215, set out as a note under section 6 of Title 50, Appendix, War and National Defense.

Here is the motive for the carrying on of these Wars without a Congressional Act Declaring War. The President merely carries on a War by Executive Order so that he can proclaim a National Emergency so that it is a crime for the people to own, possess, buy or sell gold.

If one can own an automobile can it be a crime to own steel? If one can own a gold coin can it be a crime to own gold? If one can own a silver Coin can it be a crime to own silver? If No State can make any Thing but gold and silver Coin a Tender in Payment of Debts; can it be a crime to own gold and silver? It can not be made a crime to own any of the elements on the periodic chart of elements so long as they are acquired and held for a lawful purpose. If it can become a crime to own oxygen, then it can become impossible to live without committing a crime. If it can be made a crime to own gold and silver then it is not possible to contract and do business under the Constitution of the United States as written.

Title 31 United States Code Sections 316b and 443 are unconstitutional and void and I so hold. By the express provisions of the 14th Amendment this Court is expressly prohibited from denying to any person within its Jurisdiction the equal protection of the Laws. The Constitution of the United States is the Supreme Law. The Law must apply equally to all persons and must not discriminate against any person in favor of the Federal Reserve Bank of New York or Foreigners. Title 12 Section 95a is unconstitutional and void and I so hold. Nothing in the Constitution of the United States requires that any person shall have to have a License to own any thing, including gold and silver.

It should be further noted that Title 31 Section 391 U.S.Code provides as follows:

CLAD COINAGE [NEW]

§ 391. Minting and issuance of clad coins; denominations and specifications; limitations on continued minting of silver coins

(a) The Secretary may coin and issue pursuant to this section half dollars or 50-cent pieces, quarter dollars or 25-cent pieces, and dimes or 10-cent pieces in such quantities as he may determine to be necessary to

meet the needs of the public. Any coin minted under authority of this section shall be a clad coin the weight of whose cladding is not less than 30 per centum of the weight of the entire coin, and which meets the following additional specifications:

(1) The half dollar shall have—
  (A) a diameter of 0.955 inch;
  (B) a cladding of an alloy of 800 parts of silver and 200 parts of copper; and
  (C) a core of an alloy of silver and copper such that the whole coin weighs 11.5 grams and contains 4.6 grams of silver and 6.9 grams of copper.

(2) The quarter dollar shall have—
  (A) a diameter of 0.955 inch;
  (B) a cladding of an alloy of 75 per centum copper and 25 per centum nickel; and
  (C) a core of copper such that the weight of the whole coin is 5.67 grams.

(3) The dime shall have—
  (A) a diameter of 0.705 inch;
  (B) a cladding of an alloy of 75 per centum copper and 25 per centum nickel; and
  (C) a core of copper such that the weight of the whole coin is 2.268 grams.

(b) Half dollars, quarter dollars, and dimes may be minted from 900 fine coin silver only until such date as the Secretary of the Treasury determines that adequate supplies of the coins authorized by this Act are available, and in no event later than five years after July 23, 1965.

(c) No standard silver dollars may be minted during the five-year period which begins on July 23, 1965. Pub.L. 89–81, Title I, § 101, July 23, 1965, 79 Stat. 254.

References in Text. "This Act", referred to in subsec. (b), means Pub.L. 89-81. For classification of Pub.L. 89-81, see Short Title note under this section.

Short Title. Section 1 of Pub.L. 89-81 provided: "That this Act [which added this section and sections 301-304 and 392-398 of this title and section 337 of Title 18, amended sections 283, 294, 317c, 324, 335, 340, 355 and 405a—1 of this title and section 485 of Title 18, repealed sections 320, 324 note, 338 and 462 of this title, and enacted provisions set out as notes under this section and section 340 of this title and section 337 of Title 18] may be cited as the 'Coinage Act of 1965'."

Legislative History: For legislative history and purpose of Pub.L. 89-81, see 1965 U.S.Code Cong. and Adm.News, p. 2299.

§ 392. Legal tender

All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations), regardless of when coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues. Pub.L. 89–81, Title I, § 102, July 23, 1965. 79 Stat. 255.

This Act does not change the silver content in the Standard Silver Dollar nor does it change the Unit of value as it is determined by the weight of silver to be contained in the Dollar or Unit.

Considering Article One Section 8 Clause 5 of the Constitution of the United States this Court determines and holds that Congress has the power to Coin Money, regulate the value thereof and of foreign Coin and fix the Standard of Weights and Measures. The power to Coin Money is prohibited by Article 10 Clause 1 to the States. And of course, what a State cannot do directly it cannot do indirectly or obliquely, lest a mockery be made of the Constitution of the United States. Therefore, a State cannot create a Corporation and permit or authorize it to either coin Money or emit Bills of Credit in any form or nature. It should be noted that the only exclusive legislation or legislative power that is given to Congress is in Article One Section 8 Clause 17 where the Congress is given the exclusive power in all cases what-so-ever over all Federal Property and Federal Buildings, which

of course would include the United States Mints. In Article One Section 8 clause 5 congress is not given exclusive legislation. Therefore, it is permissible for individual citizens to coin Money and I so hold that any Statute,State or Federal,which prohibits them from doing so or which makes it a crime for them to do so is unconstitutional and void.

If an individual Citizen cannot coin Money and place his individual seal or stamp upon the coin he stamps out and place upon the Coin the grain content of pure gold and silver that it contains then the Constitution has created an impossible situation where the Congress will not pass an act directing the U.S.Mints to fabricate a Coin which contains only gold and silver. It would be impossible to comply with Article One Section 10 in the satisfaction of this Judgment. The Congress never did pass a law which complied with the legal Tender requirements of Article 1 Section 10. The closest they ever came to it was when Congress directed the U.S.Mints to make up a gold, silver and Copper Coin. A gold, silver and copper Coin does not comply with Article One Section 10. It could be argued that the addition of copper as an alloy into the gold coin is not a material variance; however, the Constitution does not authorize any variance whatsoever. It is by slight non-compliance that un-constitutional practices get started; and then there is a steady advance thereafter by the encroachment until the Constitutional provision is completely undermined and anulled. News reports carry the story that in July the U.S.Mints will be making The "IKE" Dollar which will contain 40 % Silver and 60 % Copper as a silver clad copper core coin. These are to be collector's items only. For use by the public for general circulation the Mint is to strike out cupro-nickel clad coins which are to contain 25% copper and 75% nickel. The next thing they will be coming out with steel washers for money.

The Coin which this Court can make as a legal Tender in satisfaction of the Judgment rendered herein has to be a gold and silver coin. It can contain no other elements but these two metals.

What is contemplated by the parties when they use the word Dollar or its Symbol $ is the amount of grains of gold and silver set by Congress or Law that it takes to add up to a Dollar or Unit. The value of the Dollar or Unit is regulated by the number of grains of gold and silver, Troy weight that is set by Congress. The President or the Secretary of the Treasury cannot set this as the setting of the value of the Dollar is a legislative Act and the Executive Branch of the U.S.Government is given no power to legislate by the soverign people. As a matter of fact Congress is to exercise exclusive legislation over the U.S.Mints by Art.1, Sec. 8, Cl. 17. Sifting the chaff from the wheat so to speak in all the Coinage Acts this Court concludes and holds that One Dollar or Unit is equal to 23.22 grains, Troy weight, of pure gold; and that One Dollar or Unit is equal to 371.25 grains, Troy weight of pure silver.

Therefore, 1/100 of a Dollar or Unit would be equal to .2322 grains of pure gold and 1/100 of a Dollar or Unit would be equal to 3.7125 grains of pure silver.

Using this formula the Dollar or Unit that is contemplated as a Tender in Payment of Debts would have to be a coin that contained both gold and silver at the rate or amount of gold and silver set out above so long as it contains some portion of both metals. The exact amount of the metals contained in the Coin should be stamped on the Coin including the person or firm who struck the Coin, with his name or seal inscribed thereupon. For instance, the Standard two Dollar piece could contain 23.22 grains of pure gold and 371.25 grains of pure silver.

This Court has examined Norman v. Baltimore & O.R. Co. 294 U.S. 240 79 Led 885 and the Legal Tender Cases 110 U.S. 421, 28 Led 204 and 12 U.S. 349, 20 Led 453. In each of these cases all of the Judges over look the fact that the word "Thing" in Article One Section 10 is Capitalized. These cases also overlook the fact that soverignty resides in the people and that Article One Section 10 is absolutely binding upon the States and State Courts.

The undersigned adopts the opinion of Mr. Justice Field in his dissent in the case of Julliard v. Greenman and refers to the same as though set out in full. The prohibitions against the State from making any Thing but gold and Silver Coin a Tender in Payment of Debts and from passing any Law impairing the obligation of Contracts must be read together. The law which is binding upon the States is binding upon the Federal Courts sitting in the States. It would be a denial of due process of Law and of the equal protection of the Laws and an impairment of Contracts if the Federal Courts sitting in the States and passing upon the Contractual rights of citizens could make some "Thing" a legal Tender in payment of debts which a State Court cannot. Such a denial of justice is expressly prohibited by the due process of law clause in the 5th amendment to the Constitution of the United States.

Further, this Court adopts the reasoning in Edwards v. Kearzey, 96 U.S. 595, 24 Led. 793 is referred to as though herein set out in full. This case holdsthat the rights and remedy subsisting when a Contract is made is a part of its obligation, and any subsequent Law of the State or the Federal Government which so affects it as to substantially impair and lessen the value of the contract is forbidden by the Constitution and is void.

A 10 day stay of execution of the Judgment entered herein is Ordered.

March 26, 1971

BY THE COURT

Robert L Mahoney

Robert L. Mahoney
Justice of the Peace
Township of Credit River
Scott County, Minnesota, U.S.A.

ADDITIONAL MEMORANDUM BY GEORGE J. KELZER
SITTING AS JUSTICE OF THE PEACE IN ASSISTANCE
TO JUSTICE ROBERT LEO MAHONEY

The undersigned, George J. Kelzer, Justice of the Peace Jackson Township, Scott County, Minnesota sitting as Justice in assistance to Justice Robert L. Mahoney hereby concurres in the foregoing Judgment and opinion.

I am in agreement. This Court cannot make any Thing but gold and silver Coin a Tender in payment of the Judgment. It must be a coin that contains only gold and silver and no other element. Congress has set the vaule and fixed the standard of weights and measures of the Dollar at 23.22 grains of pure gold for the Gold Dollar or Unit and 371.25 grains of pure silver for the Silver Dollar or Unit. The legal Tender Coin must contain both metals at the rate set by Congress. I am also in agreement that Congress cannot make it a crime for any private citizen to own, possess, buy and sell and stamp into coin gold so long as no attempt is made to make it resemble the Coins stamped out by the Mints under the authority of Congress pursuant to Law.

I would go further though on the question of the right of the Bank to remove this case to a salaried Judge and to the Municipal Court of the City of Shakopee presided over by Judge Kermit Lindmeyer. I also operate my Justice Court on a non fee basis. I do not accept or charge fees in the exercise of Judicial Power as a Judge in the Cases or Controversies that come before me.

However, it is to be noted; the salaried Municipal Judges are presided over by Licensed Attorneys, supposedly learned in the Law. They are issued their License by the Supreme Court of Minnesota. The Supreme Court appoints a Minnesota State Board of Law Examiners from members of the Minnesota State Bar Association. It is material to note that there are 36 members on the Board of Governors of the Minnesota State Bar Association. At least 28 out of the 36 members on the Board of Governors are on the Boards of Directors of various BAnks through out the State of Minnesota, or they are Counsel for one or more Banks. All 6 members on the Minnesota State Board of Law Examiners are on the Boards of Directors or are Counsel for Banks; this is the Board which gives examinations to Law School graduates upon admission to the Bar and recommends admission to the Bar and it is upon this recommendation that the Supreme Court either grants a license or withold the license. This Board also brings disbarment proceedings against Lawyers. It is further interesting to note that recently the Supreme Court appointed a new "Ethics Committee" comprised of 18 members of the Bar to investigate charges made against Lawyers and to recommend disbarment proceedings. At least 9 out of the 18 are on the Baords of Directors or are Lawyers for Banks. Richey B. Reaville of Duluth is an additional member of this Ethics Committee and is the Executive Director and Chairman of the Committee. Reaville was the head of a firm of Attorneys in Duluth that represents the First American National Bank of Duluth. He has taken a leave of

absence in January of this year to act as Chairman and Executive Director of this so called Ethics Committee at a Salary of $25,000.00 per year. Although the Minnesota Constitution states that all Bills for raising Revenue shall originate in the House of Representatives and that No Money shall be withdrawn from the State Treasury except in consequence of appropriations made by Law, the Supreme Court, by Court Order taxes all the Lawyers in this State $25.00 per year, which fee goes into the State Treasury, and which fee must be paid or the Lawyers license is automatically suspended. This fund is not withdrawn pursuant to an appropriation made by Law but rather upon Order of the Supreme Court.

It is common knowledge that regardless of the competence of a Lawyer and regardless of what his sins of commission or ommission are, if he promises not to buck this National and International Banking Conspiracy he will be left alone.It is evident that an unlawful combination and conspiracy exists between and amoung the Banks, The Minnesota State Bar Association, The Minnesota State Board of Law Examiners, This so called Ethics Committee of 19 recently appointed by the Supreme Court, its chairman Richey B. Reaville, Oscar R. Knutson, Chief Justice of the Minnesota Supreme Court, certain personel in the Executive Branch of the Government of the United States; the Department of the Treasury, Internal REvenue Service and certain Federal Judges to overthrow the Constitution of the United States. In this case Kermit Lindmeyer's pay check comes from the First National Bank of Shakopee where the City of Shakopee keeps its account. As a Licensed Lawyer, were he to try to adher to his oath to support the Constitution of the United States as at Article One Section 10 Clause 1 he would not have the life of a toad under a harrow and would have about as much chance of remaining in the Bar of Licensed Lawyers as a grasshopper would have in remaining for long in a chicken house. Lindmeyer, as a Licensed Attorney and Judge of Municipal Court is directly under the subversive influence of this group. It cannot be doubted that if he attempted to administer the Constitution as written they would make their influence felt. Not only does this Justice Court Have Jurisdiction but I would hold that Lindmeyer is disqualified because of fear of this Conspiracy. In all other respects I concur with the above decision. To further illustrate my point I attach hereto and include a copy of the Testimony of Roland Graham, Vice President and General Counsel of the Federal Reserve Bank of Minneapolis taken in the disbarment proceeding against Jerome Daly by a Referee C. Donald Odden of Duluth who was appointed by the Supreme Court of Minnesota in Supreme Court file "In Re Jerome Daly" No. 42174. It appears that the Board of Governors of the Federal Reserve System "cattle-prodded" the Minnesota Bar Assn and the Board of Law Examiners and the Supreme Court into suspending Mr. Daly's License to practice Law.

Given under my had and Seal Friday March 26, 1971.

George Joseph Kelzer

George J. Kelzer
Justice of the Peace
Township of Jackson
County of Scott
State of Minnesota, U.S.A.

Wednesday, February 11, 1970
Approximately 2:30 p.m.

(WHEREUPON, the following proceedings were duly had:)

MR. DAVIS: Mr. Graham.

ROLAND D. GRAHAM

being first duly sworn, testified as follows on behalf of the Petitioner on:

DIRECT EXAMINATION

BY MR. DAVIS:

Q Will you state your full name please.

A I am Roland D. Graham, G-r-a-h-a-m.

Q Your address, Mr. Graham?

A My address is 73 South Fifth Street, Minneapolis: Federal Reserve Bank of Minneapolis.

Q What is your profession?

A I am an attorney.

Q By whom are you employed?

A I am Vice-President and General Counsel of the Federal Reserve Bank of Minneapolis.

A Are you licensed to practice law in the state of Minnesota?

A Yes, Sir.

Q For how long a time have you been counsel for the Federal Reserve Bank of Minneapolis?

A I have been general counsel for the Federal Reserve Bank of Minneapolis since 1966; however, I was on the staff of the legal department of the bank since 1959.

Q In the course of your duties with the Federal Reserve Bank of Minneapolis, have you had occasion to be involved in litigation with one Jerome Daly?

A Yes.

Q Have you received any inquiries from other agencies of government or other persons within the banking group concerning these actions commenced by Mr. Daly?

A Well, we received several inquiries with respect to the actions commenced against our bank and especially by other Federal Reserve Banks and the Board of Governors; we kept them constantly informed of the progress in these cases as it occurred.
And there was an occasional inquiry made with reference to these cases from our office, yes.

Q Do you have any compilation or list of inquiries that were made either to you or to the board, the Federal Reserve Board?
A I have a compilation of inquiries that were made and letters sent out by the Board of Governors and the Treasury Department with reference to a case arising in Credit River, Minnesota, involving the constitutionality of the Federal Reserve System.

Q Do you have that letter with you?

(WHEREUPON, Petitioner's Exhibits 66 and 67 were duly marked for purposes of identification.

Q I show you Petitioner's Exhibit Number 66, will you identify that for the Court?

A This is a letter dated September 2, 1969, addressed to me from Mr. Robert Sanders, Assistant General Counsel of the Board of Governors of the Federal Reserve System. And Mr. Sanders sent me this list at my request, in which it contains a list of a number of responses made by the Board of Governors and the Treasury Department, in connection with inquiries received by them, certain congressional offices, relating to a case arising out of Credit River, Minnesota, and arising as a result of a publication, primarily of a publication distributed, reporting that case, entitled Myers' Finance Review.

Q And I show you Petitioner's Exhibit 67 and ask you to identify that.

A This was a subsequent Xerox copy of some articles that were referred to in that letter, which also were the basis of inquiries that we received.

CROSS-EXAMINATION

BY MR. DALY:

Q You say you have been with the Federal Reserve Bank for how long?

A For ten years; approximately ten years.

Q And you are a Vice-President of the bank?

A Yes, Sir.

Q. And you say that you have been in the practice of law in the state of Minnesota?

A Yes, Sir.

Q And also in the United States District Court?

A Yes, Sir, for the state of Minnesota.

(WHEREUPON, Respondent's Exhibit J was duly marked for purposes of identification.)

Q Showing you Respondent's Exhibit J, I will ask you if you can identify that.

A. Respondent's Exhibit J is a publication put out by the Board of Governors of the Federal Reserve System explaining its purposes and functions.

Q And what issue is that?

A According to this; this is an issue that was published in 1963.

Q Are you familiar with that, Respondent's Exhibit J?

A I am familiar with its publication; I could not cite it, all the language; but I am familiar with its publication.

Q Have you looked it over?

A Yes.

Q Generally, do you agree that the statements in there are true?

A As to the functions and so forth, yes, Sir.

Q That is the official publication of the Board of Governors, is it not?

A Yes.

MR. DALY: I offer in evidence Exhibit J.

MR. DAVIS: No objection.

THE COURT: It will be received.

Q Now, your Federal Reserve Banks, there are twelve of them in the United States, aren't there?

A That is correct.

Q And more or less the head bank is in New York, is it not?

A There is a Federal Reserve Bank of New York, that represents a second Federal Reserve District; it is a separate incorporated bank, separate from the other eleven banks, yes.

Q Now, by the way, these Federal Reserve Banks have employees, do they not?

A Yes, they do.

Q And there are none of these employees on Civil Service?

A No, Sir.

Q That is a true statement, is it not?

A Yes, Sir.

Q You are not on Civil Service, yourself?

A No, Sir.

Q And the Federal Reserve banks pay taxes to the state for the real estate they are situated upon?

A Yes, Sir.

Q And the Federal Reserve banks are owned by the member banks, are they not?

A I don't know what you mean by owned, Mr. Daly.

Q I withdraw the question. The Federal Reserve corporation is a corporation organized and existing by virtue of the laws of the United States, is that correct?

A That is correct.

Q And the member banks are required to subscribe to so much stock?

A That is correct.

Q But this is non-voting stock, isn't that correct?

A They have a right to elect six of the directors of the Federal Reserve Bank.

Q I didn't mean that; it is a stock that doesn't actually carry any rise to ownership with it, isn't that ri-ht?

A The Federal Reserve stock, owned by the member banks of the Federal Reserve System, represent the capitalization they put into the system required by law and it gives them certain limited rights as to the election of directors on the Board of the reserve banks. However, in the event of dissolution of any Federal Reserve bank, they are only entitled to their reserves, the amount of capitalization they have put into the reserve bank. And after the reserve banks have paid all of the liabilities and expenses, all the residuals go into the United States Government.

Q And the member banks, like the First National here in Minneapolis; Northwestern Nationa; they have a right to use the services of the Federal Reserve bank?

A Yes, we do provide services for them, yes.

Q And the First National Bank of Montgomery is one of your member banks?

A Yes, Sir.

Q Now, calling your attention to Page Seventy-Five in that book, will you read the last two paragraphs out loud.

A The last two paragraphs?

Q I think that is what I want.

A 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 expending 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.

Q Now, by the way, since March of 1968, there is nc gold reserve banking up circulating Federal Reserve notes?

A By legislation in 1968, there was removed from the Federal Reserve Act the requirement that Federal Reserve notes circulating, be backed at least twenty-five per cent in gold certificates.

Q That requirement was removed?

A Yes, Sir.

Q So, there is no legal requirement that the Federal Reserve notes be backed by gold or gold certificates?

A No, Sir.

Q That is a true statement, is it not?

A Yes, Sir.

Q And there is no legal requirement that it be backed by gold and silver coin?

A No, Sir.

Q That is a true statement, is it not?

A Yes, Sir.

Q Now, the mechanics, can you explain the mechanics by which the Federal Reserve bank runs its open market committee.

A Runs its open market committee?

Q Yes.

A The open market committee is not a committee of the Federal Reserve banks, Mr. Daly. It consists of seven members of the Board of Governors of the Federal Reserve System and five of the seven -- five of the twelve presidents of the Federal Reserve banks.

Q And the seven members of the Board of Governors?

A Yes, Sir.

Q Will you explain to the Court what their function is?

A The function of the Federal Open Market Committee is to meet and make policy with reference to the purchase or sale of government securities by Federal Reserve banks.

Q Now, can you elaborate on that.

A The purchase and sale of government securities by Federal Reserve Banks, under the direction of the Open Market Committee, is a device, one of the monetary tools used by the Federal Reserve System to expand on one of the Federal Reserve--

Q Expand or reduce the reserves?

A Yes.

Q Now does the Federal Reserve Bank expand its reserves?

A The reserves of the commercial banks?

Q Or its own reserves?

A The action taken with reference to the Open Market Committee and expansion of the commercial bank reserves that are required to be held in the Federal Reserve banks in their own vault, by expanding reserves of the commercial banks. This then takes out of circulation or the ability of commercial banks to expand loans or inventments. If reserves are reduced, this expands the ability of the commercial banks in the country to expand loans and investments.

Q So that seven members of the Board of Governors and the twelve presidents of the Federal Reserve banks have the control over the volume of credit that is made available to the public?

A The Open Market Committee, which consists of five of the twelve presidents of the Federal Reserve banks and the seven members of the Board of Governors, directs policy with reference to the sales or purchase of the government securities on the open market, which expands or contracts the ability of commercial banks to make loans and investments.

Q And this has a direct bearing upon the amount of money that is available to the public?

A It would have a direct bearing on the amount of money and supply of credit available.

Q Now, the Federal Reserve Bank actually creates credit on its books, does it not?

A The only way in which it creates credit is by its discount policy, in which it may credit, by making a temporary loan and credit the reserve account of that individual bank.

Q It can credit the account of the individual bank by making a loan to the bank?

A Yes, Sir, this is a loan that is repaid.

Q And when the Federal Reserve bank makes the loan or that credit first comes into existence, is when they manufacture it on the books?

A It is a credit to their reserve.

Q And it first comes into existence at that time?

A These are temporary loans.

Q And it doesn't make any difference if it is temporary or long term, the first time it comes into existence is when it is credited on the books of the bank?

A Yes, Sir.

Q And as a practical matter, this credit never leaves the books of some bank; it is transferred by check entry from one bank to another?

A The effect of that particular transaction may or may not be transmitted through the banking system, I don't know.

Q What percentage of the volume of business was done by check in this country?

A I don't have that figure, Mr. Daly; I don't know the break down upon demand deposits and currency at the present time.

Q Now, when a member bank makes a loan, what is the percentage of so-called reserves that they are supposed to have on hand?

A That is determined by the Board of Governors of the Federal Reserve System and it varies at what the Board decides.

Q What is it at present?

A It is kind of a multiple breakdown at present; my recollection is reserves are seventeen per cent reserve requirement; a sixteen per cent for the country banks, which are required to have a lower reserve.

Q In other words, when say like the First National Bank of Montgomery wants to make a loan of one hundred dollars; if it has a reserve of seventeen dollars on deposit with your bank, it can make a loan of a hundred dollars?

A If the reserve bank decides to lend it, yes; this is discretionary.

Q If the First National Bank decides to lend it?

A Now, now, an application for a loan or discount from the Federal Reserve Bank may be made; in discretion with the Federal Reserve Bank, if it feels it is an appropriate borrowing.

Q Does the First National Bank of Montgomery, do they have to get the permission of the Federal Reserve Bank of Minneapolis before they can make a loan?

A They make application for a loan and they can be turned down if the Federal Reserve Bank in Minneapolis did not deem it a good loan.

Q To an individual?

A They only make loans and discounts to banks.

Q I am talking about the individual citizen that walks into a bank and wants to borrow ten thousand dollar from the bank out in the country.

A All right.

Q Does that bank out in the country also create money on its books?

A That bank may make a loan to that individual if it has the funds available to make that loan.

Q Does that bank, the commercial banks can also create credit on their books?

A To the extent that the reserve or equity at the position permits them to make a loan in accordance with their policy. They can do this by issuing a cashier's check, which is a liability in the bank or do so by crediting the deposit account of that individual.

Q To what extent can they do that?

A I guess I don't follow your question.

Q Is there a limit upon them? Is there a limit to the extent that they can do that?

A The ultimate limit to which they would be restricted would be determined by the amount of reserves they are required to hold back, dependent upon what the reserve requirements, as established by the Board of Governors of the Federal Reserve System, are.

Q So, there is a percentage of limit?

A Yes.

Q They also create credit on their books?

A To the extent they can make loans or investments.

Q And this credit first comes into being when they create it?

A When the credit is made to the account of the customers, they have thus created a loan to the customer in the form of a deposit balance. Now, this may be drawn upon to pay off perhaps creditors of the individual, that is making the loan.

Q But in any event, this is the first time that this credit comes into existence, they create it on their books?

A Yes.

Q So, in effect, the books of the member banks, amount to a bill of credit, do they not?

A What is your definition of a bill of credit, Mr. Daly?

Q There has been some argument about that, isn't that right?

A Yes.

Q But at any rate, the credit is manufactured on the books though?

A There is a credit on the account of the customers, either that he is given in disbursed funds by means of a cashier's check or some other.

Q Now, have you had a chance to read over my publication, the Daly Eagle?

A I don't remember if I have read it through or not, Mr. Daly.

Q Have you attempted to read it?

A I believe I did read it at one time; but I don't recall all the language in it.

Q There is a picture of a note in here, on Page Twelve, a one dollar Federal Reserve note?

A Yes, Sir.

Q Is this a sample of what is in circulation?

A As currency?

Q Yes.

A It appears as though it is a Federal Reserve note, yes, Sir.

Q Well, that is a reasonably accurate portrayal, is that right?

A Yes.

Q And those notes, are they redeemable in gold dollars?

A Are they redeemable in gold dollars?

Q Yes, at your bank.

A No, Sir.

Q Are they redeemable in silver dollars at your Bank?

A No, Sir, they are not redeemable; because Congress has prohibited it. There is no redemption of gold or silver under the laws of the United States.

Q And there is no redemption in silver dollars either?

A No, Sir.

Q So, in effect, in the United States, your bank is issuing -- I will withdraw that question. The Federal Reserve notes, your various Federal Reserve Banks get those for the cost of the printing, do they not?

A You mean--

Q The notes themselves.

A The notes themselves are collateralized by the United States Government obligations or other types of debt obligations that are permitted by law. They are collateralized by the Board of Governors of the Federal Reserve System.

Q Your bank acquires United States obligations by creating credit on its books, do they not?

A I guess you might say by creating credit as permitted under the policy of the Federal Reserve, yes.

Q But the physical notes themselves, they are made up by the Bureau of Printing and Engraving?

A That is correct.

Q And that is under the control of what, the Treasury Department?

A I believe it is the Treasury Department.

Q The notes themsleves, you get these notes in denominations from one dollar up to ten thousand dollars, is that right?

A I don't believe there is a ten thousand dollar bill in circulation; but we get them in the various denominations now permitted by law.

Q And your bank gets them for the cost of the printing?

A We get them, yes; these are the actual physical notes, yes, for the cost of the printing; but they are issued as a liability to the Federal Reserve Bank of Minneapolis or whatever Federal Reserve Bank is involved.

Q And you have to deposit United States Securities with the Federal Reserve Agent in order to get whatever quantity of these notes that you get?

A They have to be collateralized with the Board of Governors through the Federal Reserve Agent, who acts as an agent of the Federal Reserve.

Q Where is his office?

A The Feceral Reserve Agent is the same as the Chairman of the Federal Reserve Bank. He serves as a Federal Reserve Agent, a representative of the Board of Governors, and the obligations are collateralized before him.

Also, before a Federal Reserve Bank may issue, it must make application to him, through the Board of Governors, Board of the Federal Reserve System; he does not have authority to issue Federal Reserve Notes.

Q You got those notes for the cost of the printing isn't that right?

A The physical notes.

Q And these are the notes that the public is using every day up and down the street as part of their pocket cash?

A This is legal tender under the laws of the United States, yes.

Q You claim it is legal tender?

A It is under the statutes of the United States, yes.

Q Well, now, there are notes in circulation that state say the Federal Reserve Bank say of Minneapolis, there are notes in circulation that state: This note is redeemable in lawful money?

A Yes, Sir.

Q At the Treasury or at any Federal Reserve Bank upon demand, isn't that right?

A I don't believe the recent issues of this Federal Reserve note contain the language. For example, I don't think this one: This note is legal tender for all debts, public and private.

Q And the new ones are coming out, replacing the old ones that indicate they are redeemable in lawful money?

A Yes, Sir, I think there was a change in that.

Q Is there any statutory authority for your bank to issue notes that are not redeemable in lawful money?

A Section 16 of the Federal Reserve Act.

Q You have got that?

A I don't believe I have the Federal Reserve Act.

Q What section did you say?

A Section 16.

THE COURT: We will take a fifteen minute recess.

Q (By Mr. Daly, continuing) Well, now, I direct your attention to Page 69 of that Daly Eagle. They are numbered on the side.

A Yes.

Q Section 411, Federal Reserve Notes, do you see that?

A Yes, Sir.

Q It states: 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.

A Yes, Sir.

Q Is that statute still in existence?

A Yes, Sir, this is Section 16 that I referred to.

Q This is the one you called Section 16?

A Yes, Sir.

Q Well, now that first sentence indicates that the only purpose of Federal Reserve Notes are between Federal Reserve Banks and national banks, isn't that right?

A This statement says that Federal Reserve Notes shall be issued at the discretion of the Board of Governors and 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. This reference is that all national and member banks receive these as obligations of the United States.

There is a Section, Title 31, 329: All currency of the United States, including Federal Reserve Notes, shall be legal tender for all debts, public and private.

Q Let's get back here to Section 411. The first sentence indicates that the notes are for making advances to Federal Reserve Banks through the Federal reserve agents as hereinafter set forth and for no other purpose, are authorized.

A Yes.

Q Then it goes on to say: 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.

A Yes, Sir.

Q They shall be redeemable 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.

A Yes, Sir.

Q The promise to redeem the notes in lawful money at any Federal Reserve bank is not contained on your new notes, isn't that right?

A The words "lawful money" in here would refer to all lawful money of the United States. The language in here was substituted back, I believe, back in the days when we went off the gold standard. They replaced it with redeemable indigo, lawful money would include Federal Reserve notes. It is an anachronism in the statute.

Q I don't care what you want to call it; your notes don't comply with the statute, the new ones.

A In what way?

Q There is no promise to pay redeemable in lawful money, upon demand at the Federal Reserve bank.

A If a Federal Reserve note is redeemed at a Federal Reserve Bank, we can send them other Federal Reserve notes or coins; they are all legal tender.

Q Whose idea was it to take off the Federal Reserve notes the language: This note is redeemable upon demand at any Federal Reserve bank or at the United States Treasury?

A I have no idea, Mr. Daly; I can assure you, it wasn't me.

Q Do you know why it was taken off?

A No.

Q But the notes are issued pursuant to this statute, 411?

A This statute, 411; 412; the entire section, yes.

Q 418 indicates the denominations they may be printed in on Page Seventy, isn't that right?

A Yes, Sir. I don't know if this was; there was an amendment to this, Mr. Daly, and I don't know if this contains the amended language or not.

Q June 4, 1963; do you know when it was amended?

A I don't remember the date of the last amendment. However, they are in denominations of one, five, ten, twenty, one hundred, five hundred and one thousand dollars.

Q But in any event, your Federal Reserve notes are not redeemable in gold and silver coin.

A No, Sir.

Q And they are not redeemable in standard silver dollars?

A No, they are not redeemable in standard silver dollars.

Q That is right.

A They would be redeemable to the extent that people would pay a silver dollar; but a silver dollar is not available, as I understand.

Q If you took a hundred dollar bill off to your bank and say this note is redeemable in lawful money at the United States Treasury or any Federal Reserve bank, you couldn't come up with a hundred?

A We could come up with a hundred dollars in Federal Reserve notes or coin. Any currency that is legal tender of the United States; this would serve the same medium of exchange for whoever redeemed the note, as any other currency.

Q Could you produce a hundred silver dollars, containing four hundred twelve and a half grains of silver?

A I couldn't.

Q I mean your bank.

A I don't know, very frankly, whether there are any silver dollars there or not; it is not my function.

Q Well, are you familiar with the statute, Section 314 of Title 31?

A I don't recall.

Q The dollar of gold nine-tenths fine consisting of the weight determined under the provisions of Section 821 of this title shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the Secretary of Treasury to maintain such parity. Do you have any dollars, that is gold dollars, in your bank that comply with that section?

A Not that I am aware of. It is my recollection, Mr. Daly, that the United States went off the gold standard in 1933 and 1934 and the gold dollars are no longer minted.

Q But this statute is still on the books?

A I don't know; I am not familiar with that section.

Q Well, now, I believe you indicated that you had some correspondence from the head office of the Board of Governors of the Federal Reserve System?

A Yes, Sir.

Q With yourself, for purposes of following it to the Bar Association, is that right?

A This arose, because I had heard that there was some testimony being given before the Ethics Committee with reference to the Credit River proceeding. I talked to Mr. Orren with the Ethics Committee and indicated I had a number of telephone calls with respect to the Credit River proceeding and I acknowledged they had received a number of inquiries down at the Board, at the Treasury Department, arising out of the Myers' Finance Publication.

Q This is Myers' Finance Review?

A Yes.

Q From Calgary, Alberta, Canada?

A Yes, Sir.

Q Did you ever see his review before this?

A Before today? I had seen copies of a publication, I believe, that was dated May 27, 1969.

Q May 27, 1969?

A Yes, Sir.

Q And this is the first publication in which he published it, is that right?

A Published what, I am sorry.

Q This story with reference to the Credit River verdict?

A I don't know, Mr. Daly, I just saw the May 27th issue.

(WHEREUPON, Respondent's Exhibit K was marked for purposes of identification.)

Q Do you recognize that as a copy that you saw?

A Yes, Sir.

Q And how soon after May 27th of 1969 did you see that?

A The only one I recollect was a publication that came out, I believe, in June. I don't subscribe to the publication.

Q Well, it is fair to say that you gentlemen that are counsel for the Federal Reserve banks and the general counsel for the Board of Governors, you are keeping very close tab on this dispute?

A Well, as a matter of information, yes, yes.

Q And you have since 1963?

A I have transmitted all the information down to the Board of Governors, with reference to the suits, yes.

Q Showing you what has been marked as Respondent's Exhibit N, which is a copy of Myers' Finance Review, September 5, 1969, on Page Three, there is an answer from William McChesney Martin. I wonder if you would read that please.

A Right here?

Q Right.

A "Dear Mr. Myers: "Thank you very much for your recent letter in which you make reference to my recent correspondence with Mr. William E. Johnson of Rome, Georgia.

"Upon receipt of your letter, I contacted the Board of Governors of the Federal Reserve System concerning this matter, and with the thought that you might find it of interest, I am enclosing herewith a copy of the response I received. Sincerely, Herman E. Talmadge."

Do you want me to continue?

Q Yes.

A The letter which Senator Talmadge enclosed was signed by William McChesney Martin, Jr. Mr. Martin reviewed the case of the First National Bank of Montgomery v. Jerome Daly, and stated further:

" On June 20, 1969, in connection with Joyce v. Northwestern State Bank of Appleton, U.S.D.C. Minnesota file number 3-68 Civil 32, the Court issued a permanent injunctionagainst Mr. Daly '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 claims regarding unlawful creation of money and credit."

"On the substantive legal questions involved, it should be noted that the Constitutional authority of the Congress to enact a law making Treasury notes legal tender was upheld in 1884 in the Legal Tender Case (U.S. Reports, volume 110, page 421). The most recent legislation in this area is the Coinage Act of 1965, which provides that 'All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations), regardless of when coined or issued, shall be legal tender for all debts, public and private, public charges, taxes duties and dues' (United States Code title 31, section 392). We feel confident that the Supreme Court would hold this Act of Congress constitutional for reasons similar to those it found persuasive in the Legal Tender Case."

Q You never saw that letter, is that right, or a copy of it?

A My recollection is that this is a letter -- I don't recall seeing that specific letter. I believe there is a letter that was drafted of that language or similar language for response to inquiries that came in.

Q Now, there is something I wanted to talk to you about. Do you have any gold and silver coin in your bank over here at the Federal Reserve bank?

A Mr. Daly, we have no gold coin; we are not permitted by law to have gold coin. Now, when you refer to silver coin, what are you referring to? Pure silver coin?

Q No, the Constitution of the United States states that no state shall make any Thing, and the thing is capitalized, but gold and silver Coin as legal tender in payment of debts; and the word coin is capitalized and the word tender is capitalized; payment is capitalized and debts is capitalized. I am talking about a coin that has both gold and silver in it; both.

A No, Sir, we do not have any coins that have both gold and silver.

Q How do you know you don't.

A It would be in violation of law.

Q Did you ever see a coin that had both gold and silver in it?

A A mixture of gold and silver?

Q Yes.

A No, I have not.

Q Do you know there was such a coin?

A I didn't have any knowledge there was a coin that had both gold and silver; unless, are you referring to the gold coins that were minted prior to the 1930's?

Q Prior to 1873.

A No, Sir, I am not familiar with them.

Q Have you ever seen one?

A No.

Q Prior to 1873, there is evidence in here by the Act of 1792 and the Act of Congress of 1837, the gold dollar pieces, two-and-a-half dollar and five and ten and twenty dollar pieces, contained, I believe, to the dollar, 25.8 grains of gold, nine-tenths fine and with an alloy of silver and copper, one-tenth of the coin was to be alloy and the alloy of silver and copper was not to exceed one half silver; you have never seen a coin like that?

A No, Sir not that I am aware of.

Q The Constitutional provision does say gold and silver; it doesn't say gold or silver; it says gold and silver?

A Yes, Sir, that makes a reference to the state, doesn't it?

Q That is right.

A Yes, Sir.

Q And you agree with the proposition that Congress can't authorize the state to violate a prohibition.

A The Congress can't authorize--

Q To violate a prohibition against the state.

A In my opinion, the federal government could not authorize a state to violate the Constitution, no.

Q Congress can't pass a law authorizing this state to violate the Constitution?

A I wouldn't think so, no.

Q So, in other words, Congress couldn't pass a law authorizing a state to grant a title of nobility?

A Would you describe what a title of nobility is?

Q Making you king of Minnesota?

A No, I am afraid, in my opinion, Congress could not authorize the state to make me king of Minnesota.

Q Congress couldn't authorize the state or the state officials, from making anything but gold and silver coin as legal tender of debts?

A Anything but?

Q That is right.

A I don't think Congress can authorize a state to make gold coin a legal tender of debts, Mr. Daly.

Q I said any thing but gold or silver a tender of legal debts.

A You are saying that Congress cannot authorize a state to have any constitutional authority, other than an alleged constitutional authority to make gold coin and issue gold coin?

Q Listen to my question very carefully: Congress cannot authorize a state to "Make any Thing but gold and silver Coin as legal Tender in Payment of Debts."

A Well, if you are citing a section of the Constitution, then I would go along with what the section of the Constitution states. I would also state that since the 1930's, gold coin is not a legal tender for the payment of debts.

Q Well, it has been outlawed by Congressional statute, isn't that right?

A By Congressional statute, yes, Sir.

Q Whether that is constitutional or not is still no question?

Q By the way, are you acquainted with how much gold is left in the United States Government Depository at Fort Knox at the present time?

A No, Sir.

Q Do you know anything about it?

A In what way?

Q What quantity is there?

A I don't know.

Q What is your best guess?

A My recollection is the last published report I have ever seen as to the amount of gold and this, in any way, is no official statement, this is my recollection; the last published report I have seen as to the amount of gold, owned by the United States, is somewhere in the neighborhood of twelve billion dollars.

Q You don't know where its location is?

A I have no official knowledge of where its location is, no; only the knowledge that any member of the public, that it is in Fort Knox.

Q What has the gossip been around the Federal Reserve bank as to how much there is there?

A I don't believe I know of any gossip around the Federal Reserve bank as to the amount of gold.

Q Have you ever seen the gold in the Federal Reserve bank of New York?

A Yes, I have.

Q Is there any left there?

A Yes, Sir, the last time I was there.

Q How much?

A I have no knowledge of the amount of gold.

Q What is your best estimate?

A I don't know.

Q Now, the Federal Reserve bank of New York has suspended payment in coin or bullion of gold and silver, isn't that right?

A I would assume that they have suspended the payment of redemption of Federal Reserve notes in gold or silver bullion, yes.

Q Or gold and silver coin?

A Otherwise, they would be in violation of law.

Q You mean of Congressional statute?

A Of Congressional statute.

Q Is that the statute we talked about the other day?

A Which one?

Q Authorizing one dollar Federal Reserve notes.

A No, it is my recollection that the redeeming of currencies of the United States in gold is prohibited since the 30's.

Q And by the way, the Board of Governors of the Federal Reserve System are independent of the control by Congress, are they not?

A No, Sir, that is not true.

Q Well, can you elaborate on why it is not true?

A The Federal Reserve System was established by Congress under the Federal Reserve Act, by legislation enacted by Congress; it can be modified or revoked by Congress.

Q But at the present time, Congress exercises no control over them?

A Are you talking about control over the decisions, policy decisions made by the Federal Reserve?

Q Right.

A There is no specific law I am aware of that any Congressman can effectuate a policy decision upon the Federal Reserve.

Q That is what I am driving at.

A Yes.

Q And the Board of Governors of the Federal Reserve System controls volume of credit that is put into circulation?

A The policy decisions of the Board of Governors, Mr. Daly, influences the supply of money and credit in the contry, yes; I think that is a fair statement.

Q And that, under the present laws, is independent of any act of Congress?

A The policy decisions, I am aware of, are not subject to any Congressional mandate, that is correct.

Q And the determination of the interest rate is not subject to any Congressional mandate?

A No, Sir, I think the determination of the interest rate is a result of the market place, are you talking about?

Q Actions of the Open Market Committee?

A Actions of the Open Market Committee could have an influence on the level of interest rates.

Q Isn't that set by basically, it is set or controlled, that is the prime rate is set and controlled by the Board of Governors?

A The prime rate, no.

Q Pardon me?

A no.

Q What do they do with reference to the interest rate?

A The only interest rate, I think you are referring to, is a discount rate, established by the Federal Reserve banks. The discount rate is established initially by the Board of Directors of Federal Reserve banks, subject to review and determination by the Board of Governors. The discount rate is the rate charged against member banks of the Federal Reserve System, who make loans or discounts at Federal Reserve banks.

Q Isn't it pure and simple, the rate of interest that the Federal Reserve bank charges the member banks for the credit that they create on their books?

A Would you repeat that one?

Q To use simple language: Isn't the rate of interest that the Federal Reserve bank charges the member banks for credit they create on their books?

A This is for loans or advances given to member banks, yes.

Q And these loans and advancements are created on the books of the Federal Reserve bank?

A The making of a loan or discount is effected of a credit to the reserve account of a member bank.

Q When they create the credit on their books, it comes into existence?

A Yes.

Q This discount rate is set by the Board of Governors of the Federal Reserve System?

A The discount rate is initially set by the Boards of Directors of reserve banks, independently; they are subject to review and determination of the Board of Governors in the Federal Reserve System.

Q So if all of the member banks get together and agree to set the discount rate, that is the federal reserve banks get together and set the discount rate, the Board of Governors doesn't have anything to say about it?

A They have to approve a discount rate.

Q And the people in charge of the Federal Reserve banks are not, none of them are government employees as such?

A Of the Federal Reserve banks?

Q Right.

A None of them are under Civil Service, no.

Q And none of them are government employees as such then?

A No, Sir, they are not under Civil Service.

MR. DALY: I think that is all the questions I have.

EXAMINATION

BY MR. DAVIS:

Q In Respondent's Exhibit PP appears a letter dated September 5, 1969, purported to be signed by you, directed to Harding A Orren; do you recognize that?

A Yes, Sir.

Q Will you tell the Court when you first had any kind of communication with Mr. Orren?

A Just prior to this letter, I had a conversation with Mr. Orren and informed him that it was my understanding that the Board of Governors was receiving a number of inquiries with respect to the proceedings at Credit River. I then called Mr. Orren and informed him of this fact and asked him whether or not he was interested in this particular fact and he said he was.

I then called the Board of Governors and requested the list that was introduced in evidence. I then sent Mr. Orren that list together with a copy of Myers' Finance Review and the Daly Eagle. This is the covering letter, yes.

Q Will you identify Mr. Orren for us please.

A I have never met Mr. Orren; I believe he was a member of the Ethics Committee at that time.

Q Have you had any contact, other than that, with Mr. Orren?

A No, I have not.

J. Effect of Unconstitutional Statutes

1. In General

§ 148. Generally.—The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law,[20] but is wholly

[11] Viemeister v. White, 179 N. Y. 235, 72 N. E. 97, 70 L.R.A. 796, 103 Am. St. Rep. 859, 1 Ann. Cas. 334.

[12] Muller v. Oregon, 208 U. S. 412, 52 L. ed. 551, 28 S. Ct. 324, 13 Ann. Cas. 957; People v. Charles Schweinler Press, 214 N. Y. 395, 108 N. E. 639, L.R.A. 1918A, 1124, Ann. Cas. 1916D, 1059, writ of error dismissed in 242 U. S. 618, 61 L. ed. 530, 37 S. Ct. 214.

[13] Viemeister v. White, 179 N. Y. 235, 72 N. E. 97, 70 L.R.A. 796, 103 Am. St. Rep. 859, 1 Ann. Cas. 334; State v. Sherman, 18 Wyo. 169, 105 P. 299, 27 L.R.A.(N.S.) 898, Ann. Cas. 1912C, 819, wherein it was said in reference to a statute regulating the making of small loans that it is a matter of common knowledge that such loans are usually made to persons of small means, who, by reason of their actual or supposed necessities, are compelled to deal with, and yield to, the demands of those engaged in that business.

[14] See supra, § 145.

[15] Ex parte Kair, 28 Nev. 127, 80 P. 463, 113 Am. St. Rep. 817, 6 Ann. Cas. 893.
See Labor [Also 16 R. C. L. p. 489, § 62].

[16] W. C. Ritchie & Co. v. Wayman, 244 Ill. 509, 91 N. E. 695, 27 L.R.A.(N.S.) 994.
For a detailed treatment of this question, see Labor [Also 16 R. C. L. p. 485, § 60].

[17] People v. Detroit United R. Co. 134 Mich. 682, 97 N. W. 36, 63 L.R.A. 746, 104 Am. St. Rep. 626.

[18] Beach v. Bradstreet, 85 Conn. 344, 82 A. 1030, Ann. Cas. 1913B, 946.

[19] People v. Elerding, 254 Ill. 579, 98 N. E. 982, 40 L.R.A.(N.S.) 893.

[20] Chicago, I. & L. R. Co. v. Hackett, 228 U. S. 559, 57 L. ed. 966, 33 S. Ct. 581; United States v. Realty Co. 163 U. S. 427, 41 L. ed. 215, 16 S. Ct. 1120; Huntington v. Worthen, 120 U. S. 97, 30 L. ed. 588, 7 S. Ct. 469; Norton v. Shelby County, 118

void,[1] and in legal contemplation is as inoperative as if it had never been passed.[2] Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted.[3] Moreover, a construction of a statute which brings it in conflict with the Constitution will nullify it as effectually as if it had, in express terms, been enacted in conflict therewith.[4]

Since an unconstitutional law is void, the general principles follow that it imposes no duties,[5] confers no rights,[6] creates no office,[7] bestows no power or

U. S. 425, 30 L. ed. 178, 6 S. Ct. 1121; Ex parte Royall, 117 U. S. 241, 29 L. ed. 868, 6 S. Ct. 734; Ex parte Siebold, 100 U. S. 371, 25 L. ed. 717; Texas Co. v. State, 31 Ariz. 485, 254 P. 1060, 53 A.L.R. 258; Quong Ham Wah Co. v. Industrial Acci. Commission, 184 Cal. 26, 192 P. 1021, 12 A.L.R. 1190, writ of error dismissed in 255 U. S. 445, 65 L. ed. 723, 41 S. Ct. 373; Hirsh v. Block, 50 App. D. C. 56, 267 F. 614, 11 A.L.R. 1238, writ of certiorari denied in 254 U. S. 640, 65 L. ed. 452, 41 S. Ct. 13; State ex rel. Nuveen v. Greer, 88 Fla. 249, 102 So. 739, 37 A.L.R. 1298; Security Sav. Bank v. Connell, 198 Iowa, 564, 200 N. W. 8, 36 A.L.R. 486; Opinion of Justices, 269 Mass. 611, 168 N. E. 536, 66 A.L.R. 1477; Garden of Eden Drainage Dist. v. Bartlett Trust Co. 330 Mo. 554, 50 S. W. (2d) 627, 84 A.L.R. 1078; Anderson v. Lehmkuhl, 119 Neb. 451, 229 N. W. 773, citing R. C. L.; Daly v. Beery, 45 N. D. 287, 178 N. W. 104, citing R. C. L. (concurring opinion); Threadgill v. Cross, 26 Okla. 403, 109 P. 558, 138 Am. St. Rep. 964; Atkinson v. Southern Exp. Co. 94 S. C. 444, 78 S. E. 516, 48 L.R.A.(N.S.) 349; Ex parte Hollman, 79 S. C. 9, 60 S. E. 19, 21 L.R.A.(N.S.) 242, 14 Ann. Cas. 1105; Henry County v. Standard Oil Co. 167 Tenn. 485, 71 S. W. (2d) 683, 93 A.L.R. 1483; Peay v. Nolan, 157 Tenn. 222, 7 S. W. (2d) 815, 60 A.L.R. 408; State v. Candland, 36 Utah, 406, 104 P. 285, 24 L.R.A.(N.S.) 1260, 140 Am. St. Rep. 834; Miller v. State Entomologist (Miller v. Schoene) 146 Va. 175, 135 S. E. 813, 67 A.L.R. 197, affirmed in 276 U. S. 272, 72 L. ed. 568, 48 S. Ct. 246; Bonnett v. Vallier, 136 Wis. 193, 116 N. W. 885, 17 L.R.A.(N.S.) 486, 128 Am. St. Rep. 1061.

Annotation: 3 Ann. Cas. 581.

A discriminatory law is, equally with the other laws offensive to the Constitution, no law at all. Quong Ham Wah Co. v. Industrial Acci. Commission, 184 Cal. 26, 192 P. 1021, 12 A.L.R. 1190, writ of error dismissed in 255 U. S. 445, 65 L. ed. 723, 41 S. Ct. 373.

[1] Ex parte Royall, 117 U. S. 241, 29 L. ed. 868, 6 S. Ct. 734; Ex parte Siebold, 100 U. S. 371, 25 L. ed. 717; Cohen v. Virginia, 6 Wheat. (U. S.) 264, 5 L. ed. 257; State ex rel. Nuveen v. Greer, 88 Fla. 249, 102 So. 739, 37 A.L.R. 1298; Henderson v. Lieber, 175 Ky. 15, 192 S. W. 830, 9 A.L.R. 620; Opinion of Justices, 269 Mass. 611, 168 N. E. 536, 66 A.L.R. 1477; Michigan State Bank v. Hastings, 1 Dougl. (Mich.) 225, 41 Am. Dec. 549; Garden of Eden Drainage Dist. v. Bartlett Trust Co. 330 Mo. 554, 50 S. W. (2d) 627, 84 A.L.R. 1078; Anderson v. Lehmkuhl, 119 Neb. 451, 229 N. W. 773, citing R. C. L.; State v. Tufly, 20 Nev. 427, 22 P. 1054, 19 Am. St. Rep. 374; State v. Williams, 146 N. C. 618, 61 S. E. 61, 17 L.R.A.(N.S.) 299, 14 Ann. Cas. 562; Daly v. Beery, 45 N. D. 287, 178 N. W. 104, citing R. C. L. (concurring opinion); Atkinson v. Southern Exp. Co. 94 S. C. 444, 78 S. E. 516, 48 L.R.A.(N.S.) 349; Ex parte Hollman, 79 S. C. 9, 60 S. E. 19, 21 L.R.A.(N.S.) 242, 14 Ann. Cas. 1105; Henry County v. Standard Oil Co. 167 Tenn. 485, 71 S. W. (2d) 683, 93 A.L.R. 1483; Peay v. Nolan, 157 Tenn. 222, 7 S. W. (2d) 815, 60 A.L.R. 408; Miller v. State Entomologist (Miller v. Schoene) 146 Va. 175, 135 S. E. 813, 67 A.L.R. 197, affirmed in 276 U. S. 272, 72 L. ed. 568, 48 S. Ct. 246; Servonitz v. State, 133 Wis. 231, 113 N. W. 277, 126 Am. St. Rep. 955.

Annotation: 22 Am. St. Rep. 649.

[2] Chicago, I. & L. R. Co. v. Hackett, 228 U. S. 559, 57 L. ed. 966, 33 S. Ct. 581; Norton v. Shelby County, 118 U. S. 425, 30 L. ed. 178, 6 S. Ct. 1121; Louisiana v. Pilsbury, 105 U. S. 278, 26 L. ed. 1090; Gunn v. Barry, 15 Wall. (U. S.) 610, 21 L. ed. 212; Texas Co. v. State, 31 Ariz. 485, 254 P. 1060, 53 A.L.R. 258; Hirsh v. Block, 50 App. D. C. 56, 267 F. 614, 11 A.L.R. 1238, writ of certiorari denied in 254 U. S. 640, 65 L. ed. 452, 41 S. Ct. 13; Security Sav. Bank v. Connell, 198 Iowa, 564, 200 N. W. 8, 36 A.L.R. 486; Cooke v. Iverson, 108 Minn. 388, 122 N. W. 251, 52 L.R.A.(N.S.) 415; Clark v. Grand Lodge, B. R. T. 328 Mo. 1084, 43 S. W. (2d) 404, 88 A.L.R. 150; St. Louis v. Polar Wave Ice & Fuel Co. 317 Mo. 907, 296 S. W. 993, 54 A.L.R. 1082; Anderson v. Lehmkuhl, 119 Neb. 451, 229 N. W. 773, citing R. C. L.; Daly v. Beery, 45 N. D. 287, 178 N. W. 104, citing R. C. L. (concurring opinion); Atkinson v. Southern Exp. Co. 94 S. C. 444, 78 S. E. 516, 48 L.R.A.(N.S.) 349; Henry County v. Standard Oil Co. 167 Tenn. 485, 71 S. W. (2d) 683, 93 A.L.R. 1483; State v. Candland, 36 Utah, 406, 104 P. 285, 24 L.R.A.(N.S.) 1260, 140 Am. St. Rep. 834; Bonnett v. Vallier, 136 Wis. 193, 116 N. W. 885, 17 L.R.A.(N.S.) 486, 128 Am. St. Rep. 1061.

[3] Clark v. Grand Lodge, B. R. T. 328 Mo. 1084, 43 S. W. (2d) 404, 88 A.L.R. 150.

[4] Gilkeson v. Missouri P. R. Co. 222 Mo. 173, 121 S. W. 138, 24 L.R.A.(N.S.) 844, 17 Ann. Cas. 763; Peay v. Nolan, 157 Tenn. 222, 7 S. W. (2d) 815, 60 A.L.R. 408.

[5] Norton v. Shelby County, 118 U. S. 425, 30 L. ed. 178, 6 S. Ct. 1121; Security Sav. Bank v. Connell, 198 Iowa, 564, 200 N. W. 8, 36 A.L.R. 486; Anderson v. Lehmkuhl, 119 Neb. 451, 229 N. W. 773, citing R. C. L.; Daly v. Beery, 45 N. D. 287, 178 N. W. 104, citing R. C. L. (concurring opinion); Henry County v. Standard Oil Co. 167 Tenn. 485, 71 S. W. (2d) 683, 93 A.L.R. 1483; State v. Candland, 36 Utah, 406, 104 P. 285, 24 L.R.A.(N.S.) 1260, 140 Am. St. Rep. 834.

[6] Chicago, I. & L. R. Co. v. Hackett, 228 U. S. 559, 57 L. ed. 966, 33 S. Ct. 581; Norton v. Shelby County, 118 U. S. 425, 30 L. ed. 178, 6 S. Ct. 1121; Hirsh v. Block, 50 App. D. C. 56, 267 F. 614, 11 A.L.R. 1238, writ of certiorari denied in 254 U. S. 640

authority on anyone,[8] affords no protection,[9] and justifies no acts performed under it.[10] No one is bound to obey an unconstitutional law[11] and no courts are bound to enforce it[12] because only the valid legislative intent becomes the law to be enforced by the courts.[13]

A void act cannot be legally inconsistent with a valid one.[14] Moreover, an unconstitutional law cannot operate to supersede any existing valid law.[15] Accordingly, 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.[16] A judgment of any court which is based on an unconstitutional law—it has been said—has no legitimate basis at all and is not to be treated as a judgment of a competent tribunal.[17] Furthermore, courts of other states are not required to give to it the full faith and credit commanded by the provisions of the United States Constitution as to the public acts, records, and judicial proceedings of other states.[18]

A contract which rests on an unconstitutional statute is void[19] and creates no obligation to be impaired by subsequent legislation.[20]

These general principles apply to the Constitutions as well as to the laws of the several states in so far as they are repugnant to the Constitution and laws of the United States.[1]

65 L. ed. 452, 41 S. Ct. 13; Security Sav. Bank v. Connell, 198 Iowa, 564, 200 N. W. 8, 36 A.L.R. 486; Garden of Eden Drainage Dist. v. Bartlett Trust Co. 330 Mo. 554, 50 S. W. (2d) 627, 84 A.L.R. 1078; St. Louis v. Polar Wave Ice & Fuel Co. 317 Mo. 907, 296 S. W. 993, 54 A.L.R. 1082; Henry County v. Standard Oil Co. 167 Tenn. 485, 71 S. W. (2d) 683, 93 A.L.R. 1483.

[7] Norton v. Shelby County, 118 U. S. 425, 30 L. ed. 178, 6 S. Ct. 1121; Security Sav. Bank v. Connell, 198 Iowa, 564, 200 N. W. 8, 36 A.L.R. 486.

[8] Felix v. Wallace County, 62 Kan. 832, 62 P. 667, 84 Am. St. Rep. 424; Henderson v. Lieber, 175 Ky. 15, 192 S. W. 830, 9 A.L.R. 620; Anderson v. Lehmkuhl, 119 Neb. 451, 229 N. W. 773, citing R. C. L.; Daly v. Beery, 45 N. D. 287, 178 N. W. 104, citing R. C. L. (concurring opinion).

[9] Huntington v. Worthen, 120 U. S. 97, 30 L. ed. 588, 7 S. Ct. 469; Norton v. Shelby County, 118 U. S. 425, 30 L. ed. 178, 6 S. Ct. 1121; Highway Comrs. v. Bloomington, 253 Ill. 164, 97 N. E. 280, Ann. Cas. 1913A, 471; Security Sav. Bank v. Connell, 198 Iowa, 564, 200 N. W. 8, 36 A.L.R. 486; St. Louis v. Polar Wave Ice & Fuel Co. 317 Mo. 907, 296 S. W. 993, 54 A.L.R. 1082; Anderson v. Lehmkuhl, 119 Neb. 451, 229 N. W. 773, citing R. C. L.; State v. Williams, 146 N. C. 618, 61 S. E. 61, 17 L.R.A.(N.S.) 299, 14 Ann. Cas. 562; Daly v. Beery, 45 N. D. 287, 178 N. W. 104, citing R. C. L. (concurring opinion); Atkinson v. Southern Exp. Co. 94 S. C. 444, 78 S. E. 516, 48 L.R.A.(N.S.) 349; State v. Candland, 36 Utah, 406, 104 P. 285, 140 Am. St. Rep. 834; Bonnett v. Vallier, 136 Wis. 193, 116 N. W. 885, 17 L.R.A.(N.S.) 486, 128 Am. St. Rep. 1061.

The text statement is very general. For detailed treatment, see infra, § 149.

[10] Osborn v. Bank of United States, 9 Wheat. (U. S.) 738, 6 L. ed. 204.

[11] State ex rel. Clinton Falls Nursery Co. v. Steele County, 181 Minn. 427, 232 N. W. 737, 71 A.L.R. 1190; St. Louis v. Polar Wave Ice & Fuel Co. 317 Mo. 907, 296 S. W. 993, 54 A.L.R. 1082; Anderson v. Lehmkuhl, 119 Neb. 451, 229 N. W. 773, citing R. C. L.; State v. Williams, 146 N. C. 618, 61 S. E. 61, 17 L.R.A.(N.S.) 299, 14 Ann. Cas. 562; Daly v. Berry, 45 N. D. 287, 178 N. W. 104, citing R. C. L. (concurring opinion).

[12] Chicago, I. & L. R. Co. v. Hackett, 228 U. S. 559, 57 L. ed. 966, 33 S. Ct. 581; United States v. Realty Co. 163 U. S. 427, 41 L. ed. 215, 16 S. Ct. 1120; Hammond v. Clark, 136 Ga. 313, 71 S. E. 479, 38 L.R.A.(N.S.) 77; Anderson v. Lehmkuhl, 119 Neb. 451, 229 N. W. 773, citing R. C. L.; State v. Williams, 146 N. C. 618, 61 S. E. 61, 17 L.R.A.(N.S.) 299, 14 Ann. Cas. 562; Daly v. Beery, 45 N. D. 287, 178 N. W. 104, citing R. C. L. (concurring opinion).

[13] State ex rel. Clarkson v. Phillips, 70 Fla. 340, 70 So. 367, Ann. Cas. 1918A, 138.

[14] Re Spencer, 228 U. S. 652, 57 L. ed. 1010, 33 S. Ct. 709.

[15] Chicago, I. & L. R. Co. v. Hackett, 228 U. S. 559, 57 L. ed. 966, 33 S. Ct. 581; State v. Savage, 96 Or. 53, 184 P. 567, 189 P. 427, citing R. C. L.

[16] See infra, § 154.

[17] Security Sav. Bank v. Connell, 198 Iowa, 564, 200 N. W. 8, 36 A.L.R. 486; Servonitz v. State, 133 Wis. 231, 113 N. W. 277, 126 Am. St. Rep. 955.

[18] Vanuxem v. Hazlehursts, 4 N. J. L. 192, 7 Am. Dec. 582.

[19] St. Louis v. Polar Wave Ice & Fuel Co. 317 Mo. 907, 296 S. W. 993, 54 A.L.R. 1082.

Annotation: 64 Am. Dec. 51.

[20] Thomas v. State, 76 Ohio St. 341, 81 N. E. 437, 10 L.R.A.(N.S.) 1112, 118 Am. St. Rep. 884.

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

§ 149. Protection of Rights.—The general rule is that an unconstitutional act of the legislature protects no one.[2] It is said that all persons are presumed to know the law, meaning that ignorance of the law excuses no one. Consequently, if any person acts under an unconstitutional statute, the general rule is that he does so at his peril and must take the consequences.[3] 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.[4] 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.[5]

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.[6] In the majority of jurisdictions it is held that reliance on a statute which subsequently is declared unconstitutional does not protect one from civil responsibility for an act in reliance thereon, which would otherwise subject him to liability.[7] 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.[8] As far as criminal responsibility is concerned, it is generally conceded that mistaken belief in, or reliance upon, the constitutionality of a statute is a good defense in a criminal prosecution.[9] It is also generally held, however, that mistaken belief in, or reliance upon, the unconstitutionality of a statute is no defense.[10]

It has been declared that an unconstitutional act cannot operate to create an office,[11] and any department of government exceeding the limits of its constitutional power acts wholly without authority and can confer no authority on others.[12] This doctrine, however, is not enforced rigorously; it is generally recognized that until a statute has been declared unconstitutional,

[2] See supra, § 148.

[3] Sumner v. Beeler, 50 Ind. 341, 19 Am. Rep. 718.
Annotation: 64 Am. Dec. 53.

[4] State ex rel. Nuveen v. Greer, 88 Fla. 249, 102 So. 739, 37 A.L.R. 1298.

[5] Ibid.

[6] Annotation: 53 A.L.R. 269.

[7] Highway Comrs. v. Bloomington, 253 Ill. 164, 97 N. E. 280, Ann. Cas. 1913A, 471; Fisher v. McGirr, 1 Gray (Mass.) 1, 61 Am. Dec. 381; Chenango Bridge Co. v. Paige, 83 N. Y. 178, 38 Am. Rep. 407.
Annotation: 53 A.L.R. 269.

[8] Texas Co. v. State, 31 Ariz. 485, 254 P. 1060, 53 A.L.R. 258.
Annotation: 53 A.L.R. 273.

[9] Annotation: 61 A.L.R. 1153.

[10] Annotation: 61 A.L.R. 1154.

[11] State v. Candland, 36 Utah, 406, 104 P. 285, 140 Am. St. Rep. 834; Bonnett v. Vallier, 136 Wis. 193, 116 N. W. 885, 17 L.R.A. (N.S.) 486, 128 Am. St. Rep. 1061.

[12] Kelley v. Bemis, 4 Gray (Mass.) 83, 64 Am. Dec. 50.
Annotation: 64 Am. Dec. 51, 55.

it is sufficient to confer on an officer acting under it such color of title as will constitute him an officer de facto.[13] Furthermore, the title to office of a successful candidate cannot be affected, after election, by a decision holding invalid the statute under which the nominations are made.[14]

Whether an unconstitutional act of the legislature is sufficient to form the basis for a corporation de facto is a question as to which the courts are not entirely agreed.[15]

The courts appear to be divided on the question as to the extent to which moral obligations may be recognized as arising out of unconstitutional laws. Some hold that persons acting under such a statute are recognized as having moral obligations sufficient to sustain appropriation for their payment from the public treasury.[16] Other courts take the opposite view.[17]

One result of the unconstitutionality of a statute is to relieve a person from the obligation of complying with provisions inserted in a contract merely to comply with the requirements of such law. In cases of that sort the binding force of the stipulations and provisions so inserted depends on the validity of the statute requiring their insertion; and if this statute is unconstitutional, these stipulations, although incorporated in the contract, are not considered as of binding force upon the parties to such contract.[18] Similarly, the acceptance of a license under a state law does not impose on the holder any obligation to comply with any provisions of the statute or regulations prescribed by the state which in fact are repugnant to the Constitution.[19]

With reference to real property the Supreme Court has indicated that possession taken under authority of a statute is under color of title even if such a statute is unconstitutional.[20]

2. Statutes Creating Criminal Offenses

§ 150. Generally.—The general principle that legal effect should not be given to unconstitutional laws[1] has been applied to statutes creating criminal offenses which are in violation of the Constitution. It has been decided that an offense created by an unconstitutional law is not a crime. A conviction under it is not merely erroneous, but is illegal and void and cannot be a legal

[13] Miller v. Dunn, 72 Cal. 462, 14 P. 27, 1 Am. St. Rep. 67; State v. Carroll, 38 Conn. 449, 9 Am. Rep. 409; State v. Pooler, 105 Me. 224, 74 A. 119, 24 L.R.A.(N.S.) 408, 134 Am. St. Rep. 543; Lang v. Bayonne, 74 N. J. L. 455, 68 A. 90, 15 L.R.A.(N.S.) 93, 122 Am. St. Rep. 391, 12 Ann. Cas. 961.
The acts of public officers, whether they are state, county, district or municipal, created by an act of the legislature, are valid as to the public and all persons having dealings with the officers antecedent to the time when the legislative act under which they were exercising authority was declared unconstitutional. Wendt v. Berry, 154 Ky. 586, 157 S. W. 1115, 45 L.R.A.(N.S.) 1101, Ann. Cas. 1915C, 493.
For general discussion, see Public Officers [Also 22 R. C. L. p. 588, § 306].

[14] People ex rel. Lindstrand v. Emmerson, 333 Ill. 606, 165 N. E. 217, 62 A.L.R. 912.

[15] See Corporations [Also 7 R. C. L. pp. 61, 62, § 43].

[16] United States v. Realty Co. 163 U. S. 427, 41 L. ed. 215, 16 S. Ct. 1120; Miller v. Dunn, 72 Cal. 462, 14 P. 27, 1 Am. St. Rep. 67.

[17] Michigan Sugar Co. v. Auditor Gen. 124 Mich. 674, 83 N. W. 625, 56 L.R.A. 329, 83 Am. St. Rep. 354; Anderson v. Lehmkuhl, 119 Neb. 451, 229 N. W. 773, citing R. C. L. wherein the court points out the two conflicting views on this question but follows the rule holding the bond or contract void.
A municipality can exercise only such powers as are conferred by law; and where a legislative enactment purports to confer upon a municipality authority to issue bonds, and such authority is in conflict with express or implied provisions of the Constitution, the enactment confers no authority, and bonds issued thereunder are void, even in the hands of bona fide holders, and the municipality is not estopped to deny the validity of the bonds. State ex rel. Nuveen v. Greer, 88 Fla. 249, 102 So. 739, 37 A.L.R. 1298.

[18] Cleveland v. Clements Bros. Constr. Co. 67 Ohio St. 197, 65 N. E. 885, 59 L.R.A. 775, 93 Am. St. Rep. 670.

[19] W. W. Cargill Co. v. Minnesota, 180 U. S. 452, 45 L. ed. 619, 21 S. Ct. 423.

[20] White v. Sparkill Realty Corp. 280 U. S. 500, 74 L. ed. 578, 50 S. Ct. 186.

[1] See supra, § 148.

cause of imprisonment; the courts must liberate a person imprisoned under it just as if there had never been the form of a trial, conviction, and sentence.[2] Thus, one imprisoned by the judgment of a court which is without jurisdiction in the premises because proceeding under an unconstitutional law may be discharged by the writ of habeas corpus.[3] There are, however, certain apparent limitations and exceptions to the general principle, occasioned either by the interests of the community or by the rights of individuals. Where a person is committed under an unconstitutional statute to an insane asylum, the general rule seems to be that he is not entitled immediately to his liberty under a writ of habeas corpus, but that the court should direct his retention for a reasonable time so that an inquisition may be had in proper form, thereby protecting the community from the presence at large of a person dangerously insane.[4]

A former conviction under an unconstitutional law, when acquiesced in by the accused, has been held to be a bar to a second prosecution for the same offense.[5] It has also been decided that a person cannot be punished for selling intoxicating liquor at a time when the prohibitory law was by decision of the highest courts of the state held to be unconstitutional, although that court subsequently changed its opinion and determined that the act was valid.[6]

3. Validation of Unconstitutional Statutes

§ 151. Generally.—While it has been broadly stated that an unconstitutional act cannot be validated by the legislature,[7] 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.[8] The distinction 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 against it, then the statute may be rendered valid by amendment, so far as its future operation may extend.[9]

2 Ex parte Siebold, 100 U. S. 371, 25 L. ed. 717; State v. Williams, 146 N. C. 618, 61 S. E. 61, 17 L.R.A.(N.S.) 299, 14 Ann. Cas. 562; Kelley v. Meyers, 124 Or. 322, 263 P. 903, 56 A.L.R. 661; Ex parte Hollman, 79 S. C. 9, 60 S. E. 19, 21 L.R.A.(N.S.) 242, 14 Ann. Cas. 1105.

Annotation: 3 Ann. Cas. 581.

If a state legislature passes an ex post facto law or a law impairing the obligation of contracts, it remains a harmless enactment on the statute book. Craig v. Missouri, 4 Pet. (U. S.) 410, 7 L. ed. 903.

3 Ex parte Bornee, 76 W. Va. 360, 85 S. E. 529, L.R.A.1915F, 1093.

For general discussion of securing the release of a person convicted under an unconstitutional law creating a criminal offense, see Habeas Corpus [Also 12 R. C. L. p. 1198, § 18].

4 Re Boyett, 136 N. C. 415, 48 S. E. 789, 67 L.R.A. 972, 103 Am. St. Rep. 944, 1 Ann. Cas. 729.

5 McGinnis v. State, 9 Humph. (Tenn.) 43, 49 Am. Dec. 697.

As to former jeopardy generally, see Criminal Law [Also 8 R. C. L. p. 134, §§ 114 et seq.].

6 State v. O'Neil, 147 Iowa, 513, 126 N. W. 454, 33 L.R.A.(N.S.) 788, Ann. Cas. 1912B, 691.

Annotation: 33 L.R.A.(N.S.) 788.

7 Thomas v. State, 76 Ohio St. 341, 81 N. E. 437, 10 L.R.A.(N.S.) 1112, 118 Am. St. Rep. 884; Atkinson v. Southern Exp. Co. 94 S. C. 444, 78 S. E. 516, 48 L.R.A. (N.S.) 349; State v. Whitesides, 30 S. C. 579, 9 S. E. 661, 3 L.R.A. 777.

Annotation: 60 L.R.A. 564.

Compare Paris Mountain Water Co. v. Greenville, 110 S. C. 36, 96 S. E. 545, citing R. C. L.

8 Allison v. Corker, 67 N. J. L. 596, 52 A. 362, 60 L.R.A. 564; State v. Cincinnati, 52 Ohio St. 419, 40 N. E. 508, 27 L.R.A. 737; Com. v. Great American Indem. Co. 312 Pa. 183, 167 A. 793, citing R. C. L. (recognizing rule).

Annotation: 60 L.R.A. 564.

9 People v. De Blaay, 137 Mich. 402, 100 N. W. 598, 4 Ann. Cas. 919; Seneca Min. Co. v. Osmun, 82 Mich. 573, 47 N. W. 25, 9 L.R.A. 770; State v. Tufly, 20 Nev. 427, 22

(See S. C. Reporter's ed. 510–535.)

Judges — interest — disqualification.

1. Officers acting in a judicial or quasi judicial capacity are disqualified by their interest in the controversy to be decided.

Constitutional law — due process — bias of judge.

2. An accused is unconstitutionally deprived of due process of law if his liberty and property are subjected to the judgment of a court the judge of which has a direct and substantial pecuniary interest in reaching a conclusion against him.

Constitutional law — fine sole source of judge's costs — effect.

3. One accused of violating the liquor law is unconstitutionally deprived of due process of law by being subjected to trial before a mayor the sole source of whose costs will be the fine imposed upon accused, unless the costs are so small that they may properly be ignored as within the maxim "de minimis non curat lex."

Constitutional law — when interest of judge becomes material.

4. The possibility of a mayor receiving $12 as costs for conviction of one accused of violating the liquor law, and whose emoluments from such source amount to about $100 per month, in addition to his salary, is not an interest so minute, remote, trifling, or insignificant that his sitting as judge in the case will not deprive accused of due process of law.

Constitutional law — failure to provide due process — prejudiced judge.

5. A statute seeking to stimulate small municipalities in the country part of counties in which large cities exist, to organize and maintain courts to try persons accused of violations of the prohibition law anywhere in the county, which offers the municipalities a share of the fines collected and provides for the employment of detectives and other assistants to detect crime and be paid out of fines, and giving the mayor jurisdiction to sit without a jury to try offenders, with a right to share in the fines collected, and with no review of his decisions except on matters of law and flagrant disregard of the evidence, is unconstitutional as providing a tribunal in which accused is not afforded due process of law.

Mr. Chief Justice **Taft** delivered the opinion of the court:

The question in this case is whether certain statutes of Ohio in providing for the trial by the mayor of a village of one accused of violating the Prohibition Act of the state deprive the accused of due process of law and violate the 14th Amendment to the Federal Constitution, [**515**] because of the pecuniary and other interest which those statutes give the mayor in the result of the trial.

That officers acting in a judicial or quasi judicial capacity are disqualified by their interest in the controversy to be decided is of course the general rule. Dimes v. Grand Junction Canal, 3 H. L. Cas. 759, 10 Eng. Reprint, 301; Gregory v. Cleveland, C. & C. R. Co. 4 Ohio St. 675; Pearce v. Atwood, 13 Mass. 324; Taylor v. Worcester County, 105 Mass. 225; Kentish Artillery v. Gardiner, 15 R. I. 296; Moses v. Julian, 45 N. H. 52, 84 Am. Dec. 114; State, Winans, Prosecutor, v. Crane, 36 N. J. L. 394; Peninsular R. Co. v. Howard, 20 Mich. 18; Stockwell v. White Lake, 22 Mich. 341; Findley v. Smith, 42 W. Va. 299, 26 S. E. 370; Nettleton's Appeal, 28 Conn. 268; Cooley, Const. Lim. 7th ed. pp. 592 et seq. Nice questions, however, often arise as to what the degree or nature of the interest must be. One is in respect to the effect of the membership of a judge in a class of taxpayers or others to be affected by a principle of law, statutory or constitutional, to be applied in a case between other parties and in which the judge has no other interest. Then the circumstance that there is no judge not equally disqualified to act in such a case has been held to affect the question. Wheeling v. Black, 25 W. Va. 266, 280; Peck v. Essex County, 20 N. J. L. 457; Dimes v. Grand Junction Canal, supra (see Baron Parke's Answer for the Judges, pp. 785, 787); Y. B. 8 Hen. VI. 19, s. c. 2 Rolle. Abr. 93; Evans v. Gore, 253 U. S. 245, 247, 64 L. ed. 887, 889, 11 A.L.R. 519, 40 Sup. Ct. Rep. 550; Stuart v. Mechanics' & F. Bank, 19 Johns. 496; Ranger v. Great Western R. Co. 5 H. L. Cas. 72, 10 Eng. Reprint, 824. We are not embarrassed by such considerations here for there were available in this case other judicial officers who had [**523**] no disqualification either by reason of the character of their compensation or their relation to the village government.

All questions of judicial qualification may not involve constitutional validity. Thus matters of kinship, personal bias, state policy, remoteness of interest would seem generally to be matters merely of legislative discretion. Wheeling v. Black, 25 W. Va. 266, 270. But it certainly violates the 14th Amendment and deprives a defendant in a criminal case of due process of law to subject his liberty or property to the judgment of a court, the judge of which has a direct, personal, substantial pecuniary interest in reaching a conclusion against him in his case.

The mayor of the village of North College Hill, Ohio, had a direct personal pecuniary interest in convicting the defendant who came before him for trial, in the twelve dollars of costs imposed in his behalf, which he would not have received if the defendant had been acquitted. This was not exceptional but was the result of the normal operation of the law and the ordinance. Counsel for the state do not deny this, but assert the validity of the practice as an exception to the general rule. They rely upon the cases of Ownbey v. Morgan, 256 U. S. 94, 65 L. ed. 837, 17 A.L.R. 873, 41 Sup. Ct. Rep. 433; Den ex dem. Murray v. Hoboken Land & Improv. Co. 18 How. 272, 276–280, 15 L. ed. 372, 374 376. These cases show that in determining what due process of law is, under the 5th or 14th Amendment, the court must look to those settled usages and modes of proceeding existing in the common and statute law of England before the emigration of our ancestors, which were shown not to have been unsuited to their civil and political condition by having been acted on by them

after the settlement of this country. Counsel contend that in Ohio and in other states, in the economy which it is found necessary to maintain in the administration of justice in the inferior courts by justices of the peace and by judicial officers of like jurisdiction, the only compensation which the state and county [**524**] and township can afford is the fees and costs earned by them, and that such compensation is so small that it is not to be regarded as likely to influence improperly a judicial officer in the discharge of his duty, or as prejudicing the defendant in securing justice, even though the magistrate will receive nothing if the defendant is not convicted.

We have been referred to no cases at common law in England prior to the separation of colonies from the mother country showing a practice that inferior judicial officers were dependent upon the conviction of the defendant for receiving their compensation. Indeed in analogous cases it is very clear that the slightest pecuniary interest of any officer, judicial or quasi judicial, in the resolving of the subject matter which he was to decide, rendered the decision voidable. Bonham's Case, 8 Coke, 118a, 77 Eng. Reprint, 652, s. c. 2 Brownl. & G. 255, 123 Eng. Reprint, 928; London v. Wood, 12 Mod. 669, 687, 88 Eng. Reprint, 1592; Day v. Savage, Hobart, 85, 87, 80 Eng. Reprint, 235; Hesketh v. Braddock, 3 Burr. 1847, 1856-1858, 97 Eng. Reprint, 1130.

As early as the 12th Richard II. A. D. 1388, it was provided that there should be a commission of the justices of the peace, with six justices in the county once a quarter, which might sit for three days, and that the justices should receive 4 shillings a day "as wages," to be paid by the sheriffs out of a fund made up of fines and amercements, and that that fund should be added to out of the fines and amercements from the courts of the lords of the franchises which were hundred courts allowed by the King by grant to individuals.

It was required that the justices of the peace should be knights, esquires or gentlemen of the land, qualifications that were not modified until 1906. The wages paid were used "to defray their common diet," and they soon became obsolete. Holdsworth, History of English Law, 288, 289. The wages paid were not dependent on conviction [**525**] of the defendant. They were paid at a time when the distinction between torts and criminal cases was not clear (Holdsworth, vol. 2, 363, 365; vol. 3, 328); and they came from a fund which was created by fines and amercements collected from both sides in the controversy. There was always a plaintiff, whether in the action for a tort or the prosecution for an offense. In the latter he was called the prosecutor. If he failed to prove his case, whether civil or criminal, he was subject to amercement pro falso clamore, while if he succeeded, the defendant was in misericordia. See Com. v. Johnson, 5 Serg. & R. 195, 198; Musser v. Good, 11 Serg. & R. 247. Thus in the outcome someone would be amerced in every case, and the amercements generally went to the Crown, and the fund was considerable. The Statute of Richard II. remained on the statute book until 1855, when it was repealed by the 18th and 19th Victoria. Meantime the hundred courts by franchise had largely disappeared. The wages referred to were not part of the costs. The costs at common law were the amounts paid either by the plaintiff or prosecutor or by the defendant for the witnesses or services of the court officers. 1 Burn Justice, p. 628; 1 Chitty, Crim. Law, 4th ed. 1841, 829. See also 14 Geo. III. chap. 20, 1774. For hundreds of years the justices of the peace of England seem not to have received compensation for court work. Instead of that they were required, upon entering upon the office, to pay certain fees. Holdsworth, vol. 1, p. 289; 19 Halsbury, Laws of England, § 1152. Local judges in towns are paid salaries.

There was at the common law the greatest sensitiveness over the existence of any pecuniary interest however small or infinitesimal in the justices of the peace. In Hawkins, 2d Pleas of the Crown, we find the following:

"The general rule of law certainly is that justices of the peace ought not to execute their office in their own case (citing Anonymous, 1 Salk. 396, 91 Eng. Reprint, 343); and even in cases where such [**526**] proceeding seems indispensably necessary, as in being publicly assaulted or personally abused, or their authority otherwise contemned while in the execution of their duty, yet if another justice be present, his assistance should be required to punish the offender (Stra. 240).

"And by the common law, if an order of removal were made by two justices, and one of them was an inhabitant of the parish from which the pauper was removed, such order was illegal and bad, on the ground that the justice who was an inhabitant was interested, as being liable to the poor's rate. (Rex v. Great Chart,

AUGUSTUS D. JUILLIARD, *Plff. in Err.*,
v.
THOMAS S. GREENMAN.

(See S. C., Reporter's ed., "*Legal Tender Cases*," 421-470.)

Treasury notes, a legal tender—re-issued notes.

*1. Congress has the constitutional power to make the treasury notes of the United States a legal tender in payment of private debts, in time of peace as well as in time of war.

2. Under the Act of May 31, 1878, ch. 146, which enacts that notes of the United States, issued during the war of the rebellion under Acts of Congress declaring them to be a legal tender in payment of private debts, and since the close of that war redeemed and paid in gold coin at the Treasury, shall be re-issued and kept in circulation, notes so re-issued are a legal tender.

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

Julliard, a citizen of New York, brought an action against Greenman, a citizen of Connecticut, in the Circuit Court of the United States for the Southern District of New York, alleging that the plaintiff sold and delivered to the defendant, at his special instance and request, one hundred bales of cotton, of the value and for the agreed price of $5122.90; and that the defendant agreed to pay that sum in cash on the delivery of the cotton, and had not paid the same or any part thereof, except that he had paid the sum of $22.90 on account, and was now justly indebted to the plaintiff therefor in the sum of $5,100; and demanding judgment for this sum with interest and costs.

The defendant in his answer admitted the citizenship of the parties, the purchase and delivery of the cotton, and the agreement to pay therefor, as alleged; and averred that, after the delivery of the cotton, he offered and tendered to the plaintiff, in full payment, $22.50 in gold coin of the United States, forty cents in silver coin of the United States, and two United States notes, one of the denomination of $5,000, and the other of the denomination of $100, of the description known as United States legal tender notes, purporting by recital thereon to be legal tender, at their respective face values, for all debts, public and private, except duties on imports and interest on the public debt, and which, after having been presented for payment, and redeemed and paid in gold coin, since January 1, 1879, at the United States sub-treasury in New York, had been re-issued and kept in circulation under and in pursuance of the Act of Congress of May 31, 1878, ch. 146; that at the time of offering and tendering these notes and coin to the plaintiff, the sum of $5122.90 was the entire amount due and owing in payment for the cotton, but the plaintiff declined to receive the notes in payment of $5,100 thereof; and that the defendant had ever since remained and still was ready and willing to pay to the plaintiff the sum of $5,100 in these notes, and brought these notes into court, ready to be paid to the plaintiff, if he would accept them.

The plaintiff demurred to the answer, upon the grounds that the defense, consisting of new matter, was insufficient in law upon its face, and that the facts stated in the answer did not constitute any defense to the cause of action alleged.

The Circuit Court overruled the demurrer and gave judgment for the defendant, and the plaintiff sued out this writ of error.

The amount which the plaintiff seeks to recover and which, if the tender pleaded is insufficient in law, he is entitled to recover is $5,100. There can, therefore, be no doubt of the jurisdiction of this court to revise the judgment of the Circuit Court. Act of February 16, 1875, ch. 77, sec. 3; 18 Stat. at L., 315.

The notes of the United States, tendered in payment of the defendant's debt to the plaintiff, were originally issued under the Acts of Congress of February 25, 1862, ch. 33, July 11, 1862, ch. 142, and March 3, 1863, ch. 73, passed during the war of the rebellion, and enacting that these notes should "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. 12 Stat. at L., 345, 532, 709.

The provisions of the earlier Acts of Congress, so far as it is necessary, for the understanding of the recent statutes, to quote them, are re-enacted in the following provisions of the Revised Statutes:

"Sec. 3579. When any United States notes are returned to the Treasury, they may be re-issued, from time to time, as the exigencies of the public interest may require.

Sec. 3580. When any United States notes returned to the Treasury are so mutilated or otherwise injured as to be unfit for use, the Secretary of the Treasury is authorized to replace the same with others of the same character and amounts.

Sec. 3581. Mutilated United States notes, when replaced according to law, and all other notes which by law are required to be taken up and not re-issued, when taken up shall be destroyed in such manner and under such regulations as the Secretary of the Treasury may prescribe.

Sec. 3582. The authority given to the Secretary of the Treasury to make any reduction of the currency, by retiring and canceling United States notes, is suspended."

"Sec. 3588. 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."

The Act of January 14, 1875, ch. 15, "To provide for the resumption of specie payments," enacted that on and after January 1, 1879, "The Secretary of the Treasury shall redeem in coin the United States legal tender notes then outstanding, on their presentation for redemption at the office of the Assistant Treasurer of the United States in the City of New York, in sums of not less than $50," and authorized him to use for that purpose any surplus revenues in the Treasury and the proceeds of the sales of certain bonds of the United States. 18 Stat. at L., 296

The Act of May 31, 1878, ch. 146, under which the notes in question were re-issued, is

entitled "An Act to Forbid the Further Retirement of the United States Legal Tender Notes," and enacts as follows:

"From and after the passage of this Act it shall not be lawful for the Secretary of the Treasury or other officer under him to cancel or retire any more of the United States legal tender notes. And when any of said notes may be redeemed or be received into the Treasury under any law from any source whatever and shall belong to the United States, they shall not be retired, canceled or destroyed, but they shall be re-issued and paid out again and kept in circulation; *Provided*, That nothing herein shall prohibit the cancellation and destruction of mutilated notes and the issue of other notes of like denomination in their stead, as now provided by law. All Acts and parts of Acts in conflict herewith are hereby repealed." 20 Stat. at L., 87.

The manifest intention of this Act is that the notes which it directs, after having been redeemed, to be re-issued and kept in circulation, shall retain their original quality of being a legal tender.

The single question, therefore, to be considered, and upon the answer to which the judgment to be rendered between these parties depends, is whether notes of the United States, issued in time of war, under Acts of Congress declaring them to be a legal tender in payment of private debts, and afterwards in time of peace redeemed and paid in gold coin at the Treasury, and then re-issued under the Act of 1878, can, under the Constitution of the United States, be a legal tender in payment of such debts.

Upon full consideration of the case, the court is unanimously of opinion that it cannot be distinguished in principle from the cases heretofore determined, reported under the names of the *Legal Tender Cases*, 12 Wall., 457 [79 U. S., XX., 287]; *Dooley* v. *Smith*, 13 Wall., 604 [80 U. S., XX., 547]; *R. R. Co.* v. *Johnson*, 15 Wall., 195 [82 U. S., XXI., 178]; and *Md.* v. *R. R. Co.*, 22 Wall., 105 [89 U. S., XXII., 713]; and all the Judges, except *Mr. Justice* Field, who adheres to the views expressed in his dissenting opinions in those cases, are of opinion that they were rightly decided.

The elaborate printed briefs submitted by counsel in this case, and the opinions delivered in the *Legal Tender Cases*, and in the earlier case of *Hepburn* v. *Griswold*, 8 Wall., 603 [75 U. S., XIX., 513], which those cases overruled, forcibly present the arguments on either side of the question of the power of Congress to make the notes of the United States a legal tender in payment of private debts. Without undertaking to deal with all those arguments, the court has thought it fit that the grounds of its judgment in the case at bar should be fully stated.

No question of the scope and extent of the implied powers of Congress under the Constitution can be satisfactorily discussed without repeating much of the reasoning of *Chief Justice* Marshall in the great judgment in *McCulloch* v. *Md.*, 4 Wheat., 316, by which the power of Congress to incorporate a bank was demonstrated and affirmed, notwithstanding the Constitution does not enumerate, among the powers granted, that of establishing a bank or creating a corporation.

The People of the United States by the Constitution established a National Government, with sovereign powers, legislative, executive and judicial. "The government of the Union," said *Chief Justice* Marshall, "though limited in its powers, is supreme within its sphere of action;" "and its laws, when made in pursuance of the Constitution, form the supreme law of the land." "Among the enumerated powers of government, we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the Nation, are intrusted to its government." 4 Wheat., 405, 406, 407.

A constitution, establishing a frame of government, declaring fundamental principles and creating a national sovereignty and intended to endure for ages and to be adapted to the various crises of human affairs, is not to be interpreted with the strictness of a private contract. The Constitution of the United States, by apt words of designation or general description, marks the outlines of the powers granted to the National Legislature; but it does not undertake, with the precision and detail of a code of laws, to enumerate the subdivisions of those powers, or to specify all the means by which they may be carried into execution. *Chief Justice* Marshall, after dwelling upon this view, as required by the very nature of the Constitution, by the language in which it is framed, by the limitations upon the general powers of Congress introduced in the 9th section of the 1st article, and by the omission to use any restrictive term which might prevent its receiving a fair and just interpretation, added these emphatic words: "In considering this question, then, we must never forget that it is *a constitution* we are expounding." 4 Wheat., 407. See, also, page 415.

The breadth and comprehensiveness of the words of the Constitution are nowhere more strikingly exhibited than in regard to the powers over the subjects of revenue, finance and currency, of which there is no other express grant than may be found in these few brief clauses:

"The Congress shall have power:

To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense 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 coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures."

The section which contains the grant of these and other principal legislative powers concludes by declaring that the Congress shall have power:

"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."

By the settled construction and the only reasonable interpretation of this clause, the words "necessary and proper" are not limited to such measures as are absolutely and indispensably necessary, without which the powers granted must fail of execution; but they include all appropriate means which are conducive or adapted to the end to be accomplished, and which in the judgment of Congress will most advantageously effect it.

That clause of the Constitution which declares that "The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States," either embodies a grant of power to pay the debts of the United States, or presupposes and assumes that power as inherent in the United States as a sovereign government. But, in whichever aspect it be considered, neither this nor any other clause of the Constitution makes any mention of priority or preference of the United States as a creditor over other creditors of an individual debtor. Yet this court, in the early case of *U. S.* v. *Fisher*, 2 Cranch, 358, held that, under the power to pay the debts of the United States, Congress had the power to enact that debts due to the United States should have that priority of payment out of the estate of an insolvent debtor, which the law of England gave to debts due to the Crown.

In delivering judgment in that case, *Chief Justice* Marshall expounded the clause giving Congress power to make all necessary and proper laws, as follows: "In construing this clause, it would be incorrect, and would produce endless difficulties, if the opinion should be maintained that no law was authorized which was not indispensably necessary to give effect to a specified power. Where various systems might be adopted for that purpose, it might be said with respect to each, that it was not necessary, because the end might be obtained by other means. Congress must possess the choice of means, and must be empowered to use any means which are in fact conducive to the exercise of a power granted by the Constitution. The government is to pay the debt of the Union, and must be authorized to use the means which appear to itself the most eligible to effect that object." 2 Cranch, 396.

In *McCulloch* v. *Md.*, he more fully developed the same view, concluding thus: "We admit, as all must admit, that the powers of the government are limited and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the National Legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional." 4 Wheat., 421.

The rule of interpretation thus laid down has been constantly adhered to and acted on by this court, and was accepted as expressing the true test by all the Judges who took part in the former discussions of the power of Congress to make the treasury notes of the United States a legal tender in payment of private debts.

The other judgments delivered by *Chief Justice* Marshall contain nothing adverse to the power of Congress to issue legal tender notes.

By the Articles of Confederation of 1777, the United States in Congress assembled were authorized to borrow money or emit bills on the credit of the United States; but it was declared that "Each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right which is not by this confederation expressly delegated to the United States in Congress assembled." Art. 2; art. 9, section 5; 1 Stat. at L., 4, 7. Yet, upon the question whether, under those articles, Congress, by virtue of the power to emit bills on the credit of the United States, had the power to make bills so emitted a legal tender, *Chief Justice* Marshall spoke very guardedly, saying: "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." *Craig* v. *Mo.*, 4 Pet., 410, 435. But in the Constitution, as he had before observed in *McCulloch* v. *Md.*, "There is no phrase which, like the Articles of Confederation, excludes incidental or implied powers; and which requires that everything granted shall be expressly and minutely described. Even the 10th Amendment, which was framed for the purpose of quieting the excessive jealousies which had been excited, omits the word 'expressly,' and declares only that the powers 'not delegated to the United States, nor prohibited to the States, are reserved to the States or to the people;' thus leaving the question, whether the particular power which may become the subject of contest has been delegated to the one government or prohibited to the other, to depend on a fair construction of the whole instrument. The men who drew and adopted this Amendment had experienced the embarrassments resulting from the insertion of this word in the Articles of Confederation, and probably omitted it to avoid those embarrassments." 4 Wheat., 406, 407.

The sentence sometimes quoted from his opinion in *Sturges* v. *Crowninshield* had exclusive relation to the restrictions imposed by the Constitution on the powers of the States, and especial reference to the effect of the clause prohibiting the States from passing laws impairing the obligation of contracts, as will clearly appear by quoting the whole paragraph: "Was this general prohibition intended to prevent paper money? We are not allowed to say so, because it is expressly provided that no State shall 'emit bills of credit;' neither could these words be intended to restrain the States from enabling debtors to discharge their debts by the tender of property of no real value to the creditor, because for that subject also particular provision is made. Nothing but gold and silver coin can be made a tender in payment of debts." 4 Wheat., 122, 204.

Such reports as have come down to us of the debates in the Convention that framed the Constitution afford no proof of any general concurrence of opinion upon the subject before us. The adoption of the motion to strike out the words "and emit bills" from the clause "to borrow money and emit bills on the credit of the

United States" is quite inconclusive. The philippic delivered before the Assembly of Maryland by Mr. Martin, one of the delegates from that State, who voted against the motion, and who declined to sign the Constitution, can hardly be accepted as satisfactory evidence of the reasons or the motives of the majority of the Convention. See, 1 Elliot's Debates, 345, 370, 376. Some of the members of the Convention, indeed, as appears by Mr. Madison's minutes of the debates, expressed the strongest opposition to paper money. And Mr. Madison has disclosed the grounds of his own action, by recording that "This vote in the affirmative by Virginia was occasioned by the acquiescence of Mr. Madison, who became satisfied that striking out the words would not disable the government from the use of public notes, so far as they could be safe and proper; and would only cut off the pretext for a paper currency, and particularly for making the bills a tender, either for public or private debts." But he has not explained why he thought that striking out the words "and emit bills" would leave the power to emit bills, and deny the power to make them a tender in payment of debts. And it cannot be known how many of the other delegates, by whose vote the motion was adopted, intended neither to proclaim nor to deny the power to emit paper money, and were influenced by the argument of Mr. Gorham, who "was for striking out, without inserting any prohibition," and who said: "If the words stand, they may suggest and lead to the emission." "The power, so far as it will be necessary or safe, will be involved in that of borrowing." 5 Elliot's Debates, 434, 435, and *note*. And after the first clause of the 10th section of the 1st article had been reported in the form in which it now stands, forbidding the States to make anything but gold or silver coin a tender in payment of debts, or to pass any law impairing the obligation of contracts, when Mr. Gerry, as reported by Mr. Madison, "Entered into observations inculcating the importance of public faith, and the propriety of the restraint put on the States from impairing the obligation of contracts, alleging that Congress ought to be laid under the like prohibitions," and made a motion to that effect, he was not seconded. *Ib.*, 546. As an illustration of the danger of giving too much weight, upon such a question, to the debates and the votes in the Convention, it may also be observed that propositions to authorize Congress to grant charters of incorporation for national objects were strongly opposed, especially as regarded banks, and defeated. *Ib.*, 440, 543, 544. The power of Congress to emit bills of credit, as well as to incorporate national banks, is now clearly established by decisions to which we shall presently refer.

The words to "borrow money," as used in the Constitution, to designate a power vested in the National Government, for the safety and welfare of the whole people, are not to receive that limited and restricted interpretation and meaning which they would have in a penal statute, or in an authority conferred, by law or by contract, upon trustees or agents for private purposes.

The power "to borrow money on the credit of the United States" is the power to raise money for the public use on a pledge of the public credit, and may be exercised to meet either present or anticipated expenses and liabilities of the government. It includes the power to issue, in return for the money borrowed, the obligations of the United States in any appropriate form, of stock, bonds, bills or notes; and in whatever form they are issued, being instruments of the National Government, they are exempt from taxation by the governments of the several States. *Weston* v. *Charleston*, 2 Pet., 449; *Banks* v. *Mayor*, 7 Wall., 16 [74 U. S., XIX., 57]; *Bank* v. *Supervisors*, 7 Wall., 26 [74 U. S. XIX., 60]. Congress has authority to issue these obligations in a form adapted to circulation from hand to hand in the ordinary transactions of commerce and business. In order to promote and facilitate such circulation, to adapt them to use as currency and to make them more current in the market, it may provide for their redemption in coin or bonds, and may make them receivable in payment of debts to the government. So much is settled beyond doubt, and was asserted or distinctly admitted by the Judges who dissented from the decision in the *Legal Tender Cases*, as well as by those who concurred in that decision. *Veazie Bk.* v. *Fenno* and *Hepburn* v. *Griswold*, 8 Wall., 533, 548, 616, 636 [75 U. S., XIX., 482, 487, 524, 530]; *Legal Tender Cases*, 12 Wall., 543, 544, 560, 582, 610, 613, 637 [79 U. S., XX., 310, 315, 322, 331, 332, 340].

It is equally well settled that Congress has the power to incorporate national banks, with the capacity, for their own profit as well as for the use of the government in its money transactions, of issuing bills which under ordinary circumstances pass from hand to hand as money at their nominal value, and which, when so current, the law has always recognized as a good tender in payment of money debts, unless specifically objected to at the time of the tender. *U. S. Bank* v. *Bank of Ga.*, 10 Wheat., 333, 347; *Ward* v. *Smith*, 7 Wall., 447, 451 [74 U. S., XIX., 207, 209]. The power of Congress to charter a bank was maintained in *McCulloch* v. *Md.*, 4 Wheat., 316, and in *Osborn* v. *U. S. Bank*, 9 Wheat., 738, chiefly upon the ground that it was an appropriate means for carrying on the money transactions of the government. But *Chief Justice* Marshall said: "The currency which it circulates, by means of its trade with individuals, is believed to make it a more fit instrument for the purposes of government than it could otherwise be; and if this be true, the capacity to carry on this trade is a faculty indispensable to the character and objects of the institution." 9 Wheat., 864. And *Mr. Justice* Johnson, who concurred with the rest of the court in upholding the power to incorporate a bank, gave the further reason that it tended to give effect to that power over the currency of the country, which the framers of the Constitution evidently intended to give to Congress alone. *Ib.*, 873.

The constitutional authority of Congress to provide a currency for the whole country is now firmly established. In *Veazie Bk.* v. *Fenno* [*supra*], *Chief Justice* Chase, in delivering the opinion of the court, said: "It cannot be doubted that under the Constitution the power to provide a circulation of coin is given to Congress. And it is settled, by the uniform practice of the government and by repeated decisions, that Congress may constitutionally authorize the

emission of bills of credit." Congress, having undertaken to supply a national currency, consisting of coin, of treasury notes of the United States and of the bills of national banks, is authorized to impose on all state banks, or national banks or private bankers, paying out the notes of individuals or of state banks, a tax of ten per cent upon the amount of such notes so paid out. *Veazie Bk.* v. *Fenno*, above cited; *Nat. Bank* v. *U. S.*, 101 U. S., 1 [XXV., 979]. The reason for this conclusion was stated by *Chief Justice* Chase, and repeated by the present *Chief Justice*, in these words: "Having thus, in the exercise of 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 by appropriate legislation. To this end, Congress has denied the quality of legal tender to foreign coins, and has provided by law against the imposition of counterfeit and base coin on the community. To the same 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." *Bank* v. *Fenno* [*supra*]; *Bank* v. *U. S.*

By the Constitution of the United States, 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 debts. But no intention can be inferred from this to deny to Congress either of these powers. Most of the powers granted to Congress are described in the 8th section of the first article; the limitations intended to be set to its powers, so as to exclude certain things which might otherwise be taken to be included in the general grant, are defined in the 9th section; the 10th section is addressed to the States only. This section prohibits the States from doing some things which the United States are expressly prohibited from doing, as well as from doing some things which the United States are expressly authorized to do, and from doing some things which are neither expressly granted nor expressly denied to the United States. Congress and the States equally are expressly prohibited from passing any bill of attainder or *ex post facto* law, or granting any title of nobility. The States are forbidden, while the President and Senate are expressly authorized, to make treaties. The States are forbidden, but Congress is expressly authorized to coin money. The States are prohibited from emitting bills of credit; but Congress, which is neither expressly authorized nor expressly forbidden to do so, has, as we have already seen, been held to have the power of emitting bills of credit and of making every provision for their circulation as currency, short of giving them the quality of legal tender for private debts—even by those who have denied its authority to give them this quality.

It appears to us to follow, as a logical and necessary consequence, that Congress has the power to issue the obligations of the United States in such form, and to impress upon them such qualities as currency for the purchase of merchandise and the payment of debts, as accord with the usage of sovereign governments. The power, as incident to the power of borrowing money and issuing bills or notes of the government for money borrowed, of impressing upon those bills or notes the quality of being a legal tender for the payment of private debts, was a power universally understood to belong to sovereignty, in Europe and America, at the time of the framing and adoption of the Constitution of the United States. The governments of Europe, acting through the monarch or the Legislature, according to the distribution of powers under their respective constitutions, had and have as sovereign a power of issuing paper money as of stamping coin. This power has been distinctly recognized in an important modern case, ably argued and fully considered, in which the Emperor of Austria, as King of Hungary, obtained from the English Court of Chancery an injunction against the issue in England, without his license, of notes purporting to be public paper money of Hungary. *Austria* v. *Day*, 2 Giff., 628, and 3 De G. F. & J., 217. The power of issuing bills of credit and making them, at the discretion of the Legislature, a tender in payment of private debts, had long been exercised in this country by the several Colonies and States; and during the Revolutionary War the States, upon the recommendation of the Congress of the Confederation, had made the bills issued by Congress a legal tender. See, *Craig* v. *Mo.*, 4 Pet., 435, 453; *Briscoe* v. *Bank of Ky.*, 11 Pet., 257, 313, 334-336; *Legal Tender Cases*, 12 Wall., 557, 558, 622 [79 U. S., XX., 314, 335]; Phillips, American Paper Currency, *passim*. The exercise of this power not being prohibited to Congress by the Constitution, it is included in the power expressly granted to borrow money on the credit of the United States.

This position is fortified by the fact that Congress is vested with the exclusive exercise of the analogous power of coining money and regulating the value of domestic and foreign coin, and also with the paramount power of regulating foreign and interstate commerce. Under the power to borrow money on the credit of the United States, and to issue circulating notes for the money borrowed, its power to define the quality and force of those notes as currency is as broad as the like power over a metallic currency under the power to coin money and to regulate the value thereof. Under the two powers, taken together, Congress is authorized to establish a national currency, either in coin or in paper and to make that currency lawful money for all purposes, as regards the National Government or private individuals.

The power of making the notes of the United States a legal tender in payment of private debts, being included in the power to borrow money and to provide a national currency, is not defeated or restricted by the fact that its exercise may affect the value of private contracts. If, upon a just and fair interpretation of the whole Constitution, a particular power or authority appears to be vested in Congress, it is no constitutional objection to its existence or to its exercise, that the property or the contracts of individuals may be incidentally affected. The decisions of this court, already cited, afford several examples of this.

Upon the issue of stock, bonds, bills or notes of the United States, the States are deprived of their power of taxation to the extent of the prop-

erty invested by individuals in such obligations, and the burden of state taxation upon other private property is correspondingly increased. The ten per cent tax, imposed by Congress on notes of state banks and of private bankers, not only lessens the value of such notes, but tends to drive them and all state banks of issue, out of existence. The priority given to debts due to the United States over the private debts of an insolvent debtor diminishes the value of these debts and the amount which their holders may receive out of the debtor's estate.

So, under the power to coin money and to regulate its value, Congress may, as it did with regard to gold by the Act of June 28, 1834, ch. 95, and with regard to silver by the Act of February 28, 1878, ch. 20, 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 less real value. A contract to pay a certain sum in money, without any stipulation as to the kind of money in which it shall be paid, may always be satisfied by payment of that sum in any currency which is lawful money at the place and time at which payment is to be made. 1 Hale, P. C., 192–194; Bac. Abr., Tender, b. 2; Pothier, Contract of Sale, No. 416; Pardessus, *Droit Commercial*, Nos. 204, 205; *Searight* v. *Calbraith*, 4 Dall., 325. As observed by *Mr. Justice* Strong, in delivering the opinion of the court in the *Legal Tender Cases*, "Every contract for the payment of money, simply, is necessarily subject to the constitutional power of the government over the currency, whatever that power may be, and the obligation of the parties is, therefore, assumed with reference to that power." 12 Wall., 549 [79 U. S., XX., 311].

Congress, as the Legislature of a sovereign Nation, being expressly empowered by the Constitution to lay and collect taxes, to pay the debts and provide for the common defense and general welfare of the United States, and to borrow money on the credit of the United States, and to coin money and regulate the value thereof and of foreign coin; and being clearly authorized, as incidental to the exercise of those great powers, to emit bills of credit, to charter national banks and to provide a national currency for the whole people, in the form of coin, treasury notes and national bank bills; and the power to make the notes of the government a legal tender in payment of private debts being one of the powers belonging to sovereignty in other civilized Nations, and not expressly withheld from Congress by the Constitution; we are irresistibly impelled to the conclusion that the impressing upon the treasury notes of the United States the quality of being a legal tender in payment of private debts is an appropriate means, conducive and plainly adapted to the execution of the undoubted powers of Congress, consistent with the letter and spirit of the Constitution and, therefore, within the meaning of that instrument, "necessary and proper for carrying into execution the powers vested by this Constitution in the Government of the United States."

Such being our conclusion in matter of law, the question whether at any particular time, in war or in peace, the exigency is such, by reason of unusual and pressing demands on the resources of the government, or of the inadequacy of the supply of gold and silver coin to furnish the currency needed for the uses of the government and of the people, that it is, as matter of fact, wise and expedient to resort to this means, is a political question, to be determined by Congress when the question of exigency arises, and not a judicial question, to be afterwards passed upon by the courts. To quote once more from the judgment in *McCulloch* v. *Md.*: "Where the law is not prohibited and is really calculated to effect any of the objects intrusted to the government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department, and to tread on legislative ground." 4 Wheat., 423.

It follows that the Act of May 31, 1878, ch. 146, is constitutional and valid; and that the circuit court rightly held that the tender in treasury notes, re-issued and kept in circulation under that Act, was a tender of lawful money in payment of the defendant's debt to the plaintiff.

Judgment affirmed.

Mr. Justice **Field**, dissenting:

From the judgment of the court in this case, and from all the positions advanced in its support, I dissent. The question of the power of Congress to impart the quality of legal tender to the notes of the United States, and thus make them money and a standard of value, is not new here. Unfortunately, it has been too frequently before the court, and its latest decision, previous to this one, has never been entirely accepted and approved by the country. Nor should this excite surprise; for whenever it is declared that this government, ordained to establish justice, has the power to alter the condition of contracts between private parties and authorize their payment or discharge in something different from that which the parties stipulated, thus disturbing the relations of commerce and the business of the community generally, the doctrine will not and ought not to be readily accepted. There will be many who will adhere to the teachings and abide by the faith of their fathers. So the question has come again, and will continue to come until it is settled so as to uphold and not impair the contracts of parties, to promote and not defeat justice.

If there be anything in the history of the Constitution which can be established with moral certainty, it is that the framers of that instrument intended to prohibit the issue of legal tender notes both by the General Government and by the States; and thus prevent interference with the contracts of private parties. During the Revolution and the period of the old Confederation, the Continental Congress issued bills of credit, and upon its recommendation the States made them a legal tender, and the refusal to receive them an extinguishment of the debts for which they were offered. They also enacted severe penalties against those who refused to accept them at their nominal value, as equal to coin, in exchange for commodities. And previously, as early as January, 1776, Congress had declared that, if any person should be so lost to all virtue and regard for his country as to refuse to receive in payment the bills then issued, he should, on conviction thereof, be "Deemed,

published and treated as an enemy of his country, and precluded from all trade and intercourse with the inhabitants of the Colonies."

Yet, this legislation proved ineffectual; the universal law of currency prevailed, which makes promises of money valuable only as they are convertible into coin. The notes depreciated until they became valueless in the hands of their possessors. So it always will be; legislative declaration cannot make the promise of a thing the equivalent of the thing itself.

The legislation to which the States were thus induced to resort was not confined to the attempt to make paper money a legal tender for debts; but the principle that private contracts could be legally impaired, and their obligation disregarded, being once established, other measures equally dishonest and destructive of good faith between parties were adopted. What followed is thus stated by *Mr. Justice* Story, in his Commentaries:

"The history, indeed," he says, "of the various laws which were passed by the States, in their colonial and independent character, upon this subject, is startling at once to our morals, to our patriotism, and to our sense of justice. Not only was paper money issued and declared to be a tender in payment of debts, but laws of another character, well known under the appellation of tender laws, appraisement laws, installment laws and suspension laws, were from time to time enacted, which prostrated all private credit and all private morals. By some of these laws, the due payment of debts was suspended; debts were, in violation of the very terms of the contract, authorized to be paid by installments at different periods; property of any sort, however worthless, either real or personal, might be tendered by the debtor in payment of his debts; and the creditor was compelled to take the property of the debtor, which he might seize on execution, at an appraisement wholly disproportionate to its known value. Such grievances and oppressions, and others of a like nature, were the ordinary results of legislation during the Revolutionary War and the intermediate period down to the formation of the Constitution. They entailed the most enormous evils on the country, and introduced a system of fraud, chicanery and profligacy which destroyed all private confidence and all industry and enterprise." 2 Story, Const., sec. 1371.

To put an end to this vicious system of legislation which only encouraged fraud, thus graphically described by Story, the clauses which forbid the States from emitting bills of credit or making anything but gold and silver a tender in payment of debts, or passing any law impairing the obligation of contracts, were inserted in the Constitution.

"The attention of the Convention, therefore," says *Chief Justice* Marshall, "was particularly directed to paper money and to acts which enabled the debtor to discharge his debt otherwise than was stipulated in the contract. Had nothing more been intended, nothing more would have been expressed, but in the opinion of the Convention much more remained to be done. The same mischief might be effected by other means. To restore public confidence completely, it was necessary, not only to prohibit the use of particular means by which it might be effected, but to prohibit the use of any means by which the same mischief might be produced. The Convention appears to have intended to establish a great principle, that contracts should be inviolable." *Sturges* v. *Crowninshield*, 4 Wheat., 122, 206.

It would be difficult to believe, even in the absence of the historical evidence we have on the subject, that the framers of the Constitution, profoundly impressed by the evils resulting from this kind of legislation, ever intended that the new government, ordained to establish justice, should possess the power of making its bills a legal tender, which they were unwilling should remain with the States, and which in the past had proved so dangerous to the peace of the community, so disturbing to the business of the people and so destructive of their morality.

The great historian of our country has recently given to the world a history of the Convention, the result of years of labor in the examination of all public documents relating to its formation and of the recorded opinions of its framers; and thus he writes:

"With the full recollection of the need or seeming need of paper money in the Revolution, with the menace of danger in future time of war from its prohibition, authority to issue bills of credit that should be legal tender was refused to the General Government by the vote of nine States against New Jersey and Maryland. It was Madison who decided the vote of Virginia, and he has left his testimony that 'the pretext for paper currency, and particularly for making the bills a tender, either for public or private debts, was cut off.' This is the interpretation of the clause made at the time of its adoption, alike by its authors and by its opponents, accepted by all the statesmen of that age, not open to dispute because too clear for argument, and never disputed so long as any one man who took part in framing the Constitution remained alive. History cannot name a man who has gained enduring honor by causing the issue of paper money. Wherever such paper has been employed it has in every case thrown upon its authors the burthen of exculpation under the plea of pressing necessity." 2 Bancroft, History of the Formation of the Constitution, 134.

And when the Convention came to the prohibition upon the States, the historian says that the clause, "No State shall make anything but gold and silver a tender in payment of debts," was accepted without a dissentient State:

"So the adoption of the Constitution," he adds, "is to be the end forever of paper money, whether issued by the several States or by the United States, if the Constitution shall be rightly interpreted and honestly obeyed." *Id.*, 137.

For nearly three quarters of a century after the adoption of the Constitution, and until the legislation during the recent Civil War, no jurist and no statesman of any position in the country ever pretended that a power to impart the quality of legal tender to its notes was vested in the General Government. There is no recorded word of even one in favor of its possessing the power. All conceded, as an axiom of constitutional law, that the power did not exist.

Mr. Webster, from his first entrance into public life in 1812, gave great consideration to the subject of the currency, and in an elaborate speech on that subject, made in the Senate in 1836, then sitting in this room, he said:

"Currency, in a large and perhaps just sense, includes not only gold and silver and bank bills, but bills of exchange also. It may include all that adjusts exchanges and settles balances in the operations of trade and business; but if we understand by currency the legal money of the country, and that which constitutes a legal tender for debts, and is the standard measure of value, then undoubtedly nothing is included but gold and silver. Most unquestionably there is no legal tender and there can be no legal tender in this country, under the authority of this government or any other, but gold and silver, either the coinage of our own mints or foreign coins at rates regulated by Congress. This is a constitutional principle, perfectly plain and of the highest importance. The States are expressly prohibited from making anything but gold and silver a legal tender in payment of debts, and although no such express prohibition is applied to Congress, yet as Congress has no power granted to it in this respect but to coin money and to regulate the value of foreign coins, it clearly has no power to substitute paper or anything else for coin as a tender in payment of debts and in discharge of contracts. Congress has exercised this power fully in both its branches; it has coined money, and still coins it; it has regulated the value of foreign coins, and still regulates their value. The legal tender, therefore, the constitutional standard of value, is established and cannot be overthrown. To overthrow it would shake the whole system." 4 Webster's Works, 271.

When the idea of imparting the legal tender quality to the notes of the United States issued under the first Act of 1862 was first broached, the advocates of the measure rested their support of it on the ground that it was a war measure, to which the country was compelled to resort by the exigencies of its condition, being then sorely pressed by the Confederate forces, and requiring the daily expenditure of enormous sums to maintain its army and navy and to carry on the government. The representative who introduced the bill in the House, declared that it was a measure of that nature, "one of necessity and not of choice;" that the times were extraordinary and that extraordinary measures must be resorted to in order to save our government and preserve our nationality. Speech of Spaulding, of New York, Cong. Globe, 1861–62, part 1, 523. Other members of the House frankly confessed their doubt as to its constitutionality, but yielded their support of it under the pressure of this supposed necessity.

In the Senate also the measure was pressed for the same reasons. When the Act was reported by the committee on finance, its chairman, whilst opposing the legal tender provision, said:

"It is put on the ground of absolute, overwhelming necessity; that the government has now arrived at that point when it must have funds, and those funds are not to be obtained from ordinary sources, or from any of the expedients to which we have heretofore had recourse and, therefore, this new, anomalous and remarkable provision must be resorted to in order to enable the government to pay off the debt that it now owes and afford circulation which will be available for other purposes." Cong. Globe 1861–62, part 1, 764.

And upon that ground the provision was adopted, some of the Senators stating that in the exigency then existing money must be had, and they, therefore, sustained the measure, although they apprehended danger from the experiment. "The medicine of the Constitution," said Senator Sumner, "must not become its daily food." *Id.*, 800. A similar necessity was urged upon the state tribunals and this court in justification of the measure, when its validity was questioned. The dissenting opinion in *Hepburn* v. *Griswold* referred to the pressure that was upon the government at the time to enable it to raise and support an army and to provide and maintain a navy. *Chief Justice* Chase, who gave the prevailing opinion in that case, also spoke of the existence of the feeling when the bill was passed that the provision was necessary. He favored the provision on that ground when Secretary of the Treasury, although he had come to that conclusion with reluctance, and recommended its adoption by Congress. When the question as to its validity reached this court, this expression of favor was referred to, and by many it was supposed that it would control his judicial action. But after long pondering upon the subject, after listening to repeated arguments by able counsel, he decided against the constitutionality of the provision; and, holding in his hands the casting vote, he determined the judgment of the court. He thus preferred to preserve his integrity as a judicial officer rather than his consistency as a statesman. In his opinion he thus referred to his previous views:

"It is not surprising that amid the tumult of the late Civil War, and under the influence of apprehensions for the safety of the Republic almost universal, different views, never before entertained by American statesmen or jurists, were adopted by many. The time was not favorable to considerate reflection upon the constitutional limits of legislative or executive authority. If power was assumed from patriotic motives, the assumption found ready justification in patriotic hearts. Many who doubted yielded their doubts; many who did not doubt were silent. Some who were strongly averse to making government notes a legal tender felt themselves constrained to acquiesce in the views of the advocates of the measure. Not a few who then insisted upon its necessity, or acquiesced in that view, have, since the return of peace and under the influence of the calmer time, reconsidered their conclusions, and now concur in those which we have just announced. These conclusions seem to us to be fully sanctioned by the letter and spirit of the Constitution." 8 Wall., 625 [75 U. S., XIX., 526].

It must be evident, however, upon reflection, that if there were any power in the Government of the United States to impart the quality of legal tender to its promissory notes, it was for Congress to determine when the necessity for its exercise existed; that war merely increased the urgency for money; it did not add to the powers of the government nor change their nature; that if the power existed it might be equally exercised when a loan was made to meet ordinary expenses in time of peace as when vast sums were needed to support an army or a navy in time of war. The wants of the government could never be the measure of its powers. But

in the excitement and apprehensions of the war these considerations were unheeded; the measure was passed as one of overruling necessity in a perilous crisis of the country. Now, it is no longer advocated as one of necessity, but as one that may be adopted at any time. Never before was it contended by any jurist or commentator on the Constitution that the government in full receipt of ample income, with a Treasury overflowing, with more money on hand than it knows what to do with, could issue paper money as a legal tender. What was in 1862 called the "medicine of the Constitution" has now become its daily bread. So it always happens that whenever a wrong principle of conduct, political or personal, is adopted on a plea of necessity, it will be afterwards followed on a plea of convenience.

The advocates of the measure have not been consistent in the designation of the power upon which they have supported its validity, some placing it on the power to borrow money, some on the coining power, and some have claimed it as an incident to the general powers of the government. In the present case it is placed by the court upon the power to borrow money, and the alleged sovereignty of the United States over the currency. It is assumed that this power, when exercised by the government, is something different from what it is when exercised by corporations or individuals, and that the government has, by the legal tender provision, the power to enforce loans of money because the sovereign governments of European countries have claimed and exercised such power.

"The words to borrow money," says the court, "are not to receive that limited and restricted interpretation and meaning which they would have in a penal statute or in an authority conferred by law or by contract upon trustees or agents for private purposes." And it adds that "The power, as incident to the power of borrowing money and issuing bills or notes of the government for money borrowed, of impressing upon those bills or notes the quality of being a legal tender for the payment of private debts, was a power universally understood to belong to sovereignty, in Europe and America, at the time of the framing and adoption of the Constitution of the United States. The governments of Europe, acting through the monarch or the Legislature, according to the distribution of powers under their respective Constitutions, had and have as sovereign a power of issuing paper money as of stamping coin," and that "the exercise of this power not being prohibited to Congress by the Constitution, it is included in the power expressly granted to borrow money on the credit of the United States."

As to the terms *to borrow money;* where, I would ask, does the court find any authority for giving to them a different interpretation in the Constitution from what they receive when used in other instruments, as in the charters of municipal bodies or of private corporations, or in the contracts of individuals? They are not ambiguous; they have a well settled meaning in other instruments. If the court may change that in the Constitution, so it may the meaning of all other clauses; and the powers which the government may exercise will be found declared, not by plain words in the organic law, but by words of a new significance resting in the minds of the judges. Until some authority beyond the alleged claim and practice of the sovereign governments of Europe be produced, I must believe that the terms have the same meaning in all instruments wherever they are used; that they mean a power only to contract for a loan of money, upon considerations to be agreed between the parties. The conditions of the loan, or whether any particular security shall be given to the lender, are matters of arrangement between the parties; they do not concern anyone else. They do not imply that the borrower can give to his promise to refund the money any security to the lender outside of property or rights which he possesses. The transaction is completed when the lender parts with his money and the borrower gives his promise to pay at the time and in the manner and with the securities agreed upon. Whatever stipulations may be made, to add to the value of the promise or to secure its fulfillment, must necessarily be limited to the property, rights and privileges which the borrower possesses. Whether he can add to his promises any element which will induce others to receive them beyond the security which he gives for their payment, depends upon his power to control such element. If he has a right to put a limitation upon the use of other persons' property, or to enforce an exaction of some benefit from them, he may give such privilege to the lender; but if he has no right thus to interfere with the property or possessions of others, of course he can give none. It will hardly be pretended that the Government of the United States has any power to enter into an engagement that, as security for its notes, the lender shall have special privileges with respect to the visible property of others, shall be able to occupy a portion of their lands or their houses, and thus interfere with the possession and use of their property. If the government cannot do that, how can it step in and say, as a condition of loaning money, that the lender shall have a right to interfere with contracts between private parties? A large proportion of the property of the world exists in contracts, and the government has no more right to deprive one of their value by legislation operating directly upon them, than it has a right to deprive one of the value of any visible and tangible property. No one, I think, will pretend that individuals or corporations possess the power to impart to their evidences of indebtedness any quality by which the holder will be able to affect the contracts of other parties, strangers to the loan; nor would any one pretend that Congress possesses the power to impart any such quality to the notes of the United States, except from the clause authorizing it to make laws necessary and proper to the execution of its powers. That clause, however, does not enlarge the expressly designated powers; it merely states what Congress could have done without its insertion in the Constitution. Without it, Congress could have adopted any appropriate means to borrow; but that can only be appropriate for that purpose which has some relation of fitness to the end, which has respect to the terms essential to the contract, or to the securities which the borrower may furnish for the repayment of the loan. The quality of legal tender does not touch the terms of the contract; that is complete without it; nor does it stand as a security for the

loan, for a security is a thing pledged, over which the borrower has some control or in which he holds some interest.

The argument presented by the advocates of legal tender is, in substance, this: the object of borrowing is to raise funds, the addition of the quality of legal tender to the notes of the government will induce parties to take them, and funds will thereby be more readily loaned. But the same thing may be said of the addition of any other quality which would give to the holder of the notes some advantage over the property of others, as, for instance, that the notes should serve as a pass on the public conveyances of the country, or as a ticket to places of amusement, or should exempt his property from state and municipal taxation or entitle him to the free use of the telegraph lines, or to a percentage from the revenues of private corporations. The same consequence: a ready acceptance of the notes, would follow, and yet no one would pretend that the addition of privileges of this kind with respect to the property of others, over which the borrower has no control, would be in any sense an appropriate measure to the execution of the power to borrow.

Undoubtedly, the power to borrow includes the power to give evidences of the loan in bonds, treasury notes, or in such other form as may be agreed between the parties. These may be issued in such amounts as will fit them for circulation, and for that purpose may be made payable to bearer, and transferable by delivery. Experience has shown that the form best fitted to secure their ready acceptance is that of notes payable to bearer, in such amounts as may suit the ability of the lender. The government, in substance, says to parties with whom it deals: lend us your money or furnish us with your products or your labor and we will ultimately pay you, and as evidence of it we will give you our notes, in such form and amount as may suit your convenience, and enable you to transfer them; we will also receive them for certain demands due to us. In all this matter there is only a dealing between the government and the individuals who trust it. The transaction concerns no others. The power which authorizes it is a very different one from a power to deal between parties to private contracts in which the government is not interested, and to compel the receipt of these promises to pay in place of the money for which the contracts stipulated. This latter power is not an incident to the former; it is a distinct and far greater power. There is no legal connection between the two; between the power to borrow from those willing to lend and the power to interfere with the independent contracts of others. The possession of this latter power would justify the interference of the government with any rights of property of other parties, under the pretense that its allowance to the holders of the notes would lead to their more ready acceptance, and thus furnish the needed means.

The power vested in Congress to coin money does not, in my judgment, fortify the position of the court as its opinion affirms. So far from deducing from that power any authority to impress the notes of the government with the quality of legal tender, its existence seems to me inconsistent with a power to make anything but coin a legal tender. The meaning of the terms "to coin money" is not at all doubtful. It is to mold metallic substances into forms convenient for circulation and to stamp them with the impress of the government authority indicating their value with reference to the unit of value established by law. Coins are pieces of metal of definite weight and value, stamped such by the authority of the government. If any doubt could exist that the power has reference to metallic substances only it would be removed by the language which immediately follows, authorizing Congress to regulate the value of money thus coined and of foreign coin, and also by clauses making a distinction between coin and the obligations of the General Government and of the States. Thus, in the clause authorizing Congress "to provide for the punishment of counterfeiting the securities and current coin of the United States," a distinction is made between the obligations and the coin of the government.

Money is not only a medium of exchange, but it is a standard of value. Nothing can be such standard which has not intrinsic value, or which is subject to frequent changes in value. From the earliest period in the history of civilized Nations, we find pieces of gold and silver used as money. These metals are scattered over the world in small quantities; they are susceptible of division, capable of easy impression, have more value in proportion to weight and size, and are less subject to loss by wear and abrasion than any other material possessing these qualities. It requires labor to obtain them; they are not dependent upon legislation or the caprices of the multitude; they cannot be manufactured or decreed into existence, and they do not perish by lapse of time. They have, therefore, naturally, if not necessarily, become throughout the world a standard of value. In exchange for pieces of them, products requiring an equal amount of labor, are readily given. When the product and the piece of metal represent the same labor, or an approximation to it, they are freely exchanged. There can be no adequate substitute for these metals. Says Mr. Webster, in a speech made in the House of Representatives in 1815:

"The circulating medium of a commercial community must be that which is also the circulating medium of other commercial communities, or must be capable of being converted into that medium without loss. It must also be able, not only to pass in payments and receipts among individuals of the same society and Nation, but to adjust and discharge the balance of exchanges between different Nations. It must be something which has a value abroad as well as at home, by which foreign as well as domestic debts can be satisfied. The precious metals alone answer these purposes. They alone, therefore, are money, and whatever else is to perform the functions of money must be their representative, and capable of being turned into them at will. So long as bank paper retains this quality, it is a substitute for money; divested of this, nothing can give it that character." 3 Webster's Works, 41.

The clause, to coin money, must be read in connection with the prohibition upon the States to make anything but gold and silver coin a tender in payment of debts. The two taken together clearly show that the coins to be fabricated

under the authority of the General Government, and as such to be a legal tender for debts, are to be composed principally, if not entirely, of the metals of gold and silver. Coins of such metals are necessarily a legal tender to the amount of their respective values without any legislative enactment, and the Statute of the United States providing that they shall be such tender is only declaratory of their effect when offered in payment. When the Constitution says, therefore, that Congress shall have the power to coin money, interpreting that clause with the prohibition upon the States, it says it shall have the power to make coins of the precious metals a legal tender, for that alone which is money can be a legal tender. If this be the true import of the language, nothing else can be made a legal tender. We all know that the value of the notes of the government in the market, and in the commercial world generally, depends upon their convertibility on demand into coin; and as confidence in such convertibility increases or diminishes, so does the exchangeable value of the notes vary. So far from becoming themselves standards of value by reason of the legislative declaration to that effect, their own value is measured by the facility with which they can be exchanged into that which alone is regarded as money by the commercial world. They are promises of money, but they are not money in the sense of the Constitution. The term "money" is used in that instrument in several clauses; in the one authorizing Congress "to borrow money;" in the one authorizing Congress "to coin money;" in the one declaring that "no money" shall be drawn from the Treasury but in consequence of appropriations made by law; and in the one declaring that no State shall "coin money." And it is a settled rule of interpretation that the same term occurring in different parts of the same instrument shall be taken in the same sense, unless there is something in the context indicating that a different meaning was intended. Now, to coin money, is, as I have said, to make coins out of metallic substances, and the only money the value of which Congress can regulate is coined money, either of our mints or of foreign countries. It would seem, therefore, that to borrow money is to obtain a loan of coined money, that is, money composed of the precious metals, representing value in the purchase of property and payment of debts. Between the promises of the government, designated as its securities, and this money, the Constitution draws a distinction which disappears in the opinion of the court.

The opinion not only declares that it is in the power of Congress to make the notes of the government a legal tender and a standard of value, but that, under the power to coin money and regulate the value thereof, Congress may issue coins of the same denominations as those now already current, but of less intrinsic value, by reason of containing a less weight of the precious metals, and thereby enable debtors to discharge their debts by payment of coins of less real value. This doctrine is put forth as in some way a justification of the legislation authorizing the tender of nominal money in place of real money in payment of debts. Undoubtedly Congress has power to alter the value of coins issued, either by increasing or diminishing the alloy they contain; so, it may alter, at its pleasure, their denominations; it may hereafter call a dollar an eagle; and it may call an eagle a dollar. But if it be intended to assert that Congress can make the coins changed the equivalent of those having a greater value in their previous condition, and compel parties contracting for the latter to receive coins with diminished value, I must be permitted to deny any such authority. Any such declaration on its part would be not only utterly inoperative in fact, but a shameful disregard of its constitutional duty. As I said on a former occasion: "The power to coin money, as declared by this court, is a great trust devolved upon Congress, carrying with it the duty of creating and maintaining a uniform standard of value throughout the Union, and it would be a manifest abuse of this trust to give to the coins issued by its authority any other than their real value. By debasing the coins, when once the standard is fixed, is meant giving to the coins, by their form and impress, a certificate of their having a relation to that standard different from that which, in truth, they possess; in other words, giving to the coins a false certificate of their value. Arbitrary and profligate governments have often resorted to this miserable scheme of robbery, which Mill designates as a shallow and impudent artifice, the 'least covert of all modes of knavery, which consists in calling a shilling a pound, that a debt of one hundred pounds may be canceled by the payment of one hundred shillings.'" No such debasement has ever been attempted in this country, and none ever will be so long as any sentiment of honor influences the governing power of the Nation. The changes from time to time in the quantity of alloy in the different coins has been made to preserve the proper relative value between gold and silver, or to prevent exportation, and not with a view of debasing them. Whatever power may be vested in the Government of the United States, it has none to perpetrate such monstrous iniquity. One of the great purposes of its creation, as expressed in the preamble of the Constitution, was the establishment of justice, and not a line nor a word is found in that instrument which sanctions any intentional wrong to the citizen, either in war or in peace.

But beyond and above all the objections which I have stated to the decision recognizing a power in Congress to impart the legal tender quality to the notes of the government, is my objection to the rule of construction adopted by the court to reach its conclusions, a rule which fully carried out would change the whole nature of our Constitution and break down the barriers which separate a government of limited from one of unlimited powers. When the Constitution came before the Conventions of the several States for adoption, apprehension existed that other powers than those designated might be claimed; and it led to the first ten amendments. When these were presented to the States they were preceded by a preamble stating that the Conventions of a number of the States had at the time of adopting the Constitution expressed a desire, in order to prevent misconception or abuse of its powers, that further declaratory and restrictive clauses should be added. One of them is found in the 10th

Amendment, which declares that "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." The framers of the Constitution, as I have said, were profoundly impressed with the evils which had resulted from the vicious legislation of the States making notes a legal tender, and they determined that such a power should not exist any longer. They, therefore, prohibited the States from exercising it, and they refused to grant it to the new government which they created. Of what purpose is it then to refer to the exercise of the power by the absolute or the limited governments of Europe, or by the States previous to our Constitution. Congress can exercise no power by virtue of any supposed inherent sovereignty in the General Government. Indeed, it may be doubted whether the power can be correctly said to appertain to sovereignty in any proper sense as an attribute of an independent political community. The power to commit violence, perpetrate injustice, take private property by force without compensation to the owner, and compel the receipt of promises to pay in place of money, may be exercised, as it often has been, by irresponsible authority, but it cannot be considered as belonging to a government founded upon law. But be that as it may, there is no such thing as a power of inherent sovereignty in the Government of the United States. It is a government of delegated powers, supreme within its prescribed sphere, but powerless outside of it. In this country, sovereignty resides in the people, and Congress can exercise no power which they have not, by their Constitution, intrusted to it; all else is withheld. It seems, however, to be supposed that, as the power was taken from the States, it could not have been intended that it should disappear entirely, and therefore it must in some way adhere to the General Government, notwithstanding the 10th Amendment and the nature of the Constitution. The doctrine, that a power not expressly forbidden may be exercised, would, as I have observed, change the character of our government. If I have read the Constitution aright, if there is any weight to be given to the uniform teachings of our great jurists and of commentators previous to the late Civil War, the true doctrine is the very opposite of this. If the power is not in terms granted, and is not necessary and proper for the exercise of a power which is thus granted, it does not exist. And in determining what measures may be adopted in executing the powers granted, *Chief Justice* Marshall declares that they must be appropriate, plainly adapted to the end, not prohibited, and *consistent with the letter and spirit of the Constitution*. Now, all through that instrument we find limitations upon the power, both of the General Government and the State Governments, so as to prevent oppression and injustice. No legislation, therefore, tending to promote either can consist with the letter and spirit of the Constitution. A law which interferes with the contracts of others and compels one of the parties to receive in satisfaction something different from that stipulated, without reference to its actual value in the market, necessarily works such injustice and wrong.

There is, it is true, no provision in the Constitution of the United States forbidding in direct terms the passing of laws by Congress impairing the obligation of contracts, and there are many express powers conferred, such as the power to declare war, levy duties and regulate commerce, the exercise of which affects more or less the value of contracts. Thus war necessarily suspends intercourse between citizens or subjects of belligerent Nations, and the performance during its continuance of previous contracts. The imposition of duties upon goods may affect the prices of articles imported or manufactured, so as to materially alter the value of previous contracts respecting them. But these incidental consequences arising from the exercise of such powers were contemplated in the grant of them. As there can be no solid objection to legislation under them, no just complaint can be made of such consequences. But far different is the case when the impairment of the contract does not follow incidentally, but is directly and in terms allowed and enacted. Legislation operating directly upon private contracts, changing their conditions, is forbidden to the States; and no power to alter the stipulations of such contracts by direct legislation is conferred upon Congress. There are also many considerations, outside of the fact that there is no grant of the power, which show that the framers of the Constitution never intended that such power should be exercised. One of the great objects of the Constitution, as already observed, was to establish justice, and what was meant by that in its relations to contracts, as said by the late *Chief Justice* in his opinion in *Hepburn* v. *Griswold*, was not left to inference or conjecture. And in support of this statement he refers to the fact that when the Constitution was undergoing discussion in the Convention, the Congress of the Confederation was engaged in framing the ordinance for the government of the Northwest Territory, in which certain articles of compact were established between the people of the original States and the people of the Territory "for the purposes," as expressed in the instrument, "of extending the fundamental principles of civil and religious liberty, whereon these Republics (the States united under the Confederation), their laws and constitutions, are erected." That Congress was also alive to the evils which the loose legislation of the States had created by interfering with the obligation of private contracts and making notes a legal tender for debts; and the ordinance declared that in the just preservation of rights and property no law "Ought ever to be made or have force in the said Territory, that shall in any manner whatever interfere with or affect private contracts, or engagements, *bona fide* and without fraud, previously formed." This principle, said the *Chief Justice*, found more condensed expression in the prohibition upon the States against impairing the obligation of contracts, which has always been recognized "as an efficient safeguard against injustice;" and the court was then of opinion that "it is clear that those who framed and those who adopted the Constitution intended that the spirit of this prohibition should pervade the entire body of legislation, and that the justice which the Constitution was ordained to establish was not thought by them to be compatible with legislation of an opposite tendency." Soon after the Constitution was adopted, the case of *Calder* v.

Bull came before this court, and it was there said that there were acts which the Federal and State Legislatures could not do without exceeding their authority; and among them was mentioned a law which punished a citizen for an innocent act, and a law which destroyed or impaired the lawful private contracts of citizens. "It is against all reason and justice," it was added, "for a people to intrust a Legislature with such powers and, therefore, it cannot be presumed that they have done it." 3 Dall., 388. And Mr. Madison in one of the articles in the Federalist, declared that laws impairing the obligation of contracts were contrary to the first principles of the social compact, and to every principle of sound legislation. Yet this court holds that a measure directly operating upon and necessarily impairing private contracts, may be adopted in the execution of powers specifically granted for other purposes, because it is not in terms prohibited, and that it is consistent with the letter and spirit of the Constitution.

From the decision of the court I see only evil likely to follow. There have been times within the memory of all of us when the legal tender notes of the United States were not exchangeable for more than one half of their nominal value. The possibility of such depreciation will always attend paper money. This inborn infirmity no mere legislative declaration can cure. If Congress has the power to make the notes a legal tender and to pass as money or its equivalent, why should not a sufficient amount be issued to pay the bonds of the United States as they mature? Why pay interest on the millions of dollars of bonds now due, when Congress can in one day make the money to pay the principal? And why should there be any restraint upon unlimited appropriations by the government for all imaginary schemes of public improvement, if the printing press can furnish the money that is needed for them?

LEONIDAS C. EDWARDS, *Plff. in Err.*,

v.

ARCHIBALD KEARZEY.

(See S. C., 6 Otto, 595-611.)

Exemption from execution—when invalid.

1. The provision in the Constitution of a State which exempts from sale under execution every homestead not exceeding in value $1,000, is invalid as regards contracts made before the adoption of the Constitution.

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

[No. 566.]

Submitted Mar. 25. 1878. Decided Apr. 15, 1878.

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 22, 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 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

66.

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.

but when the laws undertake to add to those natural and just advantages, artificial distinctions, to grant titles, gratitudes, or 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 means of securing 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 could confine itself to equal protection, and, as Heaven does its rain, 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.*"

"The powers enumerated in that instrument do not confer on Congress the right to establish such a corporation as the Bank of the United States, and the evil consequences which followed may warn us of the danger of departing from the true rule of *construction,* and of permitting temporary circumstances or the hope of better promoting the public welfare to influence in any degree our *decisions upon the extent of the authority of the General* (Federal) *Government.*"

"But you must remember my fellow citizens, that *eternal vigilance by the people is the price of liberty, and that you must pay the price if you wish to secure the blessing.*"

"It is from within, among yourselves—from cupidity, from corruption, from disappointed ambitions, and inordinate thirst for power—that factions will be formed and liberty endangered. It is against such designs, whatever disguise the actors assume, that you have especially to guard yourselves."

"You have the *highest human trust committed to your care.* Providence has showered on this favored land blessings without number, and has chosen you *as the guardians of freedom, to preserve it for the benefit of the human race.*"

"May He who holds in His hands the destinies of nations make you worthy of the favors He has bestowed, and enable you, with pure hearts and clean hands and sleepless vigilance, to *guard and defend to the end of time the great charge He has committed to your keeping.*"

"*Let us abide by the Constitution as it is written, or amend it in the Constitutional mode if it is found to be defective.*"

"The severe lessons of experience will, I doubt not, be sufficient to prevent Congress from again chartering such a monopoly, even if the Constitution did not present an insuperable objection to it."

On the back cover of this issue is set forth an article that appeared in the Minneapolis Star on March 17, 1971. The suit papers were hardly in the hands of the Sheriff for service when Klobuchar called me for a statment. Although I make it a practice not to make any statment to a newspaper while a case is pending, his personal friendship to Hugh Galusha, late President of the Federal Reserve Bank of Minneapolis, who perished in a blizzard in Bear Tooth Pass south of Red Lodge Montana on or about Feb. 1, 1971 while on a snowmobile trip arranged and planned by Klobuchar, made added reason not to visit with him about the case.

A long time in not thinking something to be wron gives it a superficial appearance of being right. At first there is an outcry in defense of custom because, as with any pious fraud, it begets a calamitous necessity of carrying on. Sooner or later sanity will prevail, for time seems to make more converts than reason.

No part of the Constitution is more subject to being corrupted than those interrelated provisions on money. I am of the opinion that the grain content of pure metal in the gold and silver Coin should be set and fixed by constitutional amendment. Gold and silver are the units of measurement for values. Further the U.S. should be given authority in the Constitution to emit a "Bill of Credit". The control of money and the creation of credit should be vested in a Board composed of one person elected from each State for a term of 4 years, without eligibility for re-election. Paper money should state on the face of it exactly what it is redeemable in. In no case should it be made a legal Tender.

We may be beginning one of the darkest chapters in American History; it probably will take a blood bath to wake the American People up. National crimes are usually punished only be National punishment.

"The pen is mightier than the Sword" - Jerome Daly

(REPRINT)

THE MINNEAPOLIS STAR

WEDNESDAY, MARCH 17, 1971 ★ 13A

Jim Klobuchar

YOUR INSTINCTS TELL YOU that sooner or later a man endowed with the name of Obert M. Undem is going to get into trouble.

Obert Undem has been mistaken occasionally for a chapter heading in the Palmer-method penmanship course. In reality he is a banker. Until this week he has been dwelling in reasonable contentment and obscurity on Lake of the Isles as president of the Savage State Bank.

But it has been one of those hairy weeks for banks, in case the news has eluded you. There's one in Chicago that has just discovered a shortage of $6 million, which you'd think it might have covered by financing two or three more cars.

SHOWDOWN AT CREDIT RIVER

Mr. Undem's problems are far more profound. His bank is being sued for $71.60 for failure to produce silver coin on demand. The plaintiff contends the kind of money the bank offered him just won't hack it as lawful legal tender.

As a result, Mr. Undem and his confederates have been ordered to appear before the justice of the peace of Credit River Township March 22.

Now no matter how this proceeding goes, I think you'll agree we have the nostalgic outlines and cottonwood scent here of the old buckboard justice.

In his helpful instructions to the deputy sheriff, Robert L. Mahoney, the standing justice of the peace, explained that his office in Credit River Township is located two miles northeast of the Credit River Township Hall, in his farmyard. It is too early to tell whether this may become an historic site in the forward sweep of jurisprudence and the liberation of man from the toils of the bankers.

THE ACTION IS BEING BROUGHT by Mr. Jerome Daly, a Savage attorney who contends the Federal Reserve System is unconstitutional. Simple courtesy requires me to point out here that the subject of an alleged conspiracy involving the Federal Reserve System has come up from time to time on the radio talk station, WLOL, where I spend my twilight hours daily. Those who share Mr. Daly's views have expressed impatience with my failure to see the clean logic of their arguments.

OBERT UNDEM
Tough week for banks

Nonetheless, I telephoned Mr. Daly Sunday night, asking about his projected action against the Savage bank. Mr. Daly declined to give details, which naturally is his privilege There is nothing personal, he said, "I consider you an enemy of the United States."

Needless to say, a man has to be wounded a little by this abrupt judgment, especially in view of affidavits that include Dayton's ChargaPlate, membership in the 20-gallon club at Mike's Car Wash, an American Legion card and a green stamp booklet from Red Owl.

But obviously, nobody wants to prejudge the case. Is Mr. Daly correct in his charge that the Savage State Bank is giving its customers so many wooden nickels in the guise of legal currency?

"I mean," mourned Mr. Obert Undem, "they're nickels, dimes, quarters, bills like we all spend at Southdale. Mr. Daly contends he deposited $71.60 in silver coin as trustee for another person in 1966 and that he demanded return of the silver last week. Well, there just ain't that kind of silver around.

"The cashier felt bad about it but all she had in coins were pennies and the silver-covered stuff we carry around in our pockets. It was, well, our best shot, so to speak. Mr. Daly declined and now he is demanding lawful, legal tender of the realm, and I am at a loss to know what to give him."

"Mr. Undem," I demanded tightly, "is the bank in position to cover Mr. Daly's $71.60 in ANY KIND of currency?"

"This bank," Mr. Undem replied with just a trace of an edge, "is completely liquid and is prepared to cover Mr. Daly."

"CONSIDER YOURSELF FORTUNATE," I sympathized. "In the old days on the Range when a banker couldn't produce silver on demand they didn't bother with lawsuits; they just got a horse and took him out to the tree.

"No banker has been that misused in Savage," Mr. Undem said, "in recent years. The bankers no longer have to fear lynching parties. The modern version is the FDIC regional supervisor, in this case Mr. Roger West, who investigates all of our sins and most of our investments."

The community of Savage, of course, has never regarded itself as being especially that far from the frontier. Its principal indutsries include Cargill and the Dan Patch Municipal Liquor Store and Bar, a spiritual descendent of Calamity Jane's cabaret in the Black Hills.

Until now, though, the Savage bank has never been required to deliver silver to any of the urgent depositers, at the Dan Patch or anyplace else in Savage.

"I don't know whether it's going to be a landmark case at Credit River," the banker fretted. "My rock-bottom hope is that they don't have any lone trees around."

Save your in-lays, friends.

ORIGINAL

VOLUME V

STATE OF MINNESOTA

IN SUPREME COURT

In Re Jerome Daly 28 East Minnesota Street Savage, Minnesota	File No. 42174 TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for hearing before a referee; the Honorable Donald C. Odden, Judge of the District Court; on the 9th day of February, 1970, in Room 722 of the Flour Exchange Building, in the City of Minneapolis, Minnesota.

This volume contains the testimony as given on Tuesday, February 17, 1970, and Wednesday, February 18, 1970.

Appearances as heretofore noted.

Reported by:

Lana M. Fruke

* * * * * *

(Tuesday, February 17, 1970
Approximately 1:30 p.m.)

MR. DALY: I will call Judge Lord as my next witness.

JUDGE MILES W. LORD

being first duly sworn, testified as follows on behalf of the Respondent on:

DIRECT EXAMINATION

BY MR. DALY:

Q Will you state your full name.

A. Miles W. Lord; I am a Federal District Judge for the District of Minnesota.

Q And your age?

A. Fifty; I have practiced law since 1948.

Q And how long have you been a United States District Judge?

A. I think it is either three or four years; I think it will be four years this spring.

Q Now, you are here pursuant to a subpoena, are you?

A. Right.

Q And you were served by the Sheriff of Hennepin County?