



Case Files, General Index, and Briefs
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RECORD

IN THE
United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 18,906

CIVIL

JEROME DALY,

Appellant.

vs.

UNITED STATES OF AMERICA and
RAYMOND H. EHLERS, Revenue
Agent, Internal Revenue Service,

Appellee,

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF MINNESOTA
THIRD DIVISION

224-7631

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RESPONDENT'S EXHIBIT S
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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MINNESOTA
THIRD DIVISION
Civil No. 3-66-349

UNITED STATES OF AMERICA and
RAYMOND H. EHLERS, Revenue Agent,
INTERNAL REVENUE SERVICE,
Petitioners,

vs.

JEROME DALY,
Respondent.

ORDER TO SHOW CAUSE

Upon the petition, the exhibits attached thereto, the affidavit of Raymond H. Ehlers, Revenue Agent, Internal Revenue Service, and upon motion of Patrick J. Foley, United States Attorney:

It is ORDERED that Jerome Daly appear before the District Court of the United States for the District of Minnesota, in that branch thereof presided over by the undersigned, on the 28th day of December, 1966, at 10:00 A.M. to show cause why he should not be compelled to obey the Internal Revenue summons served upon him on July 21, 1966.

It is further ORDERED that a copy of this order, together with the petition, and exhibits attached thereto, be served personally upon the said Jerome Daly at least five days prior to the time set herein for hearing.

Dated at St. Paul, Minnesota, this 2 day of December, 1966.

EARL R. LARSON
United States District Judge

(Title of Cause)

PETITION TO ENFORCE INTERNAL REVENUE SUMMONS

Come now the United States of America and Raymond H. Ehlers, Revenue Agent of the Internal Revenue Service, a duly authorized delegate of the Secretary of the Treasury, by their attorney, Patrick J. Foley, United States Attorney for the District of Minnesota, and show unto this Court as follows:

I

This is a proceeding brought under the authority of Section 7604(a) of the Internal Revenue Code of 1954 to judicially enforce Internal Revenue summonses. 26 U.S.C. & 7604 (a) (1958).

II

The petitioner, Raymond Ehlers, is a revenue agent of the Internal Revenue Service employed in Minneapolis, Minnesota, and is authorized to issue Internal Revenue summonses under the authority of Section 7602 of the Internal Revenue Code of 1954. 26 U.S.C. §7602 (1958).

III

The respondent, Jerome Daly, is a resident of Rosemount, Minnesota, which is within the jurisdiction of this Court.

IV

In the course of his duties as a revenue agent for the Internal Revenue Service, Raymond Ehlers has been engaged in performing an investigation to determine the correct income tax liability of the respondent, Jerome Daly, for the year 1965.

V

On July 21, 1966, in the course of such investigation Raymond Ehlers issued and served Jerome Daly with a summons

pursuant to the provisions of Sections 7602 and 7603 of the Internal Revenue Code of 1954.

VI

The summons directed Jerome Daly to appear before Raymond Ehlers on August 10, 1966, at W-1081 First National Bank Building, St. Paul, Minnesota, to give testimony and to produce for examination various documents. Attached hereto as Exhibit A is a copy of said summons. At the request of Mr. Daly, the time for the return of summons was postponed until September 28, 1966. On September 28, 1966, Mr. Daly again requested a delay until September 30, 1966.

VII

On September 30, 1966, Mr. Daly appeared before Raymond Ehlers at W-1081 First National Bank Building, St. Paul, Minnesota. At such time Mr. Daly refused to be sworn and to give testimony with respect to his income tax liability for 1965 and he refused to produce the documents required to be produced by the summons. Moreover, he refused to state whether he had brought such documents with him.

VIII

That it was, and now is, essential to the determination of the correct income tax liability of Jerome Daly for the year 1965 that the respondent, Jerome Daly, be required to produce the records demanded and to give testimony, as is evidenced by the affidavit attached hereto and incorporated herein as a part of this application.

WHEREFORE, the petitioners respectfully pray:

1. That this Court enter an order directing the respondent, Jerome Daly, to show cause, if any he has, why he should not comply with and obey the aforementioned summons in each and every requirement thereof.

2. That the Court enter an order directing the respondent, Jerome Daly, to obey the aforementioned summons in each and every requirement thereof and to order the attendance and production of the records as required for and called for by the terms of the said summons before Revenue Agent Raymond Ehlers, or any other proper officer of the Internal Revenue Service, at such time and place as may be hereafter fixed by the said Raymond Ehlers, or any other proper officer of the Internal Revenue Service.

3. That the Court grant such other and further relief as to the Court may seem just and proper.

PATRICK J. FOLEY
United States Attorney
By Stanley H. Green
Assistant United States
Attorney

EXHIBIT A

SUMMONS

In the matter of the tax liability of Jerome Daly Route 1,
Rosemount, Minnesota
Internal Revenue District of St. Paul 1965.

THE COMMISSIONER OF INTERNAL REVENUE

Greeting:

TO: Jerome Daly

AT: Route 1, Rosemount, Minnesota

You are hereby summoned and required to appear before Raymond Ehlers, an officer of the Internal Revenue Service, to give testimony relating to the tax liability and/or the collection of the tax liability of the above named person for the periods designated and to bring with you and produce

for examination the following books, records, and papers at the time and place hereinafter set forth:

Place and time for Appearance: At W-1081 First National Bank Building, St. Paul, Minnesota, 55101 on the 10th day of August 1966, at 9 o'clock A.M.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States or before a United States Commissioner to enforce obedience to the requirements of this summons, and to punish default or disobedience.

Issued under authority of Section 7602, Internal Revenue Code of 1954, this 21st day of July, 1966.

ORIGINAL

SIGNATURE: Gerald O. Kleven
Internal Revenue Agent

TITLE: Group Supervisor

TO: Jerome Daly, Route 1, Rosemount, Minnesota

You are required to produce for examination the following records in your possession and subject to your control:

1. The deposit slips or your copies thereof reflecting deposits you made during 1965 to any savings, checking, trust, or escrow account.
2. The cancelled checks executed by you during the year 1965.
3. The bank statements received by you to the extent they relate to deposits to and disbursements from your bank accounts during the year 1965.
4. The savings or savings and loan passbooks reflecting amounts you had on deposit during any part or all of the year 1965 and interest received thereon.

5. The certificates of deposit held by you at any time during the year 1965.

6. Trust or escrow statements for any part of 1965.

7. Cash receipts journal, general ledger, and other records reflecting your receipts in 1965 from the practice of law, the rental of properties, the business of farming, dividends, or any other source.

8. Statements reflecting your purchases and sales of assets in 1965.

9. Such of your records as reflect your basis in assets sold in 1965.

10. Cash disbursements journal, general ledger, and other records reflecting expenses paid by you in 1965 incident to your practice of law, rental of properties, business of farming, and other transactions entered into for profit.

11. Appointment book reflecting appointments with clients during 1965.

12. Depreciation record or any other records reflecting assets subject to depreciation in 1965, the original basis thereof, improvements thereto, the depreciation previously allowed or allowable, the useful life, and the salvage value thereof.

13. Any other records or documents relating to your gross income in 1965 or to your expenditures in 1965 which may be deductible.

14. Any other records or documents relating to any credit, deduction, or allowance claimed by you for 1965.

(Title of Cause)

AFFIDAVIT

I, Raymond H. Ehlers, a Revenue Agent of the Internal Revenue Service and a duly authorized delegate of the Secretary of the Treasury, being first duly sworn, depose and say:

I

I am attached to the Audit Division of the District Director of Internal Revenue, St. Paul, Minnesota. My post of duty is Minneapolis, Minnesota.

II

In the course of my duties as a Revenue Agent for the Internal Revenue Service I was assigned the task of performing an investigation to determine the correct income tax liability of the respondent, Jerome Daly, for the year 1965. Respondent Jerome Daly is a resident of Rosemount, Minnesota, and has offices at 28 East Minnesota Street, Savage, Minnesota.

III

On July 21, 1966, in the course of such investigation I issued and served Jerome Daly with a summons pursuant to the provisions of sections 7602 and 7603 of the Internal Revenue Code of 1954. Said summons is attached to the Petition as Exhibit A.

IV

The summons directed Jerome Daly to appear before me on August 10, 1966 at W-1081 First National Bank Building, St. Paul, Minnesota, and to produce certain documents specified therein relating to his income tax liability for 1965 and, in addition, to testify with respect thereto. At the request of Mr. Daly, the time for the return of summons was postponed until September 28, 1966. On September 28, 1966, Mr. Daly again requested a delay until September 30, 1966.

On September 30, 1966, Mr. Daly appeared before me at W-1081 First National Bank Building, St. Paul, Minnesota. At such time Mr. Daly refused to be sworn and to give testimony with respect to his income tax liability for 1965 and he refused to produce the documents required to be produced

by the summons. Moreover, he refused to state whether he had brought such documents with him.

V

The documents specified in the summons and the testimony of Mr. Jerome Daly are essential to a determination of his correct income tax liability for 1965.

RAYMOND H. EHLERS
Internal Revenue Agent

(Jurat.)

U.S. INDIVIDUAL INCOME TAX RETURN

for the year January 1-December 31, 1965 or other taxable year beginning Jan. 1, 1965, ending Dec. 31, 1966 U.S. Treasury Department—Internal Revenue Service

Name: Jerome Daly, Rosemount, Minnesota.

Occupation: Farmer and Lawyer.

SEE Exhibit "A" ATTACHED HERETO and made part hereof.

Jerome Daly, April 16, 1966.

U.S. INDIVIDUAL INCOME TAX RETURN 1040
for 1965

EXHIBIT "A"

Relying upon the Constitution of the United States of America and the Declaration of Independence and the United States Supreme Court Case of Manley vs. Sullivan, Oct. term, 1926, 71 Lawyers Edition I hereby Plead the following constitutional objections to the form of the return, the information requested and further object to the Income Tax, in whole and in part as being unconstitutional. This is a part of my 1965 Minnesota State Income Tax Return and United States Individual Income Tax return.

It is impossible for me to answer the questions and provide the information requested without waiving my rights as secured by the Declaration of Independence and the Constitution of the United States. Chief Justice Holmes said in the above cited case: "If the form of return provided for answers that the Defendant was privileged from making he could have raised the objections in the return."

I further plead the Constitution of the United States, and each and every part thereof as though herein set out in full: with particular reference to Sections 4, 5 and 6 of the Bill of Rights and the 14th Amendment U.S. Const. I further plead the Declaration of Independence and each and every part thereof as though herein set out in full.

I further object to the form of the return upon the grounds that it may tend to supply information which may tend to lead to information which might tend to uncover information which might tend to incriminate me.

See also U.S. Supreme Court decision of Marbury V. Madison 1803 2 Law Ed. 60 "Law repugnant to the Constitution is void."

U.S.C.A. Title 12 Ch. 3 sec. 411, 420, 444, 531, 542 and 547 U.S.C.A. Title 18 Ch. 1 Sec. 384.

See also memorandum attached hereto and made a part thereof.

JEROME DALY
4-16-66

MEMORANDUM

The subject of money is disposed of by the United States Constitution with extreme brevity, it is as follows:

"Art. 1, Sec. 1 All legislative powers herein granted shall be vested in a Congress of the United States,—Art. 1 Sec. 8 Clause 5. The Congress shall have the power to

coin money, regulate the value thereof and of foreign coin."

This provision gives Congress the exclusive right to do three things.

These rights are of equal importance. (1) The right to coin money; the denial of that right to the states or to individuals is unquestioned. (2) The right of Congress to regulate the value of domestic money, and (3) foreign coin. The denial of that right to the states or to individuals is equally beyond question.

The Supreme Court of the United States has held in numerous decisions that only Congress can coin money, regulate the value thereof and of foreign coin and produce a substitute for coin. See *Briscoe vs. The Bank of the Commonwealth of Kentucky* 11 Peters 257, *Fox vs. State of Ohio* 5 Howard 410, *United States vs. Marigold* 9 Howard 560.

Federal Reserve \$10.00 Notes recite that they are "redeemable in lawful money at the U. S. Treasury", and therefore are promissory notes of a private corporation for the payment of lawful money and therefore, ipso facto, cannot be lawful money.

This power to coin money and regulate the value thereof has been denied to the States by Article 1 Section 10 which states "no state shall coin money, omit bills of credit or make anything but gold and silver coin a tender in payment of debts."

The Federal Reserve system together with the Federal Reserve Laws are obviously set up to defraud the people of the states. Plaintiffs are not willing to go along with this fraud.

No one will deny that Federal Reserve Bank notes are intended, and in fact are, a substitute for money. Their necessity grows out of a deficiency of money. Congress has au-

thority, which it derives from the Constitution, to coin money and regulate the value thereof.

If authority exists anywhere to coin a substitute, it must rest with that branch of the Government authorized to coin the real. The very fact that Congress delegates the power to banks, and the fact that banks claim to derive their power from Congress, to issue paper substitutes for coin, are admissions that Congress possessed the power, else how could it confer what it did not possess?

All the powers of Congress are derived from the Constitution, and if that instrument confers the power to coin money substitutes, it is implied from that clause conferring power to coin money. Has Congress a right to delegate its control over the coinage of gold and silver to private corporations? If not, whence does it derive its authority to delegate to banking associations its control over coin substitutes? Congress could not grant the substitute prerogative to the banks unless it first possessed it. If it ever possessed it, it held it as a trust, to exercise for the benefit of the people as their agent. If it never possessed the substitute prerogative, it could not confer it upon banks, hence, they exercise a usurped power. If Congress does possess the prerogative, it has no more right to delegate it than it has to delegate the power to coin money.

Is the right to issue, regulate and control the currency of the country a natural individual right, or a function of sovereignty?

If a natural individual right, is not the monopoly of it by the national banks in violation of the spirit of our republican form of Government which was instituted to protect all men in the full and equal enjoyment of their natural rights, instead of depriving them of one of them?

If it is a function of sovereignty, how can it be exercised by any except such as are so chosen by the sovereign people from time to time to exercise it?

If Congress has a right to confer the monetary function of sovereignty upon a hereditary succession, has it not the same right to dispose of any and all sovereign powers in the same manner?

The two great arms of national sovereignty are the purse and the sword; if it is wise to confer one upon a hereditary succession, why not dispose of the other in the same manner?

If it is safe to trust the monetary prerogative of the nation to the present generation of bankers and their heirs and assigns forever, without regard to fitness and qualification, why not trust the war power of the Government to the present generation of brigadiers, their heirs and assigns forever?

Viewed in its true light, is not the Federal Reserve banking system a long step towards the establishment of sovereignty based upon hereditary succession, is it not a big block wrenched from the temple of liberty and planted as the corner stone of imperialism, a powerful element of sovereignty crowned with the divine rights of kings?

As the Federal Government possesses no powers except such as were delegated to it by the people and enumerated in the Constitution, was not the Federal Reserve Act, conferring and perpetuating delegated powers upon foreigners and aliens, a gross betrayal of trust, if not treason against the people?

Has the Government a constitutional right to delegate powers entrusted to it, especially to be exercised by it for the people?

If not, is not the Federal Reserve bank act a palpable violation of the constitution, and its enforcement a usurpation of powers not warranted by that instrument?

If Federal Reserve notes are money, from whence do they derive their money qualities?

If the Government can create money for the banks, why not for itself and the people?

If Federal Reserve Notes are money, how can the power of the Government to create money be denied?

If Federal Reserve Notes are not money, did the bondholders ever loan any money to the Government, having loaned nothing but Notes?

If the *debts* of a nation are good security on which to base its money, why is not its *wealth* better?

If the Government chooses to farm out its control over the currency to private parties, why not grant the privilege of those who need it in the production of wealth, instead of giving it to an idle monopoly to rob, blackmail and oppress the producers of wealth?

Why should the money power that has accumulated colossal fortunes solely, through Government protection and favoritism, be exempt from all Government support, when those out of whom it has made these fortunes are compelled to bear all the public burdens in addition to being robbed?

See also the Veto message by President Andrew Jackson in 1832 on the Rechartering of the United States Bank Bill found on page 101 in "The Story Of Our Money" by Olive Cushing Dwinell which is quoted as follows:

"It is maintained by some, that the bank is a means of exercising the Constitutional power 'to coin money and regulate the value thereof.' Congress has established a mint to coin money and passed laws to regulate the value thereof. The money so coined with its value so regulated, and such foreign coins as Congress may adopt, are the only currency known to the Constitution.

"But if they (Congress) have the power to regulate the currency; it was conferred to be exercised by themselves, and not be transferred to a corporation (or individuals).

"If the bank be established for that purpose with a charter unalterable without its consent, Congress have parted with its power for a term of years, during which the Constitution is a dead letter.

"It is neither necessary nor proper to transfer its legislative power to such a bank, and therefore Unconstitutional.

"It is to be regretted that the rich and powerful too often bend the acts of Government to their selfish purposes. Distinctions in society will always exist under every just government. Equality of talents, of education, or of wealth can not be produced by human institutions. In the full enjoyment of the gifts of Heaven and the fruits of superior industry, economy and virtue, every man is equally entitled to protection by law; but when the laws undertake to add to those natural and just advantages, artificial distinctions, to grant titles, gratuities, 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 low, the rich and the poor, it could so be an unqualified blessing. In the Act before me there seems to be a wide and unnecessary departure from these just principles."

With the exception of small coins and small U. S. Notes, the Federal Reserve Banks, private corporations, in which the U. S. Government owns not one share of stock, together with member, privately owned, National and State banks, exercise exclusively the above legislative powers and further

are acquiring U. S. Securities with non-existent money and credit coined and created on their own books. Congress has no more right to surrender the legislative power to coin and create the nation's currency to a private corporation than it has the right to surrender the power to declare war to a private corporation.

Control of gold and monetary manipulation are the common denominator of all unconstitutional and subversive activity. By this medium it is sought to homologize our Constitution with the so-called British "unwritten" Constitution. Since the British have no Constitution the result is the gradual erosion and destruction of our individual sovereign rights as declared in the Declaration of Independence and our American Constitution. In our country we do not legally have "liberals" and "conservatives," nor do we have "right" and "left," either near or far. In America we have only Right and Wrong. Those who support the Declaration of Independence are Right; all others are Wrong.

Both external and internal subversives work hand in hand. Their common denominator is based upon usurpation of the right and duty of Congress to coin and regulate our money whereby the Federal Reserve Bank, a private corporation, FORGES billions of dollars in bonds and currency which it appropriates to its own use; and collect billions of dollars in "interest" from tax money; which bonds and interest our citizens and their government cannot possibly owe as a matter of law. This manipulation of illegal and void money is the means whereby ungodly influences direct and implement subversive activity, controls our government (regardless of elections); and at one and the same time steals alike our land and our birthright and in time will effectuate a revolutionary take-over from within by the small oligarchy at the top. Be it remembered the preamble of our Constitution clearly sets out the purpose of our government, "to 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." Because of the Federal Reserve Act of 1913, we do not have a Government of the people, by the people, and for the people, we have a government by, of and for the few financial magnates who, in a back room, corner the money of the world.

Behind the scenes the big bankers, National and International, sit pulling the strings; fostering, conniving and perpetrating war with profit to themselves paid for by the blood, sweat, tears and toil of the humbler members of society.

Conformance to the Constitution requires that Congress set up its own U. S. Government Bank as an accounting mechanism of the Government to act as a National Cash Register, coin, create and issue U. S. Government gold and silver coin. Pursuant to law issue United States Notes redeemable to citizens of the United States in gold or silver coin and redeemable to foreigners, at the option of the Government of the United States in surplus commodities of the United States; regulate, control and direct use of debt free and interest free money by U. S. Government Departments; loan money to private banks, states, cities, counties and school districts at a rate of interest set by Congress with principal and interest payable back into the U. S. Treasury instead of to private, National and International Bankers.

In a more specific use of the term money, its value is determined by the budgetary processes of its government whereby the appropriation and taxation of money balances each other in a complete circuit. Taxation decreases the amount of money in circulation and thereby increases its value; appropriation increases the amount of money in circulation and thereby decreases its value. A balanced budget is a prerequisite to a stable sound currency. By appropriation, I mean any outgo of money from a Constitutional U. S. Government Bank. As required by the Constitution the interest rate for the use of money borrowed must be set by law as it has a direct influence upon its value. Indiscriminate

issue and circulation of money by any government could be bad, however, since money is the life blood of our economy, the Constitution requires that complete control of it remain in the hands of Congress. Then and then only, will American money ring true on every counter of the world.

Slavery between debtor and creditor has existed since recorded history as one of the most vicious forms of human bondage, as the creditor, at his whim, removes the debtor from his homestead, unheard of in ordinary simple slavery.

Our national indebtedness to the private Federal Reserve System and member banks represents the most vicious form of human bondage, servitude and slavery ever known to the human race.

Those who expect to reap the blessings of freedom must, like men, undergo the fatigues of supporting it. All that is necessary for the triumph of oppression and evil is that good men do nothing. It is not a field of a few acres of ground that we are defending, but a cause that we are fighting for; and whether we defeat the enemy from within in one battle, or by degrees, the consequences will be the same.

All power exercised over a nation must have some beginning. It must be delegated to the government by the Constitution, express or implied, or it is assumed. There are no other sources. All delegated power is a trust; all assumed power is despotic usurpation. Time does not alter the nature or equality of either. No legislative power or article of the Constitution can be altered, delegated or infringed upon at the discretion of the Government of the United States. The U. S. Constitution is to that Government a law; and if that instrument is to be altered, it must be amended as provided, by the people, not otherwise. A nation can have no interest in being wrong.

Mankind are not universally agreed in their determination of right and wrong; but there are certain actions which the consent of all nations and individuals have branded with the

unchangeable name of meanness. In the list of human vices we find some with such a refined constitution that they cannot be carried into practice with seducing some virtue to their assistance; but meanness has neither alliance nor apology. It is generated in the dust and sweepings of other vices, and is of such a hateful figure that all the rest conspire to disown it.

The particular act of meanness which I allude to in this description is the surrender of the political power of Congress to coin and create the nation's currency to the internationally owned and controlled Federal Reserve Banks and the subsequent borrowing of their unlawfully created money from them for the purpose of financing the government and supplying the nation's credit and currency.

How is it that we are unable to see the serious wrong inflicted upon our posterity by the continuation of this vicious practice. Our country is owned and controlled, lock, stock and barrel by the National and International Bankers, we being slaves to them in the land of the free and (dubious) home of the brave.

All the people on the face of the earth, whether friends or enemies, must and surely will unite in despising this dishonest, underhanded practice.

The preservation of our Constitution, with its built-in legal device for the protection of individual sovereignty and right and the safety of our people rides on the determination of our people to preserve sovereignty in themselves as promulgated in the Declaration of Independence and the Constitution.

By circulating worthless Federal Reserve Notes as money, irredeemable in gold or silver, the money of the Constitution, or anything else of value, the Federal Reserve Bank and National banks, in their combined activity have committed an act of bankruptcy for which action they should be proceeded against by petition in involuntary bankruptcy, adjudged

bankrupt with summary and immediate seizure of all their property and resulting disposition among their creditors in general; a fate which as a part of their nefarious and insidious practices they have designed for the American People.

While tortuously they sit on the horns of a dilemma, in the torture of a noble thought, most members of Congress would rather stay dumb.

The uninhibited abandon with which some Senators and Congressmen ride down the provisions to the Constitution, in the face of their solemn oath to uphold maintain and support that instrument, identifies them with treason and tyranny.

To them, ever more increasingly applicable, is the Bible's injunction: "Choose ye this day whom you will serve, God or Mammon." So far, almost to the man, they are weighed in the balance and found wanting. Their infamous perfidy loses itself with them in unfathomable and abysmal oblivion.

The people are not fools; they will record this injustice upon the tablets of their memories where it will not be erased by or with the sophisticated tongues of aspiring politicians.

I do not mean by this "Declaration" to condemn those who honestly believe otherwise; for credulity is not in and of itself a crime and they have the same right to their belief as I have to mine. But it is necessary to the happiness of man that he be mentally faithful to himself. Infidelity does not consist in believing or in disbelieving; it consists in professing to believe what one does not believe. It is impossible to calculate the moral mischief, if I may so express it, that mental lying has produced in society. When a Congressman or Senator has so far corrupted and prostituted the chastity of his mind so as to subscribe his professional belief to things he does not believe he has prepared himself for the commission of every other crime. He takes up that position for the sake of gain, and in order to qualify himself he begins with a perjury when he takes his oath of office. Can we conceive

of anything more destructive to integrity and morality than this?

The strength of a government consists in the interest the people have in supporting it. Mere politicians of the old school may talk of alliances, but, the strongest of all alliances is that which the mildness, wisdom and justice of government, unperceived, combines with the understanding and acceptance of the people it governs. It grows in the mind with the secrecy and fidelity of love, and reposes on its own energy. Make it in the interest of the people to live in a state of government, and they will protect that which protects them. But when they are harrassed with indebtedness and spending which time discovers to be false, and burdened with taxes to pay principal and interest, baselessly, for which they can see no just cause, their confidence in such government withers away, and they laugh at the energy that attempts to restore it.

In the progress of mankind, it is sometimes useful to look back, lest we forget the ground we have travelled over and trace the turns and windings through which we have passed. With the exception of the Spirit or the Soul, man is but an atom, he is born, he lives, he acts and he dies; principles are eternal. An army of principles will penetrate where an army of soldiers cannot; it will succeed where diplomatic management would fail. It is neither the ocean, the Channel, the Rhine, nor the Wall that can arrest its progress. It will march over the horizon of the world; it will conquer.

Respectfully submitted,

JEROME DALY,
Attorney At Law
28 East Minnesota Street
Savage, Minnesota

Dated this 14th day of March, 1966.

(Title of Cause)

ADMISSION OF SERVICE

I, the undersigned, do hereby appear specially and not generally and object to the Jurisdiction of this Court Over my person and over the subject matter herein.

I make this special appearance for the singular purpose of admitting service of Order to show cause dated December 2, 1966 and attached papers the same as if they were handed to me by the United States Marshal.

Dated at Savage, Minnesota December 6, 1966

JEROME DALY

Mr. Stanley Green
United States Attorney
U.S. Court House Bldg.
Minneapolis, Minnesota

Sir:

This will acknowledge our conversation of yesterday and I thank you for having the Clerk mail the papers to me which save me a trip to St. Paul to pick them up.

As I stated yesterday I do not think that you have Jurisdiction over me. This is a Civil action. The only way you can acquire Jurisdiction over me is by filing a Summons and Complaint. An Order to Show Cause is only used to shorten the time for a motion.

Therefore, to save us both time and to narrow down the issues if you are going to proceed, in order to protect my rights I request that the U.S. Government proceed according to law.

I will be out of town for about 10 days from Dec. 10, 1966 to Dec. 20, 1966.

J.D.

(Title of Cause)

ORDER

Appearances of counsel: Steven Z. Lange, Assistant United States Attorney, for petitioner; and Jerome Daly, *pro se*.

The Court having heard the argument of counsel and being fully apprised of the circumstances herein,

IT IS HEREBY ORDERED adjudged and decreed that the respondent, Jerome Daly, appear before Revenue Agent Raymond H. Ehlers at 2:00 P.M. On Friday, January 6, 1967, at W-1081 First National Bank Building, Saint Paul, Minnesota, for questioning pursuant to Title 26, United States Code, Sections 7602, 7603 and 7604(a).

Dated: December 29, 1966.

MILES W. LORD, Judge
United States District Court

Filed Dec. 29, 1966, Frank A. Massey, Clerk—By Laurence R. Topper, Deputy.

(Title of Cause)

Testimony of Jerome Daly pursuant to Title 26, United States Code Sections 7602, 7603, and 7604(a)

Transcript of testimony of Jerome Daly, esq., taken at W-1081 1st National Bank Building, St. Paul, Minnesota, January 6, 1967, commencing at 2:00 o'clock, p.m.

APPEARANCES: David Richard Brennan, Esq. W-1081 1st National Bank Bldg. St. Paul, Minnesota, Office of Regional Counsel; Raymond H. Ehlers Agent, Internal Revenue Service.

Mr. Brennan: Now, Mr. Daly, you are appearing here in response to the Court's order in the matter of United States and Raymond Ehlers versus Jerome Daly?

Mr. Daly: Well, let's see if I have a copy of that order. Have you got a copy of it?

Mr. Brennan: Yes. I don't have a dated copy, but I have a copy.

Mr. Daly: That's 7602, 7603, 7604(a). Well, I want to file a Notice of Special Appearance dated January 6, 1966, and I will do so now.

Mr. Brennan: You are giving this to Mr. Ehlers and myself?

Mr. Daly: Yes. And I want to let the record show that I, by making this special appearance, I do not admit the jurisdiction of the Internal Revenue Department or any of its agents over my person or over the subject matter herein; nor do I admit the jurisdiction of the United States District Court—what is the date on that order?

Mr. Brennan: I don't have the date of the order.

Mr. Daly: Well, I think it was dated the same day as the hearing. When was that?

Mr. Brennan: That was December 28, 1966.

Mr. Daly: I do not admit the jurisdiction of the United States District Court for the District of Minnesota, Third Division, over my person and of that order and judgment of decree dated December 28, 1966.

Now, subject to my objection to the jurisdiction, I will consent to being sworn.

Mr. Brennan: Very well. Whereupon,

JEROME DALY,

a witness called by the Petitioner, having been first duly sworn, was examined and testified as follows:

EXAMINATION

By Mr. Ehlers:

Q. Mr. Daly, have you brought with you your deposit date slips reflecting deposits made by you in 1965 to any savings, trust or escrow accounts or any copies thereof?

A. Well, I wonder if we might—the purpose of your examination is to ascertain information to complete the 1965 return, is that right?

Q. Yes, it is; to determine your tax liability.

A. Well, my last name is Daly, D-a-l-y; my first name is Jerome. My home address is Rosemount, Minnesota, and my occupation is farmer and lawyer. My post office address is Rosemount, Minnesota. My law office address is 28 East Minnesota Street, Savage. I am single; and as far as the Social Security number is concerned, I don't remember it off-hand. I think it's 474-24-5607. My age is 40.

Now, in view of United States statutes 26, United States Code, Internal Revenue Code, Section 7202 and 7203—well, Chapter 75 of 26 United States Code, 7201 through 7212, including but not limited to Section 1918 (b) of Title 28, Section 7207 of Title 26, Section 6531 of Title—no, strike that.

In the face of those criminal statutes, I am going to refuse to answer the question that you asked me, Mr. Ehlers, upon the grounds that it infringes upon my rights as secured by the Constitution of the United States; and more specifically the fourth, fifth and sixth amendments thereof.

Q. Do you have any such records in your possession or that's under your control?

A. The same answer. When I say "The same answer," I am referring to the same—without having to clutter up the records—the same objection.

Mr. Brennan: When you say the same objection, you mean to restate precisely the objection you made in response to the first question, is that correct?

The Witness: To restate precisely what I have stated previously.

Mr. Brennan: Yes, very good.

By Mr. Ehlers:

Q. Do you recall amounts and dates of your deposits of such accounts during the year 1965?

A. Same objection.

Q. What was the source of the deposits?

A. Same objection.

Q. Mr. Daly, do you have with you your canceled checks executed by you during the year 1965?

A. Same objection.

Q. Do you recall the amounts and dates of each of such checks executed by you during '65?

A. Same objection.

Q. Please detail and describe.

A. Well, it follows that I object to that also.

Q. Yes. Have you with you bank statements received by you relative to deposits to and disbursements from bank accounts during 1965?

A. Same objection.

Mr. Brennan: May I interpose one question here. As a procedural matter in raising your claims under the Constitution, I am wondering whether you feel it would incriminate you to divulge whether those records are with you, and if they are, whether then you would raise the objection in response to the question of whether you would make them available for our examination. Just a procedural matter. Do you wish to indicate whether you have those records with you or do not? The reason I state this, I think that there may be some authority; there may be some question as to whether the objection can be raised without the records having been brought with you, and I am wondering if you are satisfied that at least that the claim of the privilege is being properly raised insofar as that question is concerned.

The Witness: After checking Section 7210 of Title 26, I am satisfied that I am going to stand on my objection.

Mr. Brennan: Very good.

The Witness: I wonder if you could show me the list of questions you have and I will take a quick glance at it and tell you which ones I will not raise objection to.

Mr. Brennan: I think I would rather Mr. Ehlers—if it wouldn't be too inconvenient for you—to go over each of the questions because I think this is more of a check list, and I think he may have questions of his own.

By Mr. Ehlers:

Q. Do you recall the amounts and dates of each of your checks executed by you during the year '65?

A. Same objection.

Q. Do you recall the amounts you had on deposit during any part at all of '65 of such type of accounts; referring to your bank accounts, savings accounts, escrow, any type of accounts that you would have?

A. Same objection.

Q. Do you recall what interest was there of any savings, passbooks or certificates?

A. Same objection. And I also want to include in this objection the further objection that it calls for evidence which might tend to lead to evidence which might tend to incriminate myself and deprive me of my rights as secured by the fourth, fifth and sixth amendments. Also upon the further grounds that it might tend to elicit information which might tend to incriminate clients I have in the States of North Dakota, Texas, Illinois and Kansas.

Q. Have you with you bank statements received by you relative to deposits to and disbursements from bank accounts during the year '65?

A. Including clients I have in the State of Minnesota and also with that statement it is the same objection all the way through.

Q. Okay. Have you with you certificates of deposit held by you at any time during '65?

A. Same objection.

Q. Do you recall whether you had such certificates of deposit?

A. Same objection.

Q. Have you trust or escrow statements which you have executed for any part of '65?

A. Same objection.

Q. Do you recall what trust or escrow arrangements you must have executed during 1965?

A. The same objection.

Q. Do you recall the amount of commissions, interest or sales proceeds that you may have been paid or accrued to you in such agreements during '65?

A. Same objection; and I might also state because of the unconstitutionality of the money system existing in the United States, I don't think it is possible for me to answer your questions. I think I have already raised this objection—I want to reassert all of the objections I have previously raised on the return, which I filed here, also.

Q. Have you with you your cash receipt journal?

A. Same objection.

Mr. Brennan: Let me interrupt just to clarify one point. You mean to state you just raised an objection dealing with the constitutionality of the monetary system was it?

The Witness: Yes, I raised that, I think, on the return I filed in 1965.

Mr. Brennan: Yes. Now, the question I have is: Are you raising that objection as to the question which was just a moment ago given to you by Mr. Ehlers or are you now raising that objection to each of the questions which Mr. Ehlers has presented to you this afternoon?

The Witness: To each previous question also.

Mr. Brennan: Very well.

By Mr. Ehlers:

Q. Have you with you your general ledger?

A. Same objection.

Q. Have you with you your other record reflecting your receipts in '65 from your practice of law?

A. Same objection.

Q. Have you with you your records reflecting your receipts in '65 from the rental of properties?

A. Rental properties; you mean property that I own and rent?

Q. Yes; property that you would own and rent.

A. Well, same objection.

Q. Do you have with you your records reflecting receipts from the business of farming?

A. Same objection.

Q. Have you with you your records of receipts in 1965 of dividends, any dividend income?

A. Same objection.

Q. Have you with you your record reflecting receipts in 1965 from any other source?

A. Same objection.

Q. What were your receipts and income in 1965?

A. Same objection.

Q. What were the sources of your receipts?

A. Same objection.

Q. Have you with you your statements reflecting purchases and sales of assets in 1965?

A. Same objection.

Q. Do you recall what your purchases and sales of assets were in 1965?

A. Same objection.

Q. Have you with you your records reflecting your basis on the assets you sold?

A. Same objection.

Q. Do you recall what your basis on such assets was?

A. The same objection.

Q. Have you with you your cash disbursements journal, general ledger or other records reflecting expenses paid by you in 1965 incident to your practice of law?

A. Same objection.

Q. How about regarding the rental properties? Do you have any of your cash disbursements journal or general ledger or other records reflecting your expenses in connection with your rental of properties?

A. Well, I am going to make the same objection, but I mean a lot of these questions you ask are just out in—just no materiality. But I want to make the same objection.

Mr. Brennan: Well, if, Mr. Daly, we can narrow the area where you have records or have not records, it might facilitate the ultimate disposition of the case. We, of course, are not aware of what records you do have and tried to be all encompassing.

The Witness: Well, I understand your point; but I think I will just stand on the same objection.

Mr. Brennan: Very well.

By Mr. Ehlers:

Q. How about in regard to the business of farming; your records such as cash disbursements journal, general ledger or other records reflecting your expenses in connection with farming?

A. Well, that's the same objection.

Q. How about in regard to other transactions entered into profit? Do you have your records in regard to that, to those?

A. Same objection.

Q. Do you recall what such expenses were?

A. Same objection.

Q. Have you brought with you your appointment book reflecting appointments with clients during 1965?

A. Same objection.

Q. Do you recall the number of appointments you had with clients during 1965?

A. The number of appointments?

Q. The number of appointments you had with clients; with your clients.

A. I think the same objection.

Q. What is the normal fee arrangements with clients? For example, how much an hour do you charge for general consultation?

A. Same objection.

Q. What's your estimate as to the total time spent working for clients?

A. Same objection.

Q. What's your total estimate of what your billings were—to your clients were during 1965?

A. Same objection.

Q. What percentage of receipts did you receive from clients in 1965?

A. Same objection.

Q. Have you brought with your depreciation records or other records reflecting assets subject to depreciation in 1965?

A. Same objection.

Q. Do you have such records as reflect the basis of such assets?

A. Same objection.

Q. Or the improvements to such assets?

A. Same objection.

Q. Depreciation allowed for such assets?

A. Same objection.

Q. The useful life of such assets?

A. Same objection.

Q. And the salvage value thereof?

A. Same objection.

Q. Do you recall what assets you may have had of such type during the year 1965?

A. Same objection.

Q. And the basis thereof, improvements, depreciation, et cetera?

A. Same objection.

Q. Mr. Daly, have you brought with you your records and documents reflecting your gross income in 1965?

A. Same objection. I answered that, didn't I?

Q. Or your expenditures in 1965 which may be deductible?

A. Same objection.

Q. Do you recall any other factors which may affect computation of your gross income or the computation of your deductions?

A. In 1965?

Q. Yes.

A. Well, no other factor other than the fact that you guys disrupted me by bringing me up here.

Q. Have you with you any documents related to any credit deduction, allowance which you may be entitled to for the year 1965?

A. Same objection.

Q. Do you claim any such credit deduction allowance at this time?

A. Do I claim a credit deduction allowance?

Q. Yes. Do you claim any credit deduction at this time on an allowance?

A. Same objection.

Q. Did you have a gross income of \$600 or more during 1965?

A. Same objection.

Q. Who does your bookkeeping?

A. Same objection.

Mr. Ehlers: That's all the questions that I have.

Mr. Brennan: Mr. Ehlers, you might want to consider some additional ones.

By Mr. Ehlers:

Q. What was the amount of your gross receipts in 1965?

A. Same objection.

Q. What was the amount of your total wages, if any, in 1965?

A. Same objection.

Q. What was the amount of your total business expenses?

A. Same objection.

Q. Are you under age 65?

A. I stated my age.

Mr. Brennan: May I have it restated? I must have missed it.

The Witness: 40. I suppose that that would even go to incriminate me by stating my age.

By Mr. Ehlers:

Q. Have you anyone who you claim as a dependent under the provisions of the Internal Revenue Code?

Mr. Brennan: For the year 1965.

Mr. Ehlers: Yes, for the year 1965.

The Witness: Same objection.

Mr. Brennan: Mr. Daly, in what respect would the last question tend to incriminate you?

The Witness: Same objection.

Mr. Brennan: Mr. Daly, in what respect would the—any of the other questions asked by Mr. Ehlers tend to incriminate you?

The Witness: Same objection.

Mr. Brennan: In other words, you refuse to answer the questions on the grounds that you previously state?

The Witness: Yes.

Mr. Brennan: Mr. Daly, at this time are you prepared to make your books and records available to Mr. Ehlers at any

location for the purposes of his making an examination into your tax liability for the year 1965?

The Witness: Same objection.

Mr. Brennan: In other words, you refuse to answer the question on the grounds stated in the original?

The Witness: Yes.

Mr. Brennan: May I ask how the answer to that question may tend to incriminate you?

The Witness: Are you asking me for an advisory opinion?

Mr. Brennan: No, I am asking you what—just in what respect do you feel that the answer to the last question would tend to incriminate you.

The Witness: Same objection.

Mr. Brennan: In other words, are you refusing to answer on the grounds you previously stated?

The Witness: Yes.

Mr. Brennan: Anything further?

Mr. Ehlers: No, I have nothing further.

Mr. Brennan: No further questions.

(Testimony concluded.)

I hereby certify that the foregoing is a true and correct transcript of my original stenotypy notes as taken at the time and place indicated.

E. JAMES FOWLER, Reporter.

(Title of Cause.)

NOTICE OF SPECIAL APPEARANCE

TO THE BUREAU OF INTERNAL REVENUE, UNITED STATES TREASURY DEPT.

You will please take notice that defendant hereby appears specially and not generally and objects to the Jurisdiction of Agent Ehlers over his person and over the subject matter therein. Defendant also objects to the Court Order served upon Defendant by the United States District Court upon the grounds that said Court never has acquired Jurisdiction over Defendant.

In consenting to take an Oath Defendant reserves his objection to the Jurisdiction of Agent Ehlers, or anyone else acting in his stead.

JEROME DALY
Rosemount, Minnesota

January 6, 1966.

(Title of Cause.)

ORDER TO SHOW CAUSE

Upon the affidavit of Raymond H. Ehlers, Revenue Agent, Internal Revenue Service, dated January 26, 1967, and attachments thereto, from which it appears that Jerome Daly is in contempt of this court by reason of his refusing to comply with the order of this court entered December 28, 1966:

It is ORDERED that Jerome Daly appear before the District Court of the United States for the District of Minnesota, in that branch thereof presided over by the undersigned, on the 27th day of March, 1967, at 10:00 A.M. to show cause why he should not be adjudged in contempt of court and why he should not be committed to prison or otherwise dealt with until he shall obey such order of this court; and

It is further ORDERED that a copy of this order, together with the affidavit, and exhibits attached thereto, be served personally upon the said Jerome Daly at least five days prior to the time set herein for hearing.

Dated at St. Paul, Minnesota, this 20th day of March, 1967.

MILES W. LORD
United States District Judge

(Title of Cause)

ORDER

Honorable Patrick J. Foley, United States Attorney, by Stanley H. Green and Steven Z. Lange, Federal Building, 110 So. 4th Street, Minneapolis, Minnesota, attorneys for petitioners; Jerome Daly, 28 E. Minnesota Street, Savage, Minnesota, attorney pro se.

ORDER OF CONTEMPT

Upon the affidavit of petitioner Raymond H. Ehlers, with timely notice thereof to Jerome Daly; the hearing thereon on March 27, 1967; and upon the record of the case, the Court makes the following Findings of Fact and Conclusions of law:

FINDINGS OF FACT

1. On April 16, 1966, Jerome Daly filed with the District Director of Internal Revenue, St. Paul, Minnesota, a Form 1040, disclosing his name, address and signature but none of the other information required by such form. Attached to such form was a memorandum in which he stated his objections to completing the return. A copy of such form and attached memorandum is a part of the record in this case. A comparable document was filed with the State of Minnesota as his state income tax return for the year 1965. A copy of such document is a part of the record in the case.

2. Raymond H. Ehlers is a Revenue Agent for the Internal Revenue Service attached to the Audit Division of the District Director of Internal Revenue, St. Paul, Minnesota. His post of duty is Minneapolis, Minnesota.

3. In the course of his duties as a Revenue Agent for the Internal Revenue Service, he was assigned the task of performing an investigation to determine the correct income tax liability of the respondent Jerome Daly for the year 1965. Respondent Jerome Daly is a resident of Rosemount, Minnesota, and has offices at 28 East Minnesota Street, Savage Minnesota.

4. On July 21, 1966, in the course of such investigation, Revenue Agent Ehlers issued and served Jerome Daly with a summons pursuant to the provisions of Secs. 7602 and 7603 of the Internal Revenue Code of 1954. The summons is a part of the record in the case.

5. The summons directed Jerome Daly to appear before Revenue Agent Ehlers on August 10, 1966, at W-1081 First National Bank Building, St. Paul, Minnesota, and to produce certain documents specified therein relating to his income tax liability for 1965 and, in addition, to testify with respect thereto. At the request of Mr. Daly, the time for the return of summons was postponed until September 28, 1966. On September 28, 1966, Mr. Daly again requested a delay until September 30, 1966.

6. On September 30, 1966, Mr. Daly appeared before Revenue Agent Ehlers at W-1081 First National Bank Building, St. Paul, Minnesota. At such time he refused to be sworn and to give testimony with respect to his income tax liability for 1965 and he refused to produce the documents required to be produced by the summons. Moreover, he refused to state whether he had brought such documents with him.

7. Pursuant to a petition filed by the petitioners to enforce such summons and upon hearing thereof, this Court

entered an order enforcing the summons requiring the testimony of Jerome Daly and the production of the documents called for by the summons.

8. At the time specified in the order, Jerome Daly did appear before Revenue Agent Ehlers at the designated place and submitted a notice of special appearance objecting to his jurisdiction and to the jurisdiction of this Court. Reserving such objections, Jerome Daly then took the oath pursuant to the provisions of Sec. 7602 of Title 26, U.S.C.

9. Except to state his name, address, occupation, marital status, Social Security number and age, Jerome Daly refused to comply with said order of Court by refusing to answer every question put to him. The testimony of Jerome Daly upon his examination by Revenue Agent Ehlers was recorded by an official United States court reporter and is a part of the record in this case.

10. Jerome Daly also refused to comply with the order enforcing the summons by refusing to produce for examination the records specified in the summons.

11. The documents specified in the summons and the testimony of Jerome Daly are essential to a determination of his correct income tax liability for 1965.

CONCLUSIONS OF LAW

1. By refusing to answer the questions propounded to him by Revenue Agent Ehlers and by refusing to produce for examination the records required by the administrative summons served upon him, Jerome Daly has refused to comply with the order of this Court entered December 29, 1966.

IT IS HEREBY ORDERED, adjudged and decreed that the respondent Jerome Daly is in contempt of court.

IT IS FURTHER ORDERED that the United States Marshal shall arrest and confine Jerome Daly until such time as he complies with the order of this Court entered December

29, 1966, by testifying and producing for examination the records called for by the summons.

IT IS FURTHER ORDERED that a copy of this order be immediately served by the United States Marshal upon the respondent Jerome Daly.

IT IS FURTHER ORDERED that execution of that portion of this order directing the arrest and confinement of Jerome Daly is stayed for ten (10) days following service of a copy of this order upon Jerome Daly.

IT IS FURTHER ORDERED that a stay of execution of this order upon appeal may be obtained by a filing of a notice of appeal and that the personal cognizance and integrity of Jerome Daly shall constitute a sufficient supersedeas bond or stand in lieu thereof.

Dated this 3rd day of May, 1967.

MILES W. LORD
United States District Judge

(Title of Cause.)

NOTICE OF APPEAL

TO: The Honorable Patrick J. Foley, United States Attorney and his Assistant Stanley Green and to the United States of America and to Raymond H. Ehlers, Revenue Agent, Internal Revenue Service:

Sirs:

YOU WILL PLEASE TAKE NOTICE that Respondent Jerome Daly, hereby appeals to the Circuit Court of Appeals, Eighth Circuit, of the United States from that certain Order of Contempt, Findings of Fact and Conclusions of Law dated and filed herein on May 3, 1967 and from the whole thereof.

JEROME DALY, Pro Se
28 East Minnesota Street
Savage, Minnesota

(Title of Cause.)

PROCEEDINGS

Dated May 15, 1967
St. Paul, Minnesota

12-1-1966—Filed petition to enforce internal revenue summons.

12-2-1966—"and entered Order to show Cause returnable at St. Paul 12-28-66 at 10:00 a.m. why respondent should not be compelled to obey the Internal Revenue summons served upon him 7-21-66. (Larson, J.)

12-7-1966—Filed Admission of service by defendant of order to show cause dated 12-2-66 and attached papers.

12-28-1966—Entered record of hearing on OSC why respondent should not be compelled to obey the Internal Revenue Summons served on him 7-21-66. Argued, submitted; order to be presented. (Lord, J.)

12-29-66—Filed and entered Order adjudging and decreeing that the respondent, Jerome Daly, appear before Revenue Agent Raymond H. Ehlers at 2 p.m. 1-6-67 for questioning pursuant to 26 USC 7602, 7603 and 7604(a). (Lord, J.)

Mailed notice to counsel.

3-21-67—Filed and entered Order to Show Cause why respondent Jerome Daly should not be adjudged in contempt of court for non-compliance with the court's order entered herein 12-29-66. Order directs personal service of this order, affidavit of Raymond H. Ehlers, and exhibits attached thereto, at least 5 days prior to time set for hearing, which is 10 a.m. 3-27-67. (Lord, J.; 3-20-67)

Filed affidavit of Raymond H. Ehlers, dated 1-26-67.

Filed transcript of testimony of Jerome Daly taken 1-6-67 at the First National Bank Bldg., St. Paul, Minn., the Office of Regional Counsel, IRS.

Lodged memorandum of law in support of citation for civil contempt.

Filed certificate of service by mail on 3-20-67 of OSC, affidavit of Mr. Ehlers, and of the memorandum of law filed this date.

3-27-67—Entered record of hearing on Order to Show Cause why respondent should not be held in contempt of court; argued, submitted, and taken under advisement. Brief to be submitted by Mr. Daly within 20 days. (Lord-J)

5-3-67—Filed and entered Findings of Fact, Conclusions of Law, and Order adjudging and decreeing that respondent, Jerome Daly, is in contempt of court, and directing the U. S. Marshal to arrest and confine Jerome Daly until such time as he complies with the order of this Court entered 12-29-66 by testifying and producing for examination the records called for by the internal revenue summons. Order provides that a copy of this order be immediately served by the U. S. Marshal upon respondent Jerome Daly, that execution of that portion of this order directing arrest and confinement is stayed for ten days following service of this order upon Jerome Daly, and that a stay of execution of this order upon appeal may be obtained by a filing of a notice of appeal and that the personal cognizance and integrity of Jerome Daly shall constitute a sufficient supersedeas bond or stand in lieu thereof. (Lord, J.)

Delivered a copy of the foregoing order to the U. S. Marshal for service upon respondent, Jerome Daly.

5-11-67—Filed Marshal's return on Order filed herein 5-3-67, served 5-4-67.

5-15-67—Filed notice of appeal from the order, etc., filed herein 5-3-67.

Mailed copy of notice of appeal to the United States Attorney, 596 U. S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

5-17-67—Filed defendant's notice of appeal, with aff. of serv. by mail on U. S. Attorney on 5-12-67. This document differs very slightly, in wording only, from that notice filed 5-15-67.

(Title of Cause.)

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF MINNESOTA

On motion appellant, it is now here ordered that appellant may have to and including August 31, 1967, in which to serve and file printed record and brief.

August 17, 1967

The first step in the process of preparing the manuscript was to select the material to be included. This was done by the author, who decided on the scope and content of the work.

The next step was to collect the material. This was done by the author, who visited the various sources of information and collected the material. The material was then organized and arranged in a logical order.

The third step was to write the manuscript. This was done by the author, who wrote the text in a clear and concise manner. The manuscript was then revised and corrected.

The fourth step was to prepare the final manuscript. This was done by the author, who prepared the final manuscript in a professional and polished manner. The final manuscript was then submitted to the publisher.

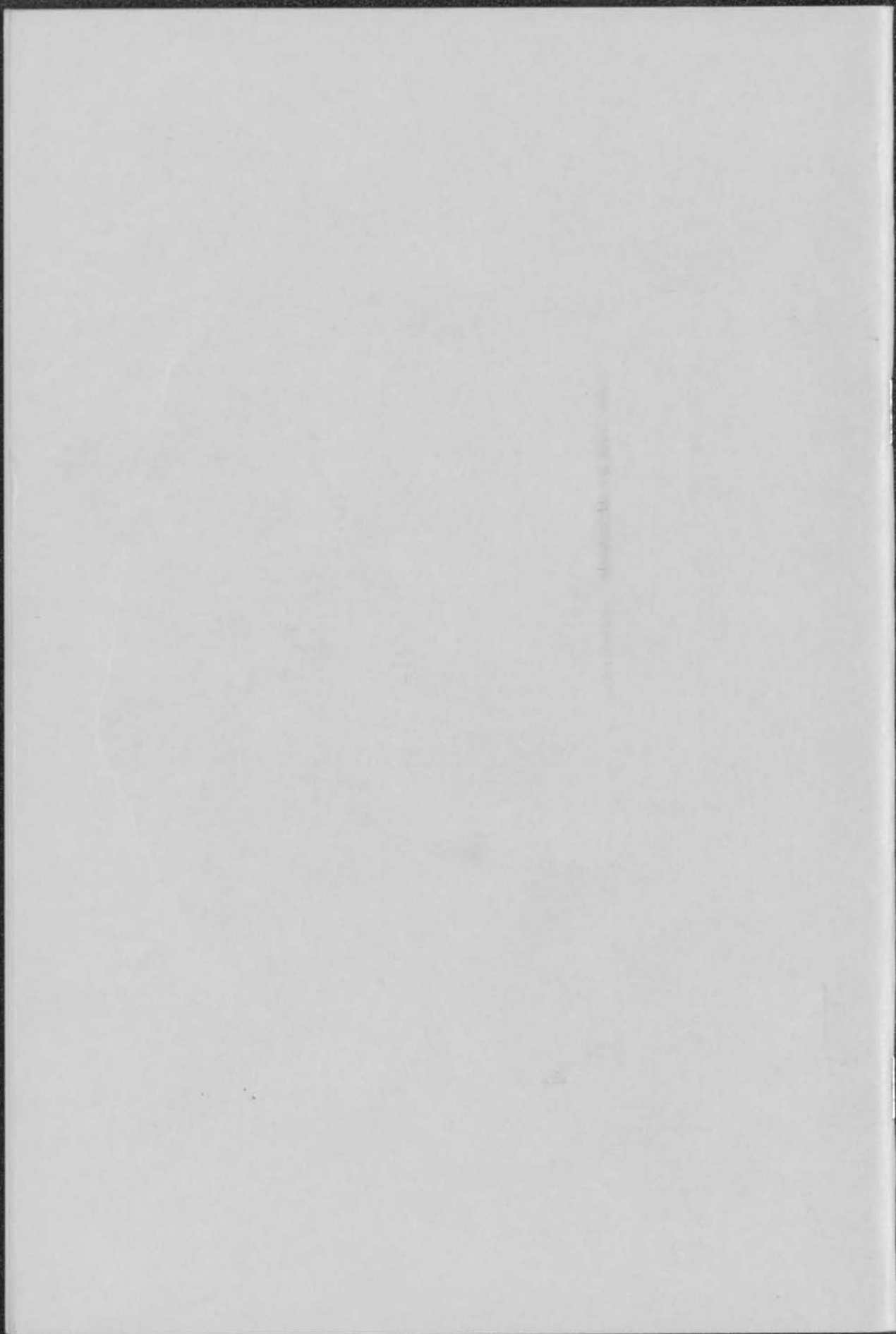
The fifth step was to publish the manuscript. This was done by the publisher, who published the manuscript in a professional and polished manner. The published manuscript was then distributed to the readers.

The sixth step was to promote the manuscript. This was done by the author, who promoted the manuscript in a professional and polished manner. The promoted manuscript was then distributed to the readers.

The seventh step was to evaluate the manuscript. This was done by the author, who evaluated the manuscript in a professional and polished manner. The evaluated manuscript was then distributed to the readers.

The eighth step was to revise the manuscript. This was done by the author, who revised the manuscript in a professional and polished manner. The revised manuscript was then distributed to the readers.

The ninth step was to submit the manuscript. This was done by the author, who submitted the manuscript in a professional and polished manner. The submitted manuscript was then distributed to the readers.



RESPONDENT'S EXHIBIT *H*

2/11/70 L.MF.

42174

IN THE

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 19080

CIVIL

BERNARD E. KOLL,

Appellant,

vs.

WAYZATA STATE BANK, ET AL.,

Appellees.

BRIEF FOR APPELLANT

JEROME DALY

Attorney for Plaintiff-Appellant

28 East Minnesota Street
Savage, Minnesota

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IN THE
United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 19080
CIVIL

BERNARD E. KOLL,

Appellant,

vs.

WAYZATA STATE BANK, ET AL.,

Appellees.

BRIEF FOR APPELLANT

STATEMENT OF THE CASE

The Complaint and Affidavits contained in the record are self-explanatory and cover the facts in this case in detail; however, the Complaint in substance alleges that the Wayzata State Bank and its officers and directors (which bank is a bank organized existing in creating under and by virtue of the laws of the State of Minnesota), together with the Federal Reserve Bank of Minneapolis, the First National Bank of Minneapolis and the Northwestern National Bank of Minneapolis are acting in combination and in consort with each other to create money and credit upon their books which does not exist.

The Complaint alleges which for purposes of this hearing must be taken as true. That the Wayzata State Bank acquired a mortgage in the sum of approximately \$6,000 on the personal property of Plaintiff including his fire truck, spray trucks, boats, snow mobiles, and weed spraying equipment. The Complaint alleges specifically that in the year 1966 the Defendant, Wayzata State Bank, acquired a mortgage in the sum of approximately \$6,000 on the personal property of Plaintiff and thereafter entered into a conspiracy with the rest of the Defendants to foreclose it.

The Complaint alleges specifically: "In the year 1966, the Defendant, Wayzata State Bank, acquired a mortgage in the sum of approximately \$6,000 on the personal property of Plaintiff, which included spray trucks, boats, snow mobiles, and the spraying equipment on the trucks. That said mortgage is fraudulent, without authority of law and void."

That Defendant, Wayzata State Bank, was at the time of placing a mortgage on Plaintiff's personal property, and at all times herein material individually engaged in the creation of money and credit by bookkeeping entry and in doing this so-called banking business was passing the following described notes of currency issued by the Federal Reserve System, "Federal Reserve Note, The United States of America, One Dollar, This note is legal tender for all debts public and private, said notes being issued and circulating generally throughout the United States by all of the 12 Federal Reserve Banks.

That at that time, that the Defendants and each of them are chargeable with notice of the provisions of the United States Constitution and the Minnesota Constitution.

The Complaint goes on to further allege that Defendant, Cronk, in the action for divorce against Plaintiff, was awarded

a decision by the Findings of Fact and Conclusions of Law and Order for Judgment, dated June 22, 1966, in the sum of approximately \$11,000 against the Plaintiff in a decision. That during the divorce proceedings, the Defendant, Eileen G. Cronk, attempted to get all of Plaintiff's property from him. That the Defendant, Wayzata State Bank, its officers, agents and servants, and members of its Board of Directors, including Dr. Reike, entered into a scheme, plan and design and acted jointly in the premise with each other including all of the other Defendants for an unlawful purpose and they all entered into a conspiracy and unlawful combination in collusion, to take, steal, and carry away all right, title and interest in Plaintiff's real and personal property, located at Route 5, Wayzata, Minnesota. That the Defendants and each of them agreed, consented to and acquiesce in the joint use of unlawful plan and design herein before and set up which culminated in an unlawful arrest and unlawful false imprisonment in the Hennepin County Workhouse for 42 days using the Hennepin District Court, its agents and servants, as the conduit for the false imprisonment, all acting wholly without jurisdiction in the premise and outside of the law, Constitutional, Statutory or otherwise. That Plaintiff was unlawfully sentenced to 180 days in the workhouse on January 5, 1967, without lawful basis, excuse or justification and with the Court acting wholly without jurisdiction. That on application of Plaintiff through his attorney, Jerome Daly, Hennepin District Judge Donald Barbeau ordered that the Plaintiff, Bernard E. Koll, be released from the custody of the Hennepin County Workhouse on February 16, 1967. That Plaintiff was unlawfully imprisoned in the Hennepin County Workhouse for 42 days. That the Defendants and each of them actively par-

ticipated in the commission of the unlawful imprisonment and the deprivation of Plaintiff's life, liberty, property rights, and pursuit of happiness and further procured, commanded, and directed, advised and encouraged, aided and abetted its commission or ratified it after it was done. That some of the Defendants acted independently but always with common design and intent, their several unlawful acts concurred in obtaining to produce one resulting event—the imposition of oppression, tyranny and theft upon Plaintiff and his property. Defendants were all acting in unlawful collusion with a common design and all are equally liable. Further, that Defendant, Cronk, and Defendant, Wayzata State Bank, and its Board of Directors, agents and servants, entered into a plan and design to incarcerate Plaintiff in the workhouse for a term of 180 days, and unlawfully keep him there so that they could foreclose their respective unlawful liens upon Plaintiff's property free from any interference by Plaintiff, Bernard E. Koll."

At the time that the Bank acquired the mortgage on the truck, the bank by cashiers deposit slip merely created the money on its own books without having anything to back it up, let alone their unlawful Federal Reserve Notes.

The Complaint alleges that Federal Reserve Bank of Minneapolis is a private corporation and that it issues Federal Reserve Notes which are not redeemable in gold or silver coin contrary to the Constitution of the United States and of Minnesota.

This case was started in the State District Court in Hennepin County in March of 1967, and was removed to the United States District Court by United States Government Attorneys, wrongfully acting on behalf of Joyce A. Swan, the Federal Reserve Agent.

Motion was made in the United States District Court on June 13, 1967, for summary Judgment which was granted by the Trial Court on September 18, 1967, upon the grounds that the Complaint failed to state a claim upon which relief could be granted.

Can a State Bank acquire a lawful mortgage by the creation of money and credit upon its own books, money which does not exist?

POINTS TO BE ARGUED

1. Does a State Bank acquire a valid chattel mortgage by issuing and creating money by making up and delivering cashiers checks as consideration for it where they have no lawful money to back up the cashiers check?
2. Do the facts alleged in the Complaint come within the applicable rule of liability of Joint Tort-Feasors in Minnesota, for damages because of imposition upon life, liberty, property and pursuit of happiness?
3. What is the effect of the creation of money by bookkeeping entry, as bearing upon the issue of whether a legally sufficient consideration passed to support a mortgage on Plaintiff's property?

ARGUMENT

1. Does a State Bank acquire a valid chattel mortgage by issuing and creating money by making up and delivering cashiers checks as consideration for it where they have no lawful money to back up the cashiers check?

The facts with reference to the creation of money and credit by the bank are simple. The Complaint alleges and must be taken as true, that the combination of these banks, the Wayzata State Bank, The First National Bank of Minneapolis, and the Northwestern National Bank of Minneapolis and the Federal Reserve Bank of Minneapolis actually create money and credit by bookkeeping entry without the slightest consideration therefor upon the ledger books of their respective banks.

The circulating medium for redemption of this bookkeeping created money is nothing more than Federal Reserve Notes Bank which are not redeemable in either gold or silver coin and have no intrinsic value other than their value as paper.

The issue in this case is: Can the Wayzata State Bank acquire lawful rights by virtue of this activity as respects the life, liberty, property, and pursuit of happiness of Plaintiff?

The particular applicable provisions of the Constitution of the United States and of the State of Minnesota are as follows:

DECLARATION OF INDEPENDENCE

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.

CONSTITUTION OF UNITED STATES

Preamble

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.

CONSTITUTION OF UNITED STATES

Article 1, Section 8

The Congress shall have Power to borrow Money on the credit of the United States; To coin Money, regulate the Value thereof, and of foreign coin, and fix the Standard of Weights and Measures.

CONSTITUTION OF UNITED STATES

Article 1, Section 10

No State shall coin Money; emit Bills of Credit; 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.

CONSTITUTION OF UNITED STATES

Amendment V

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

CONSTITUTION OF UNITED STATES

Amendment VII

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

CONSTITUTION OF UNITED STATES

Amendment IX

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

CONSTITUTION OF UNITED STATES

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.

CONSTITUTION OF UNITED STATES

Amendment XIII

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

CONSTITUTION OF UNITED STATES

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein

they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

BILL OF RIGHTS

Article I

Section 1. Object of government

Section 1. 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.

Section 2. Right and privileges

Section 2. No member of this State shall be disfranchised, or deprived of any of the right or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the State otherwise than the punishment of crime, whereof the party shall have been duly convicted.

MINNESOTA CONSTITUTION

Article I, Section 8

Section 8. 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.

CONSTITUTION OF 1857

Article 9, Section 13

Section 13. General banking law; provision and restrictions.

Section 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.

See also a statement taken directly from the book put out by the Federal Reserve System, its purposes and its functions, indicating their admission of the activities carried on by these banks.

THE FEDERAL RESERVE SYSTEM

Purposes and Functions

By Board of Governors of the

Federal Reserve System

Washington, D.C., 1963

P. 75

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

The commercial banks as a whole can create money only if additional reserves are made available to them. The Federal Reserve System is the only instrumentality en-

dowed by law with discretionary power to create (or extinguish) the money that serves as bank reserves or as the public's pocket cash. Thus, the ultimate capability for expanding or reducing the economy's supply of money rests with the Federal Reserve."

That this activity is unconstitutional is too plain and obvious to be seriously questioned, therefore it is null and void and without validity in contemplation of law nor can any rights arise on account of it.

The first question to settle is the effect of a totally unconstitutional statute.

I am setting forth in full Section 177 of American Jurisprudence Second in full as bearing directly upon this issue.

CONSTITUTIONAL LAW

16 Am Jur 2d

§ 177

D. Effect of Totally or Partially Unconstitutional Statutes

1. Total Unconstitutionality

§ 177. Generally.

The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law,⁸ but is wholly void,⁹ and ineffective for any pur-

⁸ *Chicago, I. & L. R. Co. v. Hackett*, 228 US 559, 57 L ed 966, 33 S Ct 581; *United States v. Realty Co.* 163 US 427, 41 L ed 215, 16 S Ct 1120; *Huntington v. Worthem*, 120 US 97, 30 L ed 588, 7 S Ct 469; *Norton v. Shelby County*, 118 US 425, 30 L ed 178, 6 S Ct 1121; *Ex parte Royall*, 117 US 241, 29 L ed 868, 6 S Ct 734; *Hirsh v. Block*, 50 App DC 56, 267 F 614, 11 ALR 1238, cert den 254 US 640, 65 L ed 452, 41 S Ct 13; *Texas Co. v. State*, 31 Ariz 485, 254 P 1060, 53 ALR 258; *Quong Ham Wah Co. v. Industrial Acci. Com.* 184 Cal 26, 192 P 1021, 12 ALR 1190, error dismd 255 US 445, 65 L ed 723, 41 S Ct 373; *State ex rel. Nuveen v. Greer*, 88 Fla 249, 102 So 739, 37 ALR 1298; *Commissioners of Roads & Revenues v. Davis*, 213 Ga 792, 102 SE 2d 180; *Grayson-Robinson Stores, Inc. v. Oneida, Ltd.* 209 Ga 613, 75 SE2d 161, cert den 346 US 823, 98 L ed 348, 74 S Ct 39; *State v. Garden City*, 74 Idaho 513, 265 P2d 328; *Security Sav. Bank v. Connell*, 198 Iowa 564, 200 NW 8, 36 ALR 486; *Flournoy v. First Nat. Bank*, 197 La 1067, 3 So 2d 244; *Opinion of Justices*, 269 Mass 611, 168 NE 536, 66 ALR 1477; *State ex rel. Miller v. O'Malley*, 342 Mo 641, 117 SW2d 319; *Garden of Eden Drainage Dist. v. Bartlett*

pose;¹⁰ since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it,¹¹ an unconstitutional law, in legal con-

Trust Co. 330 Mo 554, 50 SW2d 627, 84 ALR 1078; *Anderson v. Lehmkuhl*, 119 Neb 451, 229 NW 773; *Daly v. Beery*, 45 ND 287, 178 NW 104; *Threadgill v. Cross*, 26 Okla 403, 109 P 558; *Atkinson v. Southern Exp. Co.* 94 SC 444, 78 SE 516; *Ex parte Hollman*, 79 SC 6, 60 SE 19; *Henry County v. Standard Oil Co.* 167 Tenn 485, 71 SW2d 683, 93 ALR 1483; *Peay v. Nolan*, 157 Tenn 222, 7 SW2d 815, 60 ALR 408; *State v. Candland*, 36 Utah 406, 104 P 285; *Miller v. State Entomologist (Miller v. Schoene)* 146 Va 175, 135 SE 813, 67 ALR 197, affd 276 US 272, 72 L ed 568, 48 S Ct 246; *Bonnett v. Vallier*, 136 Wis 193, 116 NW 885.

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

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

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

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

¹⁰ *State v. One Oldsmobile Two-Door Sedan*, 227 Minn. 280, 35 NW 2d 525. Compare *Swift v. Calnan*, 102 Iowa 206, 71 NW 233, holding that while no right may be based upon an unconstitutional statute, part of its provisions may be considered in construing other provisions confessedly good, in arriving at the correct interpretation of the latter.

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

templation, is as inoperative as of it had been passed.¹² Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted.¹³

Since an unconstitutional law is void, the general principles follow that it imposes no duties,¹⁴ confers no rights,¹⁵

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

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

¹⁴ *Norton v Shelby County*, 118 US 425, 30 L ed 178, 6 S Ct 1121; *Security Sav. Bank v Connell*, 198 Iowa 564, 200 NW 8, 36 ALR 486; *Flournoy v First Nat. Bank*, 197 La. 1067, 3 So 2d 244; *Anderson v Lehmkuhl*, 119 Neb. 451, 229 NW 773; *Daly v Beery*, 45 ND 287, 178 NW 104; *Henry County v Standard Oil Co.* 167 Tenn. 485, 71 SW 2d 683, 93 ALR 1483; *State v Candland*, 36 Utah 406, 104 P 285.

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

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

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

creates no office,¹⁶ bestows no power or authority on anyone,¹⁷ affords no protection,¹⁸ and justifies no acts performed under it.¹⁹ A contract which rests on an unconstitutional statute creates no obligation to be impaired by subsequent legislation.²⁰

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

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

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

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

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

²⁰ A contract executed solely for the purpose of complying with the provisions of an unconstitutional statute is not valid, and the person who under its terms is obligated to comply with the provisions of the unconstitutional act is entitled to relief. *Cleveland v Clements Bros. Constr. Co.* 67 Ohio St 197, 65 NE 885; *Jones v Columbian Carbon Co.* 132 W Va. 219, 51 SE 2d 790.

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

No one is bound to obey an unconstitutional law¹ and no courts are bound to enforce it.²

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

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

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

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

³ *Re Spencer*, 228 US 652, 57 L ed 1010, 33 S Ct 709; *Board of Managers v Wilmington*, 237 NC 179, 74 SE 2d 749.

⁴ *Chicago, I. & L. R. Co. v Hackett*, 228 US 559, 57 L ed 966, 33 S Ct 581; *Berry v Summers*, 76 Idaho 446, 283 P 2d 1093; *Board of Managers v Wilmington*, 237 NC 179, 74 SE 2d 749; *State v Savage*, 96 Or. 53, 184 P 567, 189 P 427.

⁵ *Thiede v Scandia Valley*, 217 Minn. 218, 14 NW 2d 400.

⁶ *State v One Oldsmobile Two-Door Sedan*, 227 Minn. 280, 35 NW 2d 525.

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

⁸ See § 185, *infra*.

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

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

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Reported in 122 N.W. 251

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

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

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

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

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

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

STATE ex rel. H. W. CHILDS, Attorney

General v. JOHN B. SUTTON

63 Minnesota Reports

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Reported in 65 N.W. 262

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

the constitution is plain, we are not permitted to indulge in speculation concerning its meaning, nor whether it is the embodiment of great wisdom. A constitution is intended to be framed in brief and precise language, and represents the will and wisdom of the constitutional convention, and that of the people who adopt it. It stands, not only as the will of the sovereign power, but as security for private rights, and as a barrier against legislative invasion. It has been well said that "the constitution, which underlies and sustains the social structure of the state, must be beyond being shaken or affected by unnecessary construction, or by the refinements of legal reasoning." *People v. Rathbone*, 145 N.Y. 434, 40 N.E. 395.

The rule with reference to constitutional construction is also well stated by Johnson, J., in the case of *Newell v. People*, 7 N.Y. 9, 97, as follows: "If * * * the words embody a definite meaning, which involves no absurdity, and no contradiction between different parts of the same writing, then that meaning apparent upon the face of the instrument is the one which alone we are at liberty to say was intended to be conveyed. In such a case there is no room for construction. That which the words declare is the meaning of the instrument; and neither courts nor legislature have the right to add to or take away from that meaning. This is true of every instrument, but when we are speaking of the most solemn and deliberate of human writings, — those which ordain the fundamental law of states, — the rule arises to a very high degree of significance. It must be very plain — nay, absolutely certain — that the people did not intend what the language they have employed in its natural signification imports, before a court will feel itself at liberty to depart from the plain reading of a constitutional provision."

CONSTITUTION (See U.S.C.A.) ANNOTATIONS

Bills of Credit

Article I, Section 10, Cl. 1

Note 14. Nature of restriction

To be made a legal tender is not an essential quality of bills of credit or the only mischief resulting from them. "The prohibition is general. It extends to all bills of credit, not to bills of a particular description. That tribunal must be bold indeed which, without the aid of other explanatory words, could venture on this construction. It is the less admissible in this case, because the same clause of the Constitution contains a substantive prohibition to the enactment of tender laws. The Constitution, therefore, considers the emission of bills of credit, and the enactment of tender laws, as distinct operations, independent of each other, which may be separately performed. Both are forbidden. To sustain the one because it is not also the other; to say that bills of credit may be emitted if they be not made a tender in payment of debts, is, in effect, to expunge that distinct independent prohibition, and to read the clause as if it had been entirely omitted." *Craig v. Missouri*, Mo. 1830, 4 Pet. 433, 7 L. Ed. 903.

Note 15. State banks, bills of

Bank notes issued by a state bank established in the name and on behalf of the commonwealth, under the direction of a president and twelve directors chosen by the legislature, in which notes the bank promised to pay to the bearer on demand the sum specified on the face of the notes, are not bills of credit. As the leading properties on the notes of the bank were essentially different from any of the numerous classes of bills of credit issued by the states and colonies; as they were not emitted by the state, nor upon its credit, but on the credit of the funds of the bank; as they were payable in gold and silver on demand and the holder can sue the bank; and as to constitute a

bill of credit it must be issued by a state, and on the credit of the state, and the holder cannot by legal means compel the payment of the bill, the character of these two descriptions of paper cannot be considered as identical. *Briscoe v. Kentucky*, Ky. 1837, 11 Pet. 257, 9 L. Ed. 709.

2. Do the facts alleged in the Complaint come within the applicable rule of liability of Joint Tort-Feasors in Minnesota?

For a statement on the liability of Joint Tort-Feasors in Minnesota, see the case of *Virtue v. Creamery Package Mfg. Co.*, 123 Minn. 17, 142 N.W. 930, and the case of *Sloggy v. Dilworth*, 38 Minn. 179, 185, 36 N.W. 451. These two cases give a concise statement on the liabilities of the Joint Tort-Feasors. In *Sloggy v. Dilworth*, waters were wrongfully turned upon the land of another, as a result of the acts of several parties. The Court stated:

"They are all liable." It is no defense that the injury caused or wrong done by anyone standing alone might not be a sufficient ground of Complaint. If the damage is the combined result of several acting independently, recovery may be had severally in proportion to the contribution of each to the nuisance and not otherwise." "If, however, they are acting jointly in the premise, then they may be jointly or severally sued for the entire damage. So, if the Defendants had agreed, consented to, or acquiesced in the joint use of these ditches as a common outlet for the drainage of their own lands lying east and beyond, the rule adopted by the Court making them liable for the entire damages sustained by the Plaintiff might have been sustained."

The Defendants combined by and in their joint action to produce one joint resulting event: the deprivation of Plaintiff's life, liberty and property. By fraud and duress they obtained a lien upon his property. They wanted to steal his property. In order to accomplish this, they had him imprisoned falsely. They kept him imprisoned so that they would have time to foreclose their void liens. Defendant Cronk was attempting to foreclose a lien given her by Judgment although the Judgment was never served upon Bernard E. Koll. Likewise, he was held in contempt when the Judgment had never even been served upon him and no Execution by the Sheriff was ever returned unsatisfied against Bernard E. Koll. He was found guilty of an offense and sentenced for a criminal offense although none was ever brought against him. The false imprisonment was merely incidental and a means used to accomplish the theft of his property. His rights as secured by Section 1985, 42 U.S.C.A. have been violated. The Directors of the Wayzata State Bank are officers of a State Created Corporation. They come within the class of individuals that plaintiff is entitled to protection against because of Section 1986, 42 U.S.C.A. and Section 1343 of 28 U.S.C.A.

The language in *Virtue v. Creamery Package Mfg. Co.* is particularly applicable to this case. It is found at 123 Minn. 40 and is quoted as follows:

"We are of the opinion that the evidence which we have above detailed, together with other circumstances of less importance disclosed by the evidence, is sufficient to go to the jury upon the question of liability of both Defendants for both classes of acts, under the rule which is well recognized that all who actively participate in any manner in the commission of a tort, or who procure, command, direct, advise, encourage, aid or abet its commission, or who ratify it after it is done, are jointly and severally liable

therefor, Cooley, Torts, §166; Mack v. Kelsey, 61 Vt. 389, 401, 402, 17 Atl. 780, even though they act independently and without concert of action or common purpose, provided their several acts concur in tending to produce one resulting event. Flaherty v. Minneapolis & St. L. Ry. Co., 39 Minn. 158, 133 N.W. 461."

A cause of action is alleged based upon the teaching of this case.

3. What is the effect of the creation of money by bookkeeping entry, as bearing upon the issue of whether a legally sufficient consideration passed to support mortgage on Plaintiff's property?

See 17 Am. Jur. 2d, page 510, on Contracts, Section 157:

"It is clear that Courts will not recognize or enforce, or hesitate to condemn, contracts resting upon an illegal consideration. Illegal consideration consists of any act or forbearing, or a promise to act or forbear, which is contrary to law or public policy."

See *Anheuser-Busch Brewing Company v. Emma Mason*, 44 Minn. 318, 46 N.W. 558:

"It has been said that the consideration essential to a valid contract must not only be valuable, but it must be lawful, not repugnant to law or sound policy or good morals."

There can be little doubt but that the Wayzata State Bank can acquire no valid mortgage by the creation of money and credit by forged bookkeeping entries.

CONCLUSION

No authority can be found in the law for this creation of void money and credit by bookkeeping entry nor can any authority be found supporting the use of Federal Reserve Notes, which are private Bank Notes, which are not redeemable in specie.

The Constitution of the United States and of the State of Minnesota settle the questions without further diatribe.

It is respectfully submitted that the Orders and Judgments entered September 11, 1967, be reversed with directions that Plaintiff be granted a trial by a Jury of 12.

JEROME DALY

Attorney for Plaintiff-Appellant

28 East Minnesota Street

Savage, Minnesota

Dated March 5, 1968.

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THE HISTORY OF
LONDON
FROM THE FIRST SETTLEMENT
OF THE BRITONS
TO THE PRESENT TIME

By J. H. P.



38740

STATE OF MINNESOTA
In Supreme Court

14-15
16-17
MARY KATHERINE LOWE, formerly
MARY K. MILLS,

Plaintiff-Respondent

vs.

HELEN A. PATTERSON, formerly HELEN A. KLEIS,
and the HASTINGS NATIONAL BANK OF
HASTINGS, MINNESOTA,

Defendants

HELEN A. PATTERSON, formerly HELEN A. KLEIS,

Appellant

APPELLANT'S BRIEF

JEROME DALY

Attorney for Appellant

325 Cedar Street

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*Respondents' by H H H
2/18/70 emf*

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STATE OF MINNESOTA
In Supreme Court

MARY KATHERINE LOWE, formerly
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VS.

HELEN A. PATTERSON, formerly HELEN A. KLEIS,
and the HASTINGS NATIONAL BANK OF
HASTINGS, MINNESOTA,

Defendants

HELEN A. PATTERSON, formerly HELEN A. KLEIS,

Appellant

APPELLANT'S BRIEF

PROCEDURAL HISTORY

1. Plaintiff, Summons and Complaint: Served Aug. 25, 1960; filed Nov. 7, 1960.
2. Plaintiff, Amended Complaint: Served Oct. 5, 1960; filed Nov. 7, 1960.
3. Plaintiff, Reply: Served Nov. 8, 1960; filed Nov. 9, 1960.
4. Stipulation Selling Property: Dated Nov. 15, 1960; filed Nov. 15, 1960.

5. Order Selling Property: Dated Dec. 20, 1960; filed Jan. 19, 1961; no proof of service.
6. Oath of Appraisers and Appraisal: Dated Apr. 5, 1961; filed Apr. 7, 1961; no proof of service.
7. Discharge of Attorney Hertogs: Dated Feb. 23, 1962; filed Feb. 26, 1962; file indicates a copy was sent to O'Connell and Hertogs.
8. Oath of Appraisers and Amended Appraisal; Certificate of Appraiser: Dated Mar. 7, 1962; filed Mar. 8, 1962; no proof of service.
9. Report of Sale of Real Estate: Dated Mar. 7, 1962; filed Mar. 8, 1962; no proof of service.
10. Answer of Defendant Bank: Dated Sept. 12, 1960; filed Mar. 12, 1962; admission of due service not dated as to time.
11. Reply of Plaintiff: Dated Nov. 8, 1960; filed Mar. 12, 1962.
12. Separate Answer of Helen A. Patterson, signed by Attorney Hertogs: Not dated and no proof of service; filed Mar. 12, 1962.
13. Order to Show Cause on Helen Patterson: Dated Mar. 12, 1962; served Mar. 12, 1962.
Affidavit of Allan Burt: Dated Mar. 7, 1962.
14. Special Appearance and Motion: Dated Mar. 10, 1962; filed Mar. 14, 1962.
Special Appearance, Motion and Affidavit of Defendant Patterson: Dated Mar. 15, 1962; filed Mar. 16, 1962.
15. Order Confirming Sale of Real Estate: Dated Mar. 23, 1962; filed Mar. 23, 1962.
Clerk's Notice of Order: Sent out Mar. 23, 1962.

16. Motion and Notice of Motion and Affidavit of Defendant Patterson: Dated Mar. 22, 1962; served Mar. 23, 1962; filed Mar. 23, 1962.
Order to Show Cause: Dated Mar. 26, 1962.
Affidavit: Dated Mar. 24, 1962.
Motion and Notice of Motion: Dated Mar. 26, 1962.
Copies of Special Appearance and Motion: Dated Mar. 10, 1962, and Mar. 26, 1962; served Mar. 26, 1962; filed Mar. 29, 1962.
17. Affidavit and Objection to Stipulation: Dated and served Mar. 27, 1962; filed March 29, 1962.
18. Order to Show Cause and Affidavit for Attorneys Lien: Served Mar. 29, 1962; filed Mar. 29, 1962.
19. Affidavit of Attorney O'Connell in Opposition to Motion: Dated Mar. 22, 1962.
20. Affidavit of O'Connell: Dated Mar. 29, 1962; filed May 30, 1962; no proof of service thereon.
21. Affidavit of Helen A. Patterson: Dated Mar. 30, 1962; served Mar. 30, 1962; filed Mar. 30, 1962.
22. Order Denying Defendant Patterson's Motion: Dated Apr. 2, 1962; filed Apr. 2, 1962. (NOTE: File indicates Clerk's Notice of Order sent out Apr. 2, 1962.)
23. Notice of Appeal: Dated Apr. 3, 1962; served Apr. 3, 1962; filed Apr. 4, 1962.
24. Affidavit of Helen A. Patterson: Dated Apr. 19, 1962; service admitted Apr. 19, 1962; filed May 2, 1962.

LEGAL ISSUES OR ABSTRACT QUESTIONS OF LAW INVOLVED

1. Is the net effect of an action in partition a conveyance of real estate, the procedure, substance and form of which must comply with the Statute of Frauds and the due process constitutional provisions?

The Lower Court held in the negative.

2. Does the clause "written stipulation of the parties to be affected thereby," in M.S.A. 558.04, authorize an attorney-at-law to sign a stipulation on behalf of a client without written power of attorney from his client conformable with the Statute of Frauds?

The Lower Court held in the affirmative.

3. Did the Court acquire jurisdiction, of the appellant, the subject matter or to enter the order of sale, or at all?

The Lower Court held in the affirmative.

ASSIGNMENT OF ERRORS

1. The Court erred in its Order of March 23, 1962, and April 2, 1962, in the following respects:
 - A. Refusing to discharge of record, Messrs. McMenomy and Hertogs, as attorneys for appellant Patterson.
 - B. In denying appellant Patterson's Motion for Order dismissing the action, on the grounds of misjoinder and nonjoinder of indispensable parties, plaintiff and defendant.
 - C. The Court erred in denying the Motion for dismissal on the grounds that the complaint failed to state a cause of action which would support the prayer for relief.
 - D. The Court erred in denying appellant's Motion for an Order staying all proceedings herein until the action of Patterson v. Lowe, now on trial in the District Court, No. 58013, is heard and finally determined.
2. A. The Court erred in refusing to grant appellant's Motion for an Order striking from the record all statements made and motions offered by attorney O'Connell at the special term on March 16, 1962, on the grounds that said motions and statements were entirely and completely outside the record and were made without notice to defendant Patterson, in her absence, were illegal and constitute an imposition upon the Court and the appellant.
- B. The Court erred in denying appellant's Motion for an Order striking from the record the following:
 1. The purported answer of the appellant over the signature of attorneys McMenomy and Hertogs,

and filed in the Court on March 12, 1962, upon the grounds that the answer is not verified and was filed by a person not authorized to make or file it.

- C. In failing to strike the Reply, filed March 29, 1962, upon the grounds that it was not verified.
- D. In failing to strike the Amended Complaint, dated September 23, 1960, filed on March 12, 1962, upon the grounds that it is not verified and that there is no Order herein allowing the same to stand as the Amended Complaint herein.
3. In failing to expunge from the file a certain purported stipulation, dated November 15, 1960, upon the grounds that it was never authorized by defendant Patterson and is not supported by the record for any purpose, and is illegal.
4. In refusing to set aside the Order of the Court, dated December 20, 1960, appointing Allan Burt as referee and Fitch and Pederson as appraisers, upon the grounds that there was no foundation in law or fact for said Order upon which the Court could act or upon which the Order could be made, and upon the further grounds it was made without the knowledge of defendant Patterson.
5. For refusing to vacate the Order of the Court, dated December 20, 1960, appointing Fitch and Pederson as appraisers herein upon the grounds that there was no foundation and no Motion had been made by any of the parties herein moving the Court to appoint said Fitch and Pederson; upon the further grounds that their appointment was completely unnecessary as the parties were not in dispute as to the value of the property.

R page 11.

R page 13.

R page 13

6. For refusing to strike from the file the Oath of Appraisers and Appraisal, dated April 7, 1961, upon the grounds that it is illegal, incompetent and irrelevant and without foundation, not served upon the defendant; and for an Order striking the Oath of Appraisers in the Amended Appraisal, dated March 7, 1962, and filed March 8, 1962, upon the same grounds and also for further grounds that there was no motion for an order and no order for re-appraisal.
7. In failing to set aside the Report of Sale, dated March 7, 1962, filed March 8, 1962, upon the grounds that it is without foundation, made by an unqualified and unauthorized person.
8. For refusing to grant appellant's Special Appearance and Motion, dated March 10, 1962, and March 15, 1962.
9. For denying appellant's Motion, dated March 10, 1962, demanding discharge of the Order to Show Cause, dated March 8, 1962, upon the grounds that there was no showing of exigency existing which warranted the use of an Order to Show Cause instead of a Motion and Notice of Motion, and upon the further grounds that no affidavit and report of sale or Petition for an Order confirming sale had been received by appellant.
10. For refusing appellant's Motion, dated March 15, 1962, for its Order discharging the Orders to Show Cause returnable March 16, 1962, in lieu thereof for a continuance of the whole matter until the next special term, and further upon the grounds that no party and interest had applied for the Court for relief and there was nothing pending before the Court upon which it could rule.

11. The Court erred in its Order Confirming Sale of Real Estate, dated March 23, 1962, and erred in refusing to set aside said Order upon the following grounds:

- A. That there was no foundation for said Order in law or in fact or at all.
- B. The written stipulation referred to and relied upon in said Order was never authorized by appellant in writing or otherwise nor was any authority ever given anyone by appellant in writing or otherwise to sell said property; that Allan Burt never qualified as a duly appointed, qualified and acting referee in said matter by filing his bond and oath as required by law.
- C. Second paragraph of said Order is a conclusion without any basis whatsoever in law or in fact and is completely outside the record.
- D. That at no time throughout the entire proceedings was there a duly appointed, qualified, and acting referee for any purpose.
- E. That at no time was there a sale of said property made by the referee or otherwise ordered by virtue of the statute in such case made, provided or otherwise. No earnest money was ever paid or reported; that said purported sale was for a sum less than the amount fixed by the purported appraisal herein. That no application was ever made to the Court for a re-appraisal and no notice given to appellant with reference thereto. That the sum for which the land is attempted to be sold is far less than the value set upon the same by the parties in interest.

F. That no report of sale ever was served upon appellant, no Motion made and no Notice of Motion given for hearing thereon by the Court.

G. That no Notice was given nor Motion made for Order by the Court for disbursement of the proceeds by the referee nor for payment into the Clerk of Court to be held by him.

STATEMENT OF FACTS IN ADDITION TO FACTS PRINTED IN THE RECORD

Attached summons and complaint, verified by plaintiff, were served by the sheriff of Dakota County on appellant Patterson, August 25, 1960. Amended complaint, verified by O'Connell, for plaintiff, September 23, 1960, service admitted as of the 5th day of October, 1960, filed November 7, 1960; and a reply verified by Millett O'Connell, as attorney for plaintiff, verified November 8, 1960, filed November 9, 1960, service thereon admitted November 8, 1960.

On November 15, 1960, O'Connell for plaintiff and Hertogs for defendant Patterson filed a stipulation signed by O'Connell for plaintiff and Hertogs for defendant Patterson without appearance by defendant Hastings National Bank of Hastings: "It is further stipulated that the Court may enter an Order appointing said referee"; and appellant has always disclaimed any knowledge of this stipulation and denies emphatically any authority to Hertogs to enter into said stipulation.

That on January 19, 1961, there was filed with the Clerk an Order of Judge W. A. Schultz, dated December 20, 1960, wherein Allan Burt was appointed referee for the purpose of

selling the property involved herein pursuant to the statute in such case made and provided; and further ordering that the referee is authorized to sell said property at either public or private sale and further ordering that R. W. Fitch and Elmer Pederson be appointed appraisers.

Appellant denies that she ever had any notice or knowledge of this order or any proceedings upon which it is based.

That on April 7, 1961, there was filed in the office of the Clerk a purported oath of appraisers and appraisal fixing the value at \$130,000.00 in value, which never was served upon anyone.

That on February 26, 1962, appellant Helen A. Patterson served and filed a Notice of Discharge of Messrs. Hertogs and McMenomy as her attorneys.

That on March 8, 1962, the Oath of Appraisers and Amended Appraisal was filed, reducing the appraised value as of March 7, 1960, to \$100,000.00. No notice was given or motion made for the appointment of new appraisers as provided by statute for a new appraisal. There is no foundation in law for this appraisal dated March 7, 1962. The re-appraisal was requested by Allan Burt, who is not a party in interest and without notice.

On March 8, 1962, there was filed in the office of the Clerk a report of sale of real estate, signed and verified by Allan Burt before Millett O'Connell, which was never served upon anyone.

That on March 12, 1962, an answer was filed by defendant Hastings National Bank; and on March 12, 1962, an answer for defendant Patterson, without proof of service and not verified, was filed by Samuel Hertogs, as attorney

for Helen A. Patterson, *notwithstanding his discharge by appellant.*

On March 12, 1962, there was filed in the Clerk's office a reply of plaintiff, verified by Millett O'Connell as her attorney, under date of November 8, 1960; and upon March 12, 1962, there was filed a separate answer of appellant Helen A. Patterson by Samuel H. Hertogs, without date, nor is there any admission of service thereon by plaintiff or her attorney.

On the 12th day of March, 1962, affidavit of Allan Burt and Order to Show Cause, dated March 12, 1962, and returnable March 15, 1962, were served upon appellant Patterson. No report of sale was attached or was any showing made as to the exigency for an Order to Show Cause to which Order appellant herein served and filed her special appearance and motion for a discharge of the Order to Show Cause upon the grounds that there is no showing of exigency existing which warrants the use of an Order to Show Cause instead of a Motion and Notice of Motion; and upon the further grounds that no affidavit and report of sale or petition for an order confirming sale has been received by the undersigned at the time she was represented by Jerome Daly. Said affidavit and special appearance and notice of motion of appellant served upon counsel and mailed to the Clerk on March 15, 1962, because Mr. Daly was out of the city upon prior assignment and could not be available at the Court in Hastings on the return day of the Order to Show Cause.

Nonetheless, the Court on the 16th day of March, 1962, being the return date of the Order to Show Cause, did make the order confirming sale and for disbursement of part of the proceeds for items indicated in said Order and for the

deposit with the Clerk of Court of balance of the proceeds of said sale to remain on deposit with the Clerk until further Order of the Court directing payment to the proper parties. This Order, dated March 23, 1962, directs payment to the Clerk. No valid motion was made to the Court for this Order. No notice of lis pendens has been recorded or filed.

ARGUMENT

Many errors of law have been assigned before the Supreme Court in this matter; so numerous that they will not be treated separately in this argument, appellant will attempt to cover them all in a general statement. If none of said errors are treated fully or completely in this argument it is not to be presumed that appellant intends to waive any of such errors so assigned. In any event, the appellant does not waive any errors so assigned simply by reason of the fact that she has not argued them extensively in her brief. Appellant relies upon each and all of the errors so assigned.

Most of the errors so assigned are based upon violations explicit in constitutional, statute and decision law. In each of which cases the valid statement of the law speaks for itself and in that respect is so elementary as to obviate the necessity of any extensive argument by appellant.

ASSIGNMENT 1(A):

It is fundamental that any person may discharge and terminate the services of an attorney-at-law at any time upon notice to the attorney and to the other parties involved; however, application must be made to the Court under M.S.A. 481.11 to have him removed as attorney of record.

It is error for the Court to refuse to discharge of record Messrs. McMenemy and Hertogs, attorneys for appellant, upon the showing here made. See M.S.A. 481.11; also *State v. Smith*, 110 N.W. 2d 159, 167.

ASSIGNMENTS 1(B), 1(C), 1(D):

1(B) — Pirsig on Minnesota Pleadings, Section 1969: "In the absence of an indispensable party, the action cannot proceed." For definition of indispensable party, see Section 1942, *supra*. Plaintiff's husband is an indispensable party to this action; and he was not named: so the action cannot proceed over objection.

1(C) AND 1(D) — The complaint was defective because it did not state plaintiff's marital status nor was plaintiff's husband joined, nor were all of the lien holders joined as parties defendant as is required by M.S.A. 558.03, nor is a Notice of Lis Pendens filed to set up a cut-off date.

ASSIGNMENT 2(A):

See M.S.A. 545.01: Motions and orders; service of notice.

"Every direction of a court or judge made or entered in writing, not included in a judgment, shall be called an order, and every application for an order shall be known as a motion. When notice of a motion is required, it shall be served eight days before the time appointed for the hearing; but the judge, by an order to show cause, may prescribe a shorter time."

This statute was not complied with.

ASSIGNMENT 2(B):

This assignment speaks for itself. If any pleading is verified all subsequent pleadings in the case shall be verified also. See M.S.A. 545.15.

The identical statement applies to 2(A), 2(B), 2(C) and 2(D).

For discussion of the Constitution upon this question, appellant submits that M.S.A. 544.15 is controlling and supersedes any rule; that it is the law and any rule contrary to or in derogation thereof is unconstitutional and void for the following reasons:

United States Constitution Amendment No. 14 provides:

"* * * 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."

Due process involves essentially notice, opportunity to be heard, jurisdiction, fair trial in open court and compliance with all applicable law of the land, common, statutory and decision, including correct legal procedure together with compliance with state constitutional provisions.

Due process of law requires that correct legal procedure be followed each step of the way in a legal proceeding.

"The words 'due process of law' when applied to judicial proceedings, mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. The result of a proceeding does not constitute the test whether the proceeding itself is due process of law. * * * As regards judicial proceedings due process of law involves notice be-

fore judgment and an opportunity to be heard in an orderly proceeding adapted to the nature of the case."

—Mason's Dunnell Digest, Sec. 1637

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

—Minnesota Constitution, Art. I, Sec. 7

"Redress of Injuries or Wrongs

"Sec. 8. 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."

—Minnesota Constitution, Art. I, Sec. 8

"Distribution of the Powers of Government—

Division of Powers

"Sec. 1. The powers of government shall be divided into three distinct departments—legislative, executive, and judicial; and no person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others, except in the instances expressly provided in this constitution."

—Minnesota Constitution, Art. III, Sec. 1

"Legal Pleadings

"Sec. 14. Legal pleadings and proceedings in the courts of this State shall be under the *direction* of the legislature. The style of all process shall be, 'The State of Minnesota,' and all indictments shall conclude, 'against the peace and dignity of the State of Minnesota.'"

—Minnesota Constitution, Art. VI, Sec. 14

Generally:

"Forms of proceedings in civil actions and the rules by which the sufficiency of pleadings is to be determined are governed by statute."

—Nostdal v. Wantonwan County (1946)
132 Minn. 351, 22 N.W. 2d 461

Webster defines "direction" as "a making straight; act of directing; a directing; management; control."

The "Rules of Civil Procedure for the District Courts of Minnesota" promulgated by order of the Supreme Court of Minnesota on June 25, 1951, are unconstitutional and void. The enabling act approved April 23, 1947 (M.S.A. 480.051-480.057) is unconstitutional and void as it constitutes an unconstitutional delegation of legislative power to the judicial department of the government of the State of Minnesota. A court may exercise judicial but not legislative or administrative powers. See *Arrowhead Bus Service v. Black and White Duluth Cab Co.*, 226 Minn. 327, 32 N.W. 2d 590. See *In re Gollnik's Estate: Gollnik v. Mengel et al.* (1910), 112 Minn. 349, 128 N.W. 292, where it is quoted:

"I realize the full force of the views of Mr. Justice Elliott, so ably expressed by him in *Wellner v. Eckstein*, but am convinced that one of the highest duties resting upon the judicial department of the state is to refrain from trespassing upon the domain assigned to either of the other departments. The fact that under the Constitution the responsibility of maintaining the separation in the powers of government rests ultimately with the judiciary should make a court, from whose decision there is no appeal, hesitate before assuming power as to which there is any doubt, and resolve all reasonable doubts in favor of a co-ordinate branch of the government, unless such conclusion leads to a palpable wrong or absurdity."

ASSIGNMENT 3:

Appellant claims the Court erred in failing to strike from the file that certain purported stipulation, dated November 15, 1960, upon the grounds that it is illegal.

The record completely failed to disclose any compliance with the Statute of Frauds (M.S.A. 513.04) because it involves the alienation of the title to real estate in a partition proceeding. The net effect of a partition proceeding is a conveyance.

The stipulation is also in violation of M.S.A. 558.04 which is quoted as follows:

"Except as provided in Section 558.05, the title to the property and the *rights of the parties* shall be established by evidence or by the written stipulation of the parties to be affected thereby."

The stipulation is signed by the lawyers and it goes without saying that they are not the parties to be affected thereby, within the meaning of this statute.

Respondent plaintiff proceeds upon the theory that the written stipulation of the lawyers is the basis for the Court's jurisdiction to enter the order selling the property. Plaintiff must stand or fall upon her own theory.

The record discloses no compliance with the Statute of Frauds, with reference to the sale of personal property, which is M.S.A. 512.04. No motion was noticed or Order made by the Court for a re-appraisal and therefore there is no competent re-appraisal in the file. The attempted re-appraisal was made for the purpose of eliminating from the appraisal the personal property and its valuation.

ASSIGNMENT 4:

Appellant asserts that the trial Court erred in failing to set aside the Order of the Court, dated December 20, 1960, appointing Allan Burt as referee and Fitch and Pederson as appraisers and selling the property, upon the grounds that there was no foundation in law or fact for said Order upon which the Court could act, and upon the further grounds that the Court had no jurisdiction to enter the Order.

In the trial Court, the only claim for the foundation for this Order appointing the referee to sell the property was the stipulation which is referred to in Assignment 3, which stipulation is null and void.

The Court had no jurisdiction to enter this Order. The question of authority and jurisdiction of the Court and when a Court in fact does have jurisdiction to act, are set out in *In re Hudson's Guardianship*, 226 Minn. 532, 33 N.W. 2d 848:

"It is to be noted that lack of jurisdiction, in general, falls into three classes: (1) Jurisdiction of the subject matter; (2) jurisdiction of the person; and (3) jurisdiction to enter the particular judgment or order entered. It is well settled that a judgment or order may be void for want of authority in a court to render the particular judgment or order entered, though the court may have jurisdiction over the subject matter and the parties."

Syllabus 13:

"A litigant cannot by consent confer upon a court jurisdiction to do an act in excess of court's jurisdiction."

In this case the Court had no jurisdiction to enter the Order dated December 20, 1960, for the reason that the stipulation

was void and any Order based upon a void stipulation is implicitly void because the Court had no jurisdiction to enter it.

M.S.A. 545.01 states that every application for an Order shall be known as a motion. Even with the stipulation there had to be a motion for the Order based upon the stipulation.

Prior to the time of the trial, the only motions that a Court can consider are motions which are in writing, proper notice of which is given timely to every party affected thereby. In this case there was no written motion on file or notice thereof for the Court to act upon in making an Order. The Court was without jurisdiction to enter this Order.

ASSIGNMENT 5:

Assignment 5 is based upon the same grounds as alleged in Assignment 4.

ASSIGNMENT 6:

The trial Court was in error in failing to strike from the file the oath of appraisers and appraisal dated April 7, 1961, upon the grounds it was illegal, incompetent, irrelevant, without foundation, not served upon the appellant, and upon the further ground that it was unconstitutional in violation of appellant's rights; upon the further grounds there was no motion, notice of motion or order for re-appraisal which was served upon the appellant.

The appraisal was apparently made pursuant to M.S.A. 558.17 which provides in part as follows:

"If a private sale be ordered, the real estate shall be appraised by two or more disinterested persons, under order of the Court, which appraisal shall be filed before the confirmation of the sale by the Court. No real estate

shall be sold at private sale for less than its value as fixed by such appraisal."

This statute is unconstitutional and void for the reason that it provides for no notice of who the appraisers are going to be upon the appellant; it provides for no service of the copy of the appraisal upon the appellant; it provides for no opportunity allowing the appellant to come into Court and review the appraisal, or the amount of the appraisal; it allows the Court to make an order confirming the sale of the property without affording appellant due process of law to review and object to the amount for which the property can be sold. It is therefore unconstitutional and void. See case of *Gove v. Murray County*, 147 Minn. 24, 179 N.W. 569:

"The constitutionality of a statute does not depend upon the acts of the parties nor upon an order of a Court. If a statute offends against the Federal Constitutional requirement of due process of law it is a nullity and it cannot be amended by the parties or Courts. The law itself must save the rights of the parties. The notice required to satisfy the requirement of due process of law must be provided as an essential part of the statutory provision and not awarded as a mere matter of favor or grace."

ASSIGNMENT 7:

The Court erred in failing to set aside the order for sale dated March 7, 1962, and filed March 8, 1962, upon the grounds that it is without foundation and made by an unqualified and unauthorized person.

The attempted referee, Allan Burt, never qualified according to M.S.A. 358.05 which provides as follows:

"Unless otherwise provided by law, every referee and other person appointed by or made responsible to the Court in any fashion or proceeding before entering upon his duties as such shall take and subscribe the following oath: 'I, A.B., do swear that I will faithfully and justly perform all the duties of the office and trust which I now assume as referee to the best of my ability, so help me God.'"

Likewise, M.S.A. 358.11 had not been complied with and there is no oath of the referee on file with the Clerk of the District Court. This void in the file speaks for itself. The attempted referee had no authority to act and all of his actions are null and void.

ASSIGNMENT 8:

The Court erred in refusing to grant appellant's special appearance and motion, dated March 10, 1962, and March 15, 1962, which special appearances and motion were renewed in the motion dated March 22, 1962, and heard on April 6, 1962, by the Court, with notice to all parties.

The Court erred in refusing to grant the relief asked for in appellant's special appearance and motion dated March 10, 1962, and March 15, 1962.

The two motions are found in the Record on pages 38 through 56, and speak for themselves.

ASSIGNMENTS 9, 10, AND 11(A), (B), (C), (D), (E), (F) AND (G):

Assignments 9, 10, and 11(A), (B), (C), (D), (E), (F) and (G) speak for themselves and are covered by the general argument herein.

Appellant Patterson claims that it was error for the Court to enter its Order confirming sale of real estate, dated and filed March 23, 1962, and it was error for the Court to enter its Order dated April 2, 1962, denying motions of appellant Patterson, dated March 22 and March 26, 1962, which also renewed motions of March 10 and March 15, 1962, and asks for reversal of these orders with directions that appellant's motions be granted.

Respectfully submitted,

JEROME M. DALY

325 Cedar Street

St. Paul, Minnesota

Attorney for Appellant

Density →		Don Williams										M000355																													
		0.05	0.09	0.18	0.22	0.36	0.52	0.75		0.98	1.24	3.04	3.38	AD values are birth averages		0.75	0.98	1.24	3.04	3.38	AD values are birth averages		0.75	0.98	1.24	3.04	3.38														
184.36	66.23	46.83	44.64	36.12	32.13	27.44	24.08	21.35	18.97	16.84	14.94	13.27	11.79	10.46	9.25	8.14	7.11	6.15	5.25	4.40	3.68	3.05	2.51	2.00	1.57	1.23	0.97	0.76	0.60	0.47	0.36	0.27	0.20	0.15	0.11	0.08	0.06	0.04	0.03	0.02	0.01
184.36	66.23	46.83	44.64	36.12	32.13	27.44	24.08	21.35	18.97	16.84	14.94	13.27	11.79	10.46	9.25	8.14	7.11	6.15	5.25	4.40	3.68	3.05	2.51	2.00	1.57	1.23	0.97	0.76	0.60	0.47	0.36	0.27	0.20	0.15	0.11	0.08	0.06	0.04	0.03	0.02	0.01

RESPONDENT'S EXHIBIT I

2// /70 L.M.F. 42174

RECORD

IN THE

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 19080

CIVIL

BERNARD E. KOLL,

Appellant,

vs.

WAYZATA STATE BANK, ET AL.,

Appellees.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
FEDERAL JUDICIAL CENTER

NEW YORK, NEW YORK 10002

ON REMOVAL FROM DISTRICT COURT
OF NEW YORK

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NOTICE OF APPEAL

THIS CASE IS AN ACTION OF LAW FOR DAMAGES resulting from a well-planned, extensive plot devised by the Defendant and others acting in concert with them to remove the Defendant from the public and private life and to cause the destruction of public, private and personal property owned by the Defendant and his family, including the Defendant's home.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH JUDICIAL DISTRICT

Civil Action File No. 467 Civ. 106

ON REMOVAL FROM DISTRICT COURT
OF STATE OF MINNESOTA

State of Minnesota
County of Hennepin

District Court
Fourth Judicial District

BERNARD E. KOLL,

Plaintiff,

vs.

WAYZATA STATE BANK, Wayzata, Minnesota, and its
Directors and Agents in Control, Wayne Blackmarr, Robert
Frich, Jan Boswinkel, Ronald Engel, Lyle Carisch, Fred Her-
furth, J. C. Brandon, John Hollern, W. W. Rieke; FEDERAL
RESERVE BANK OF MINNEAPOLIS, Joyce A. Swan,
Federal Reserve Agent; FIRST NATIONAL BANK OF
MINNEAPOLIS; NORTHWESTERN NATIONAL BANK
OF MINNEAPOLIS; EILEEN CRONK; JOHN DOE and
RICHARD ROE,

Defendants.

COMPLAINT

Plaintiff for his cause of action herein states and alleges:

I

That this is an action at law for damages resulting from a
well organized conspiracy perpetrated by the Defendants and
others acting as principals with them to recover damages for
injuries to Plaintiff's person and property and to redress the
deprivation of rights, privileges and immunities secured by
the Declaration of Independence, Constitution of the United

States and the State of Minnesota and all laws passed pursuant thereto, and the Common Law, excepting therefrom all clerical and monarchial nonsense.

II

That on July 4, 1776, the people of the United States of America in general Congress assembled, appealing to the Supreme Judge of the World for the good faith of their intentions, did in the name of and by the authority of the good people of the colonies as then existing, then and there solemnly publish and declare that those colonies are and of right ought to be free and independent states; that they did then and there absolutely dissolve all allegiance and political connections, financial or otherwise, to the British Crown then existing between the people of the United States and the State of Great Britain and its Crown. That thereafter, the people of the United States by virtue of a Compact between themselves, did ordain and establish a Constitution for the United States and pursuant thereto, a government based upon the premise that all men are created equal. That they are endowed by their Creator with certain unalienable rights, among which are life, liberty and the pursuit of happiness. That in dissolving the said political bonds which connected them with the State of Great Britain and the King of England, the people of these United States 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. That in order to secure their natural and inherent rights to life, liberty, property and the pursuit of happiness, the people had previously instituted State Governments and ordained and established a Constitution for the Confederate States of America deriving their just powers from the consent of the Governed. The Constitution of the United States and the Government set up pursuant thereto is based upon the same premises. That after the adoption of the Declaration of Independence on July 4, 1776, the Supreme sovereign authority in these United States became and still is the people of the United States. All governmental powers derived

from the people as sovereigns is absolute. In all forms, whether under guise of law or otherwise, slavery, involuntary servitude, bondage, serfdom, thralldom, villenage, and peonage are all absolutely, strictly and categorically prohibited by the Declaration of Independence and the Constitution of the United States. That as such all financial connection between the government of the United States and the government of the States of the United States and its people and any other foreign country or the people thereof, or any person thereof, is absolutely severed and abolished. That the people have agreed among themselves to grant certain legislative powers to the Congress of the United States which the United States Congress has no right to delegate or surrender. The people have vested the power of executing the laws in the executive only, who has no power to legislate or to act in the Judicial capacity. The people have vested the judicial power in the Supreme Court of the United States, which members have no power to make a law as such but can only interpret and declare the law when a justiciable dispute comes within its jurisdiction. The people have granted to the Congress of the United States, the whole legislative power of coining and creating the Nation's credit and currency and the regulation of its value. The Congress of the United States have treasonably surrendered and abdicated the control over this power of coining and creating the Nation's credit and currency by an unlawful delegation of these powers to the Federal Reserve Corporation, National Banks and State Banks, and their managing directors and agents, including the Defendants listed herein, who are dominated and controlled by a small oligarchy of foreign and domestic financiers. This has been accomplished by fraudulent and dishonest means, using a Congress stuffed with time serving legislators who act in behalf of the defacto banker government, which is in part the Council on Foreign Relations and its nucleus, the Business Advisory Council all to the detriment of the dejure government of the United States of America, for the purposes of robbing the American people, including the Plaintiff herein, for the Bankers and the Defendants selfish gains.

That the Defendant, Federal Reserve Bank, named herein, is a purported central banking system, is privately owned and controlled. That the Defendant, Federal Reserve Bank, named herein, is a private corporation, set up, maintained and used as an artifice, trick, and device for the purpose of swindle, fraud, forgery, usury, concealment of usury, and the issuing and obtaining of property and property rights by false tokens to-wit: their false and fraudulent bookkeeping entries and their worthless Federal Reserve Notes. That the Federal Reserve Banks are maintained as a front for the purpose of perpetrating acts of aggravated forgery by creating money and credit upon their corporate books, which does not exist, by using bookkeeping entries as the method of creation, all without lawful authority, statutory or otherwise. That said Banks are not under the control of the people or their agents. For the cost of printing only, the said Federal Reserve Bank obtains Federal Reserve Notes which are not redeemable in either gold or silver coin and are passed out for use by the general public for purposes of swindle, fraud, theft and forgery by the said Defendants. That Defendant Joyce A. Swan is in control as Federal Reserve Agent and is Director of the Federal Reserve Bank of Minneapolis.

III

This suit is brought pursuant to, and for a violation of the following provisions:

U.S. Constitution, Article 1, Section 8, Clause 5: "The Congress shall have the power to coin money, regulate the value thereof and of foreign coin."

U.S.C.A. Article 1, Section 10—"No State shall coin money; emit Bills of Credit, 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."

Minnesota Constitution, Article 9, Section 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."

Minnesota Constitution, Article 1, Section 8—Redress of injuries or wrongs. "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."

Minnesota Statutes Annotated, 1 Constitution, Amendment XIII: Section 1—"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Section 2—"Congress shall have power to enforce this article by appropriate legislation."

Minnesota Statutes Annotated, 1 Constitution, Amendment XIV, Section 1—"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Minnesota Statutes Annotated, 1 Constitution, Article I, Bill of Rights, Section 1—Object of Government—"Gov-

ernment 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."

Minnesota Statutes Annotated, Article I, Section 2—Rights and privileges—"No member of this State shall be disfranchized, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the State otherwise than the punishment of crime, whereof the party shall have been duly convicted."

Minnesota Statutes Annotated, Article I, Section 7—Due process; prosecutions; second jeopardy; self-incrimination; bail; habeas corpus. "No person shall be held to answer for a criminal offense without due process of law, and no person for the same offense shall be put twice in jeopardy of punishment, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law. All persons shall before conviction be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great and the privilege of the writ of habeas corpus shall not be suspended unless when in case of rebellion or invasion the public safety may require. As amended Nov. 8, 1904."

and generally the Constitutions of the United States and the State of Minnesota.

IV

That Bernard E. Koll is engaged under the name of General Spray Service for the past 15 years exclusively, in the business of chemical applicators in the field of insecticides, pesticides and herbicides and the application thereof, and the extermination of pests and rodents. He also is en-

gaged in the field of aquatic control of weeds and algae to lakes, rivers and streams and the treatment of trees. Plaintiff is licensed by the Department of Agriculture and registered with the Department of Conservation in the State of Minnesota. That this field required many years of thorough knowledge of chemicals and the proper use and application thereof. That Plaintiff is affiliated with the Department of Agriculture since 1953.

In the past years, General Spray Service, under the direction and control of Plaintiff, has treated lakes for the control of aquatic weeds and algae throughout Minnesota. That also in this phase and field of business, Plaintiff has treated influent waters tributary to the Mississippi River to control bacteria caused in and to the Mississippi River by run-off from Rice Lake and other lakes, streams and tributaries. That these lakes were high in bacterial content and caused a foul taste of the public water consumed by the residents of Minneapolis and St. Paul.

With the pending infestation of Dutch Elm disease to the trees of the cities of Minneapolis, St. Paul and all of the vicinities concerned, Plaintiff supplied the required knowledge to the general public to control these problems.

As a result, Plaintiff and General Spray Service have built up valuable Good Will.

V

That Plaintiff and Defendant, Cronk, were married on May 4, 1956, at Northwood, Iowa.

Plaintiff conducted his General Spray Service business out of Defendant Cronk's home grounds at her request and raised and supported her 3 minor children at Route 5, Wayzata, Minnesota.

That in the year 1966, the Defendant, Wayzata State Bank, acquired a mortgage in the sum of approximately \$6,000 on

the personal property of Plaintiff, which included spray trucks, boats, snow mobiles, and the spraying equipment on the trucks. That said mortgage is fraudulent, without authority of law and void.

That Defendant, Wayzata State Bank, was at the time of placing a mortgage on Plaintiff's personal property, and at all times herein material individually engaged in the creation of money and credit by bookkeeping entry and in doing this so called banking business was passing the following described notes of currency issued by the Federal Reserve System, "Federal Reserve Note, The United States of America, One Dollar, This note is legal tender for all debts public and private said notes being issued and circulating generally throughout the United States by all of the 12 Federal Reserve Banks."

That at that time, the Defendants and each of them are chargeable with notice of the provisions of the United States Constitution and the Minnesota Constitution.

VI

That Defendant, Cronk, has been in unlawful combination with the Wayzata State Bank since about 1934. She has been a personal friend and confidant of its board of directors and has sought out and kept the services of Dr. W. W. Reike, Defendant herein.

That the Defendant, Eileen G. Cronk, commenced a divorce action against Plaintiff, Bernard E. Koll, in the first part of January of 1966. Judgment was entered in November or December of 1966 in said action. That Defendant, Wayzata State Bank, is a banking corporation, organized, created and existing pursuant to the laws of the State of Minnesota for the purpose of doing general banking business.

That the Wayzata State Bank unlawfully coins, creates and issues money and credit by bookkeeping entry, upon its own books for the purposes of swindle, fraud, and forgery.

That its board of directors engage in and promote this unlawful purpose contrary to Federal and Minnesota Statutes.

VII

That said Defendants and each of them entered into a combination and conspiracy to subvert and deprive Plaintiff of his rights as secured by the Constitution of the United States, the State of Minnesota, and the Declaration of Independence, and have defrauded Plaintiff out of his property, rights to property and liberty. That to carry this out Defendants used 2 false imprisonments.

That the Defendant, Cronk, in the action for divorce against Plaintiff, was awarded a decision by the Findings of Fact and Conclusions of Law and Order for Judgment, dated June 22, 1966, in the sum of approximately \$11,000 against the Plaintiff. That during the divorce proceedings, the Defendant, Eileen G. Cronk, attempted to get all of Plaintiff's property from him. That the Defendant, Wayzata State Bank, its officers, agents and servants, and members of its Boards of Directors, including Dr. Reike, entered into a scheme, plan and design and acted jointly in the premise with each other including all of the other Defendants for an unlawful purpose and they all entered into a conspiracy and unlawful combination in collusion, to take steal, and carry away all right, title and interest in Plaintiff's real and personal property, located at Route 5, Wayzata, Minnesota. That the Defendants and each of them agreed, consented to and acquiesce in the joint use of the unlawful plan and design hereinbefore alleged, and set up which culminated in an unlawful arrest and unlawful false imprisonment in the Hennepin County Workhouse for 42 days using the Hennepin District Court, its agents and servants, as the conduit for the false imprisonment, all acting wholly without jurisdiction in the premise and outside of the law, Constitutional, Statutory or otherwise. That Plaintiff was unlawfully sentenced to 180 days in the workhouse on January 5, 1967, without lawful basis, excuse or justification and with the

Court acting wholly without jurisdiction. That on application of Plaintiff through his attorney, Jerome Daly, Hennepin District Judge, Donald Barbeau, ordered that the Plaintiff, Bernard E. Koll, be released from the custody of the Hennepin County Workhouse on February 16, 1967. That the Defendants and each of them actively participated in the commission of the unlawful imprisonment and the deprivation of Plaintiff's life, liberty, property rights and pursuit of happiness and further procured, commanded, directed, advised and encouraged, aided and abetted its commission or ratified it after it was done. That some of the Defendants acted independently but always with common design and intent, their several unlawful acts concurring in obtaining one resulting event—the imposition of oppression, tyranny and theft upon Plaintiff and his property. Defendants were all acting in unlawful collusion with a common design and all are equally liable. Further, that Defendant, Cronk, and Defendant, Wayzata State Bank, and its Board of Directors, agents and servants, entered into a plan and design to incarcerate Plaintiff in the workhouse for a term of 180 days, and unlawfully keep him there so that they could foreclose their respective unlawful liens upon Plaintiff's property free from any interference by Plaintiff, Bernard E. Koll.

VIII

That Plaintiff is presently deprived of the use of \$70,000.00 of his personal property because of the unlawful and wrongful conduct of Defendants and each of them, the exact description of which is not ascertainable at this time.

IX

That deprivation of life, liberty and property; rights, privileges and immunities secured by the United States Constitution and laws in pursuance thereof providing for the equal rights of citizens or of all persons within the jurisdiction of the United States and the heaping of oppression upon Plaintiff is wrongfully, unlawfully and willfully turned upon Plaintiff

tiff as the result of the several acts of the Defendants and others in consort with them all acting jointly in the premise for the purpose of swindle, fraud, forgery and theft.

That the Defendants either agreed to, and, or, consented to, and, or acquiesced in the joint use of these Divorce Proceedings, unlawful Federal Reserve Notes not redeemable in specie, (Gold or Silver coin), false imprisonment and deprivation under color of State Law, statute, ordinance, regulation, custom or usage of rights, privileges and immunities secured by the United States and Minnesota Constitutions.

That Defendants and others in unlawful combination with them used the unlawful activities set out herein as a common outlet to heap and drain oppression, tyranny and nuisance upon Plaintiff and are jointly and severally liable for the damages sustained.

That Defendant, Cronk, consented to be used, was and is a willing agent for Defendants and each of them.

X

That the Defendant, National Banks, and Defendant, Federal Reserve Banks, are correspondent banks with the Defendant, Wayzata State Bank. That Defendant Joyce A. Swan occupies the Oracle seat.

XI

That the Defendant Banks, including the defendant Federal Reserve Bank of Minneapolis, Defendants herein, are private corporations, privately owned and controlled, in which the United States Government owns not one share of stock. That for all practical purposes Congress has abdicated and surrendered complete control over said banks to private individuals.

That all-times herein material, the Defendants, Federal Reserve Bank of Minneapolis, and the rest of the Defendant banks named herein, are by their joint and combined activity

creating money and credit on their own books without the slightest consideration therefor, by bookkeeping entries unlawfully usurping one of the legislative powers of Congress to coin (create) money and regulate the value thereof, and of foreign exchange. That with said unlawfully created money and credit, the said Defendant Banks are and have been, all without consideration, acquiring U.S. Bonds and other securities and obligations of the U.S. Government and of the State of Minnesota and its governmental subdivisions and are illegally receiving interest thereon. This includes the acquisition of mortgages on real and personal property generally.

That the Defendant Federal Reserve Bank of Minneapolis, is a Private Corporation, set up, maintained and used as an artifice, trick, device and means for the purposes of swindle, fraud, forgery, usury, concealment of usury, and the issuing and obtaining of property and property rights by false tokens, to-wit: their worthless Federal Reserve Notes; and for the purpose of perpetrating their acts of Aggravated Forgery, by creating money and credit upon their corporate books, which does not exist, using bookkeeping entries as the method of creation, all without lawful authority statutory or otherwise. That said entries are falsely made with intent to defraud, whereas, if lawful and genuine, legal rights, privileges, or obligations are created, terminated, transferred or evidenced. That these bookkeeping entries and the illegal utterance of said false tokens constitute an aggravation of said forgery. That the same practice of creating money by bookkeeping entry is at all times material carried out by the defendant First National Bank and the Defendant Northwestern National Bank and the foregoing allegations in that respect apply to them completely. That Defendant banks, named herein, have been and are engaged in a conspiracy as defined by Common Law and Minnesota Criminal Statute 609.175 to cheat, swindle, defraud, steal and obtain property rights in the form of United States Securities and Bonds and obligations of the State of Minnesota and its subdivision, which are the obligations of

the people generally and more specifically the plaintiffs, herein, contrary to Common Law and Minnesota Criminal Statute 609.52, defining Theft and Related Crimes, all to Plaintiff's damage. That said activity is without lawful authority.

The creation of money and credit, which does not exist, by bookkeeping entry on the Banks' Books constitutes, in law and in fact, the emission of multiple bills of credit. Each entry is a separate offense.

The defendant banks, along with the rest of the banks throughout the United States are all engaged in the same activity. They coin no gold or silver coin nor any other coins. They produce absolutely nothing of value. Yet they claim that the Government and people of the United States owe them \$330,000,000,000.

That, contrary to constitutional law, the Defendant banks claim to be fiscal agents for the Government of the United States. All monies and property, bonds or otherwise, which said Defendant banks acquire as purported agents equitably belong to the Government of the United States and is therefore held by said Defendant Banks as constructive trustees for the benefit of the Government and people of the United States, all because of their fraud.

XII

That the obtaining of said securities and bonds by Defendant banks from Governments of the United States and State of Minnesota and their subdivisions constitutes a loan or forbearance either express or implied, of something of value circulating as money, to-wit: their worthless Federal Reserve Notes, which the Defendant Banks obtained for the cost of the printing. That there is an understanding between the Defendant Banks and the Government of the United States and State of Minnesota and their subdivisions that the principal shall be paid absolutely in lawful money of the United States, which is according to the Constitution, gold or silver coin. That

said banks forge on their books the said money and credit by bookkeeping entry, by which they paid for said securities and bonds. That the most the said Defendant Banks pay for said securities and bonds are in Federal Reserve Notes, which said Federal Reserve Banks obtained for the cost of the printing, which is approximately one cent per Ten Thousand Dollars Federal Reserve Notes. That said activity by Defendant Banks constitute an extraction of a great profit, greater than is allowed by law. That said Defendant Banks, through their officers and agents, harbor an intention existing in their minds to defraud and violate the law, contrary to the usury laws of Minnesota contained in Chapter 34, Minnesota Statutes Annotated. This also applies to the attempted loan to Plaintiff.

That this aggravated forgery, as defined by M.S.A. 609.625, and the acquisition of United States and State Bonds (including real and personal property mortgages and including the purported mortgage on Plaintiff's property hereinbefore referred to) constitutes a presentation of false claims by Defendant Banks, with knowledge that said claims are false, in whole or in part, for payment, constituting a continuing attempt to commit theft of public and private funds, and property contrary to Minnesota Statute 609.465, all to Plaintiffs' damage.

That this activity is all unconstitutional.

That after payment of Income Taxes, excises and duties and other taxes, Plaintiff is left almost flat broke, all in keeping with the Defendants design.

That the Defendants and others in consort with them have subverted the Constitution of the United States and are continuing in that attempt to Plaintiffs' damage.

That Federal and State Criminal Income Tax Laws are used for the purpose of fear, threats and extortion to further the activity of Defendants, all of which has contributed to Plaintiffs' damage, general and special.

That by virtue of the 16th Amendment to the Constitution of the United States, the U.S. Government does impose and collect a direct tax upon the income of all citizens of the United States including Plaintiffs from which tax monies as and when collected approximately fifty (50) percent is paid upon purported legal obligations, principal and interest, and more specifically on the attempted obligations hereinafter referred to. That the said income tax, as levied, becomes a first and immediate lien upon all the property of Plaintiffs, real, personal and otherwise, including the Homestead, without benefit of any exemption whatsoever as to personal property.

That the State of Minnesota does impose a direct tax upon the income of all citizens, which money is used to pay all the obligations held by the Defendant Banks named herein.

That by virtue of Title 12, Section 531, U.S. Code Annotated, the Federal Reserve Bank is exempt from taxation, the said Statute is quoted as follows:

"Federal Reserve Banks, including the capital stock and surplus therein and the income derived therefrom, shall be exempt from Federal, State, and local taxation, except taxes upon real estate. Dec. 23, 1913, c. 6. sec. 7, 38 Stat. 258; Mar. 3, 1919, c. 101, sec. 1, 40 Stat. 1314."

XIII

Defendant Banks hold a substantial sum of United States and State Securities including their subdivisions.

XIV

That Plaintiff is being discriminated against by the Government of the United States, by the 12 Federal Reserve Banks of the United States, by the National Banks of the United States, including the Defendants herein as follows: a) Plaintiffs are not able to obtain Federal Reserve Notes for the Cost of Printing the notes while the Banks, including Defendant Banks are. By law, Plaintiff is not permitted to redeem Fed-

eral Reserve Notes in either Gold or Silver, coin or otherwise. The Defendant Banks herein are in Conspiracy with the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of New York and the remaining other 10 Federal Reserve Banks. That aliens are permitted to redeem Federal Reserve Notes at the Federal Reserve Bank in New York in Gold. That the Federal Reserve Banks are stealing the Gold of the United States by Creating money on their books by which they purport to purchase it with. From the Fort Knox depository our Gold is being feloniously transferred to the Federal Reserve Bank of New York where it is surrendered to aliens and transported out of the jurisdiction of the United States. It is a continuing and mounting theft. That Plaintiff is being directly damaged by this theft.

WHEREFORE, Plaintiff prays for damages against the Defendants, and each of them in the sum of \$250,000.00 in general and special damages and \$4,000,000.00 in punitive damages and costs; and judgment determining Plaintiffs property and for the immediate recovery of same.

JEROME DALY

28 East Minnesota Street

Savage, Minnesota

Attorney for Plaintiff

BERNARD E. KOLL

Wayzata, Minnesota

Plaintiff demands a trial
by jury of 12.

Dated March 10, 1967.

(Title of Cause)

NOTICE OF MOTION

To: Bernard E. Koll and Jerome Daly, his attorney; Federal Reserve Bank of Minneapolis and Roland Graham, its attorney; Joyce A. Swan, Federal Reserve Agent, and Stanley H. Green, Assistant United States Attorney, his attorney; Northwestern National Bank of Minneapolis and Faegre & Benson, its attorneys; Donald M. Tadich, Donald T. Barbeau and John K. Harvey, Assistant Hennepin County Attor-

ney, their attorney; Eileen Kronk, Mrs. Gus Johnson, Edwin Kronk, Jr., and Herbert Wolner, their attorney.

PLEASE TAKE NOTICE that Wayzata State Bank, and its directors and officers including Wayne Blackmarr, Robert Frick, Jan Boswinkel, Ronald Engel, Lyle Carisch, Fred Herfurth, I. Brandon, John Hollern, W. W. Rieke, and First National Bank of Minneapolis will move the court on Monday, June 12, 1967, at 10:00 o'clock a.m., or as soon thereafter as counsel can be heard, at the United States Courthouse, Minneapolis, Minnesota, for an order in compliance with the attached motion.

Please take further notice that Northwestern National Bank of Minneapolis, Donald M. Tadich and Donald T. Barbeau join in the attached motion for an order dismissing plaintiff's complaint with prejudice and on the merits, or in the alternative for an order in compliance therewith.

Dated: May 16, 1967.

DORSEY, OWEN, MARQUART,
WINDHORST & WEST

By Charles A. Geer

2400 First National Bank

Building

Minneapolis, Minnesota 55402

332-3351

Attorneys for Defendants

Wayzata State Bank and First
National Bank of Minneapolis,
and for Wayne Blackmarr,
Robert Frick, Jan Boswinkel,
Ronald Engel, Lyle Carisch,
Fred Herfurth, I. Brandon,
John Hollern, and W. W. Rieke

(Title of Cause)

MOTION

Defendants Wayzata State Bank, and its directors and officers including Wayne Blackmarr, Robert Frick, Jan Boswinkel, Ronald Engel, Lyle Carisch, Fred Herfurth, I. Brandon, John Hollern, W. W. Rieke, and First National Bank of Minneapolis move the court as follows:

1. To dismiss the action under Rule 12b, Federal Rules of Civil Procedure, because the complaint fails to state a claim against the moving defendants upon which relief can be granted.

2. To dismiss the action under Rule 12b, Federal Rules of Civil Procedure, on the ground that the court lacks jurisdiction for the following reasons:

a. Plaintiff has no standing to make any of the allegations of constitutional violation made in the complaint.

For the court's information, the moving defendants point out that the various allegations of the complaint herein alluding to constitutional history and constitutional violation previously have been stated in almost identical form in three Federal Court actions in Minnesota Federal District Court, all three of which have been dismissed on summary judgment motions by the defendants. These previous actions are known as *W. Frank Horne, et al v. Federal Reserve Bank of Minneapolis, et al*, No. 3-63 Civil 332, dismissed March 5, 1964; *William Wildanger, et al v. Federal Reserve Bank of Minneapolis, et al*, No. 4-66 Civil 83, dismissed July 18, 1966; *Leo Zurn, et al v. Federal Reserve Bank of Minneapolis, et al*, No. 4-66 Civil 399, dismissed March 15, 1967. These moving defendants claim that these decisions are *stare decisis* as to this issue.

b. None of the allegations of constitutional violation made in the complaint present a justiciable controversy.

3. To dismiss the action under Rule 12b, Federal Rules of Civil Procedure, for failure to join the United States of America, the State of Minnesota, and appropriate officers of each, which are indispensable parties to the extent the complaint herein is predicated on constitutional violation.

4. For compliance with Rule 10b, Federal Rules of Civil Procedure, and for a more definite statement under Rule 12e, Federal Rules of Civil Procedure, for the reasons hereafter stated:

a. The complaint violates Rule 8(a), Federal Rules of Civil Procedure, in failing to make a "short and plain statement of the claim showing that the pleader is entitled to relief."

b. The complaint violates Rule 8(3)(1), Federal Rules of Civil Procedure, which requires that "each averment of a pleading shall be simple, concise, and direct."

c. The complaint, insofar as it alleges fraud, fails to particularize "the circumstances constituting fraud" as required by Rule 9(b), Federal Rules of Civil Procedure.

d. The complaint fails to specify the special damages it demands, as required by Rule 9g, Federal Rules of Civil Procedure.

e. To the extent it is understandable, the complaint fails to comply with Rule 10b, Federal Rules of Civil Procedure, in that practically none of its paragraphs is limited to the statement of "a single set of circumstances" and in that it fails to set forth "each claim founded upon a separate transaction or occurrence . . . in a separate count."

f. The entire complaint is so vague and ambiguous as to preclude responsive pleading. It mixes together vague statements of constitutional theory, quotes from various legal sources, facts of the plaintiff's business, facts of the plaintiff's marital strife, facts of the plaintiff's imprisonment, and facts of the plaintiff's loans from defendant Wayzata State Bank.

The moving defendants are unable to determine what claim or claims plaintiff purports to assert.

5. Under Rule 12f, Federal Rules of Civil Procedure, to strike the complaint herein as sham and false, redundant, immaterial, impertinent and scandalous and not in compliance with Rule 11, Federal Rules of Civil Procedure.

Dated: May 16, 1967.

DORSEY, OWEN, MARQUART,
WINDHORST & WEST

By Charles A. Geer

2400 First National Bank

Building

Minneapolis, Minnesota 55402

332-3351

Attorneys for Defendants

Wayzata State Bank and First

National Bank of Minneapolis,

and for Wayne Blackmarr,

Robert Frick, Jan Boswinkel,

Ronald Engel, Lyle Carisch,

Fred Herfurth, I. Brandon,

John Hollern, and W. W. Rieke

(Title of Cause)

NOTICE OF MOTION

To: Bernard E. Koll and Jerome Daly, his attorney; Federal Reserve Bank of Minneapolis and Roland Graham, its attorney; Joyce A. Swan, Federal Reserve Agent, and Stanley H. Green, Assistant United States Attorney, his attorney; Northwestern National Bank of Minneapolis and Faegre & Benson, its attorneys; Donald M. Tadich, Donald T. Barbeau and John K. Harvey, Assistant Hennepin County Attorney, their attorney; Eileen Kronk, Mrs. Gus Johnson, Edwin Kronk, Jr., and Herbert Wolner, their attorney; and Wayzata State Bank and First National Bank of Minneapolis, and Wayne Blackmarr, Robert Frick, Jan Boswinkel, Ronald Engel, Lyle Carisch, Fred Herfurth, I. Brandon, John Hollern, and W. W. Rieke, and Dorsey, Owen, Marquart, Windhorst & West, their attorneys.

PLEASE TAKE NOTICE that Ralph Stageberg, Superintendent City Workhouse, whose proper name is Rolf Stageberg, will move the Court on Monday, June 12, 1967, at 10:00 o'clock A.M., or as soon thereafter as counsel can be heard, at the United States Court House, Minneapolis, Minnesota, for an order in compliance with the attached motion.

Dated: June 1, 1967.

KEITH M. STIDD

City Attorney

and

ARVID M. FALK

Assistant City Attorney

Attorneys for Rolf Stageberg

325M City Hall

Minneapolis, Minnesota

330-2017

(Title of Cause)

NOTICE OF MOTION AND MOTION

To: Bernard E. Koll and Jerome Daly, his attorney:

PLEASE TAKE NOTICE that pursuant to Rule 12.02, Rule 10.02 and Rule 8.05 of the Rules of Civil Procedure for the District Courts of Minnesota, the undersigneds will move the above named Court at a Special Term thereof to be held on the 12th day of May, 1967 at 9:30 o'clock in the forenoon or as soon thereafter as counsel can be heard in the Court House of the City of Minneapolis, County of Hennepin, State of Minnesota, for an Order

(1) To dismiss the Amended Summons and Complaint in the above entitled action on the grounds of lack of jurisdiction over the subject matter inasmuch as the Amended Complaint alleges a cause of action against an instrumentality of the United States of America, its functions and the officers thereof;

(2) That the plaintiff's Amended Complaint fails to state a claim upon which relief can be granted;

(3) That Donald T. Barbeau, Hennepin County District Court Judge, is immune from an action for damages based on his exercise of the judicial power of the State of Minnesota;

(4) That Donald M. Tadich, a Probation Officer of the Department of Court Services of the County of Hennepin, is also immune for a suit for damages based on his function as a part of the judicial function of the District Court, Fourth Judicial District of the State of Minnesota;

(5) That the Amended Complaint offends against Rule 10.02 of the Rules of Civil Procedure in that the allegations are not limited as far as practicable to a statement to a single set of circumstances or that each claim is founded upon a separate transaction or occurrence. That the pleadings in

said Amended Complaint are so merged and vague as to be unintelligible and incapable of being answered in a separate pleading;

(6) To strike the Amended Complaint in the above entitled action as its contents as redundant, immaterial, contains impertinent matter, is vague, ambiguous, incoherent and largely unintelligible and has little resemblance to stating a legal cause of action and

(7) That the pleadings taken as a whole are an abuse of process and are an attempt to intimidate the exercise of the judicial function of the District Court, Fourth Judicial District of the State of Minnesota by intimidating a Judge of the District Court because of a prior judicial function.

That said motion will be made upon all the records, files and proceedings herein.

GEORGE M. SCOTT
Hennepin County Attorney
By
PER M. LARSON
First Assistant County
Attorney
JOHN K. HARVEY
Assistant County Attorney

Dated: May 3, 1967.

(Title of Cause)

MOTION AND NOTICE OF MOTION

To the Defendants named herein and to their attorneys, Stanley Green, Fagre & Benson, John K. Harvey, Herbert Wolner, Dorsey, Owen, et al., Arvid M. Falk:

Sirs:

YOU WILL PLEASE TAKE NOTICE that at the same time and place as is set for hearing on motions to dismiss on June 12, 1967, Plaintiff will move the Court for an Order allowing Plaintiff to amend his Complaint according to law as follows:

XII

That the Defendant Donald T. Barbeau, while purporting to act as Minnesota State District Judge, acted wholly without Jurisdiction and without authority of law, in combination acting jointly in the premise, with the Defendants Donald M. Tadich and Defendant Cronk and her agents caused Plaintiff to be imprisoned in the Hennepin County Work House for 42 days; further the Defendant Stageberg without any lawful judgment or lawful process whatsoever took Plaintiff into said Workhouse and left him imprisoned. That said false imprisonment is in violation of Sec. 1343 of Title 28, U.S. Code and Sec. 1980 thru 1990 of Title 42 U.S. Code, and the Common law. That all Defendants acted jointly in the premise for the purpose of foreclosing mortgages, liens (without even Judgment being served upon Plaintiff) and oppression and have and are depriving Plaintiff of his rights under color of State law.

JEROME DALY

Plaintiff's Attorney
28 East Minnesota Street
Savage, Minnesota

June 2, 1967

(Title of Cause)

AFFIDAVIT OF JEROME DALY

State of Minnesota
County of Scott—ss.

Jerome Daly, having been first duly sworn deposes and states that he has good reason to believe, does believe and so states that the Defendants Stageberg, Donald T. Barbeau and Tadish were acting unlawfully and as agents of Defendant Eileen Kronk in accomplishing the false imprisonment and unlawfully adopted, ratified and acquiesced in her wrongful acts. That Defendant Kronk was at all times material in combination and conspiracy with the remainder of the Defendants to accomplish the unlawful purpose set out in the Complaint.

That attached hereto and made a part of this affidavit by reference to prove the unlawful coinage of money and credit by false bookkeeping entry is page 75 of the book published by the Board of Governors of the Federal Reserve System entitled "The Federal Reserve System, Its Purposes and Functions."

That your affiant is informed and believes that the books of the Wayzata State Bank, the First National Bank and the Federal Reserve Bank, coupled with the creation of money and credit by bookkeeping entry, constitutes the emission of multiple bills of credit.

That the Declaration of Independence provides:

"When, in the course of human events, it becomes necessary for one people to dissolve the political bonds 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 entitled 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."

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 1

"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."

Article 1, Section 8, Clause 5—"The 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 1, Section 10—"No State shall coin money; emit Bills of Credit; make anything but gold and silver coin a tender in payment of debts; pass any law impairing the obligation of contract."

That the Wayzata State Bank is subject to State of Minnesota Law.

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

Article V—"No person shall be deprived of life, liberty or property without due process of law."

Websters Dictionary defines coin as follows:

"Coin"—V.T.—To make—To make up—Devise—Invent.

In my opinion, when they coin money by bookkeeping entry they usurp a legislative function of Congress. When they extinguish their money and credit they repeal their own legislation.

This is the most powerful and important legislative grant given to Congress by the people.

By their unconstitutional activity these Defendants can acquire no rights.

JEROME DALY

Attorney for Plaintiff

28 East Minnesota Street

Savage, Minnesota

Subscribed and sworn to before me this day of June, 1967. — , Notary Public, Dakota County.
My commission expires 1-17-73.

FUNCTION OF BANK RESERVES Page 75

" . . . Thus the lending bank is likely to retain or receive back as deposits only a small portion of the money that it lent, while a large portion of the money that is lent by other banks is likely to be brought to it by its customers."

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

The commercial banks as a whole can create money only if additional reserves are made available to them. The Federal

Reserve System is the only instrumentality endowed by law with discretionary power to create (or extinguish) the money that serves as bank reserves or as the public's pocket cash. Thus, the ultimate capability for expanding or reducing the economy's supply of money rests with the Federal Reserve.

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

(Title of Cause)

ORDER OF DISMISSAL

This cause came on for hearing on June 13, 1967, on motions of defendants to dismiss the complaint with prejudice on the merits and on motion of plaintiff for leave to amend his complaint.

Upon the memoranda of plaintiff and defendants and the record and proceedings herein, and the Court being fully advised, it is

ORDERED:

That defendants' motions to dismiss the complaint with prejudice on the merits are granted and that defendants be awarded their costs.

Dated this 11th day of September, 1967.

MILES W. LORD
United States District Judge

(Filed September 11, 1967. — Frank A. Massey, Clerk, by Mary L. Kolden, Deputy.)

(Title of Cause)

CLERK'S NOTICE

You are hereby notified that in the above-entitled cause, on the 11th day of September, 1967, filed Order (Lord, J.) granting deft's motions to dismiss complaint with prejudice and that defendants be awarded their costs.

FRANK A. MASSEY, Clerk

By _____, Deputy

Jerome Daly

28 East Minnesota St.
Savage, Minnesota 55378

U. S. Attorney

596 U. S. Court House
110 S. 4th Street
Minneapolis, Minnesota 55401

Faegre & Benson

Lawrence C. Brown
1260 N.W. Bank Bldg.
Minneapolis, Minn. 55402

Dorsey, Marquart, Windhorst,
West & Halladay

Charles A. Geer

2400 First National Bank Bldg.
Minneapolis, Minnesota 55402

George M. Scott, County Atty.

Per M. Larson & John K. Harvey
400 Court House
Minneapolis, Minn. 55415

Wolner & Haglund

Herbert E. Wolner
240 S. Minnetonka Ave.
Wayzata, Minn. 55391

Roland Graham
 73 S. 5th St.
 Minneapolis, Minnesota 55401
 Keith M. Stidd, City Atty.
 Arvid M. Falk, Asst. City Atty.
 325M City Hall
 Minneapolis, Minn. 55415

NOTE: If an appeal is contemplated, the Rules of the United States Court of Appeals and "Suggestions to Attorneys concerning Appellate Rules and Practice" may be procured from the Clerk, U. S. Court of Appeals, U. S. Courthouse and Custom House, St. Louis, Missouri.

(Title of Cause)

NOTICE OF APPEAL

To: U. S. Attorney, Attorney for the United States of America; Faegre & Benson, Attorney for Northwestern National Bank of Minneapolis; Dorsey, Marquart, Windhorst, West & Halladay and Charles A. Geer, Attorney for Wayzata State Bank and First National Bank of Minneapolis, and for Wayne Blackmarr, Robert Frick, Jan Boswinkel, Ronald Engel, Lyle Carisch, Fred Herfurth, I. Brandon, John Holern, and W. W. Rieke; George M. Scott, County Attorney, Attorney for Donald M. Tadich, Donald T. Barbeau; Wolner & Haglund, Herbert E. Wolner, Attorney for Eileen Cronk, Mrs. Gus Johnson, Edwin Kronk, Jr.; Roland Graham, Attorney for the Federal Reserve Bank of Minneapolis; Keith M. Stidd, City Attorney, Attorney for the City of Minneapolis and Ralph Stageberg, Supt., Minneapolis City Workhouse.

Sirs:

You will please take notice that Plaintiff, Bernard E. Koll, hereby appeals to the United States Circuit Court of Appeals for the Eighth Circuit from the Order of September 11, 1967,

granting Defendants' Motion to dismiss Complaint with prejudice and awarding costs to Defendants, and also appeals from the Judgment entered on September 11, 1967, against Plaintiff.

Dated in Savage, Minnesota, September 29, 1967.

BERNARD E. KOLL
 Plaintiff
 JEROME DALY
 Attorney for Plaintiff
 28 East Minnesota Street
 Savage, Minnesota

(Title of Cause)

RELEVANT DOCKET ENTRIES

- 4-26-67—Filed Petition for Removal from the District Court of Hennepin County, with copy of Summons and Complaint, demand for trial by jury, and certificate of service by mail on 4-26-67.
- 5- 5-67—Filed Notice of Motion and Motion of defendants Wayzata State Bank and its Directors, and First National Bank for order of dismissal, with aff. of service by mail on 3-30-67.
- Filed Notice of Motion and Motion of N. W. Natl. Bank for order of dismissal, with aff. of service by mail on 4-4-67.
- 5- 8-67—Filed Notice of Motion and Motion by Hennepin County Attorney to dismiss the action, with aff. of service personally on 5-4-67 and by mail on 5-3-67.
- 5-22-67—Filed Notice of Motion and Motion of Donald T. Barbeau, Hennepin County District Judge, and Donald M. Tadich, Probation Officer, for order of dismissal, with aff. of service by mail on 5-19-67.

- 6- 5-67—Filed Notice of Motion and Motion of Mrs. Gus Johnson, Edwin Cronk, Jr., Mrs. Charles Sutherland and Eileen Cronk for order of dismissal.
- 6- 6-67—Filed Notice of Motion and Motion of Rolf Stageberg, Supt. City Workhouse, for order of dismissal, with aff. of service by mail on 6-2-67.
- 6- 7-67—Filed Amended Summons and Complaint with affs. of service personally on Mar. 11, 13, 30, 31 and Apr. 1, 1967.
- 6-13-67—Entered record of hearing on pending motions—Jerome Daly, counsel for plaintiff, is not present. Order of dismissal to be drawn by counsel for defendants and submitted for signature. (Lord, J.) Mr. Daly appeared later in the day and was given 10 days in which to submit a brief.
- 9-11-67—Filed Order (Lord, J.) granting defendants' motions to dismiss complaint with prejudice, and that defendants be awarded their costs.
- 10- 5-67—Filed Notice of Appeal by plaintiff.
—Filed Bond on Appeal.

1. The first of the series of lectures on the history of the United States was given by Mr. Charles D. Smith, of the University of California, at Berkeley, on the 1st of October, 1891.

2. The second of the series of lectures on the history of the United States was given by Mr. Charles D. Smith, of the University of California, at Berkeley, on the 8th of October, 1891.

3. The third of the series of lectures on the history of the United States was given by Mr. Charles D. Smith, of the University of California, at Berkeley, on the 15th of October, 1891.

4. The fourth of the series of lectures on the history of the United States was given by Mr. Charles D. Smith, of the University of California, at Berkeley, on the 22nd of October, 1891.

5. The fifth of the series of lectures on the history of the United States was given by Mr. Charles D. Smith, of the University of California, at Berkeley, on the 29th of October, 1891.

6. The sixth of the series of lectures on the history of the United States was given by Mr. Charles D. Smith, of the University of California, at Berkeley, on the 5th of November, 1891.

7. The seventh of the series of lectures on the history of the United States was given by Mr. Charles D. Smith, of the University of California, at Berkeley, on the 12th of November, 1891.

8. The eighth of the series of lectures on the history of the United States was given by Mr. Charles D. Smith, of the University of California, at Berkeley, on the 19th of November, 1891.

9. The ninth of the series of lectures on the history of the United States was given by Mr. Charles D. Smith, of the University of California, at Berkeley, on the 26th of November, 1891.

10. The tenth of the series of lectures on the history of the United States was given by Mr. Charles D. Smith, of the University of California, at Berkeley, on the 3rd of December, 1891.

11. The eleventh of the series of lectures on the history of the United States was given by Mr. Charles D. Smith, of the University of California, at Berkeley, on the 10th of December, 1891.

12. The twelfth of the series of lectures on the history of the United States was given by Mr. Charles D. Smith, of the University of California, at Berkeley, on the 17th of December, 1891.

13. The thirteenth of the series of lectures on the history of the United States was given by Mr. Charles D. Smith, of the University of California, at Berkeley, on the 24th of December, 1891.

14. The fourteenth of the series of lectures on the history of the United States was given by Mr. Charles D. Smith, of the University of California, at Berkeley, on the 31st of December, 1891.

15. The fifteenth of the series of lectures on the history of the United States was given by Mr. Charles D. Smith, of the University of California, at Berkeley, on the 7th of January, 1892.

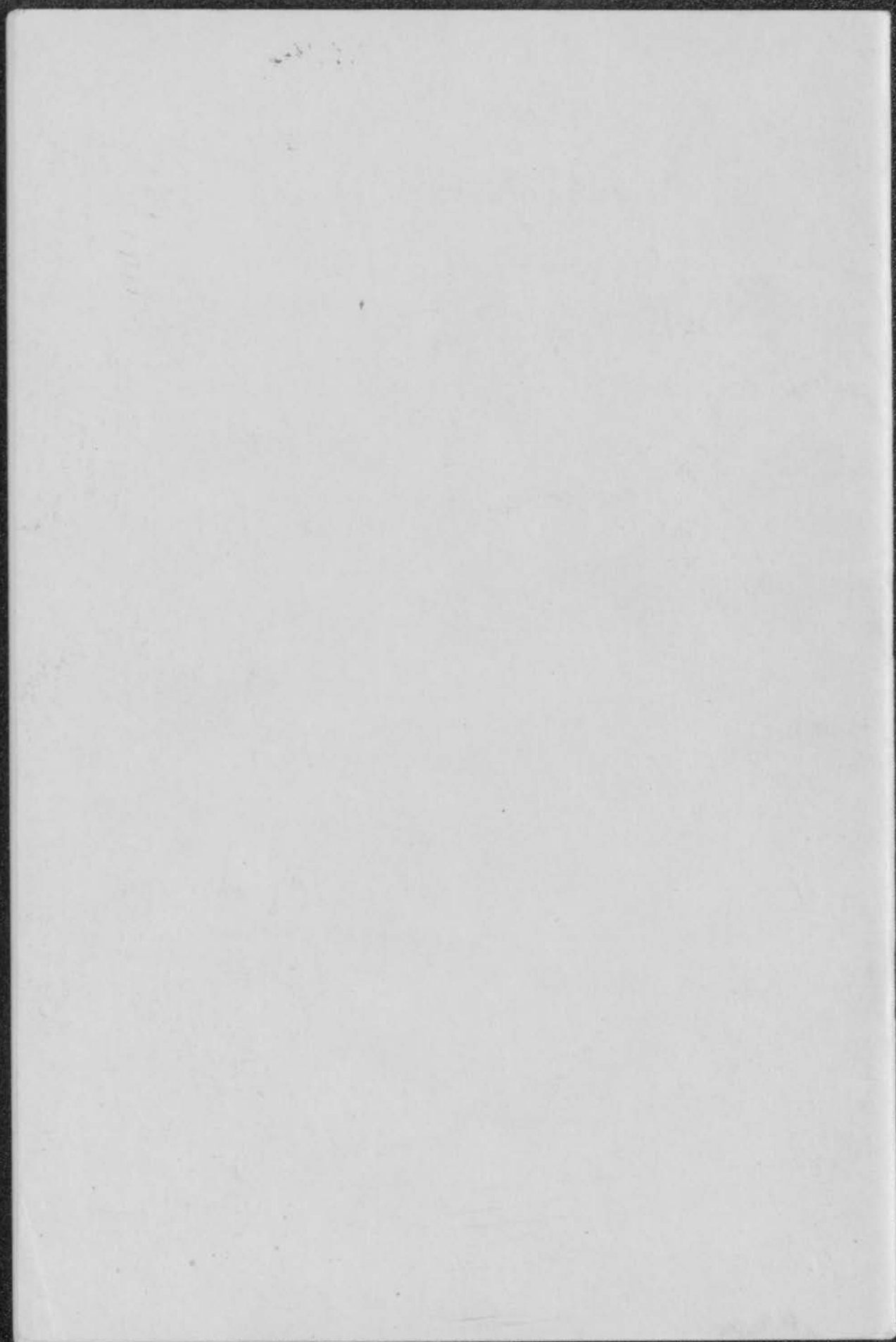
16. The sixteenth of the series of lectures on the history of the United States was given by Mr. Charles D. Smith, of the University of California, at Berkeley, on the 14th of January, 1892.

17. The seventeenth of the series of lectures on the history of the United States was given by Mr. Charles D. Smith, of the University of California, at Berkeley, on the 21st of January, 1892.

18. The eighteenth of the series of lectures on the history of the United States was given by Mr. Charles D. Smith, of the University of California, at Berkeley, on the 28th of January, 1892.

19. The nineteenth of the series of lectures on the history of the United States was given by Mr. Charles D. Smith, of the University of California, at Berkeley, on the 4th of February, 1892.

20. The twentieth of the series of lectures on the history of the United States was given by Mr. Charles D. Smith, of the University of California, at Berkeley, on the 11th of February, 1892.



The Story of PAPER MONEY



The Story of PAPER MONEY

including CATALOGUE of VALUES

By FRED REINFELD



The Story of PAPER MONEY

By FRED REINFELD

Today paper money is no novelty to us. A \$1,000 bill is "worth" a thousand dollars to us, and we don't even stop to think that it cost the government only about one cent to print.

But it was not always that way. There have been numerous times in history when people distrusted paper money. This book tells the whole story of paper money, from its beginnings in China when Kublai Khan ordered his people to accept it and Marco Polo brought samples back to Europe, through the days of the French Revolution when interest-bearing currency was issued, to North America where playing card money was issued to Canadian soldiers, and finally to the United States with its Continentals, state money, wildcat bank currency, "shin-plasters," fractional currency (in denominations of 3¢ to 50¢), Confederate bills, greenbacks, and our current small-size dollar.

Many prominent Americans — Ben Franklin, Andrew Jackson, Salmon P. Chase, Jefferson Davis—and many important American historical events are reflected in the story of currency. So, the book becomes a piece of Americana and a sidelight on history, as well as a reference work for coin and currency collectors. There is a premium list in the back of the book which catalogues every important United States bill with the price that a dealer will pay you for it.

*Jacket photos from Chase Manhattan
Bank Museum of Monies of the World*

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OTHER BOOKS BY FRED REINFELD

CATALOGUE OF THE WORLD'S MOST POPULAR COINS

TREASURY OF THE WORLD'S COINS

COIN COLLECTORS' HANDBOOK

CASH FOR YOUR COINS

COINOMETRY: An Instructive Historical Introduction to Coins and
Currency for the Young Collector (with Robert V.
Masters, co-author)

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