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Version 3
August 20, 2018

"EXHIBIT A"

IN RE: INCOME TAX, STATE AND FEDERAL - STATEMENT AND PETITION PURSUANT TO THE CONSTITUTION OF THE UNITED STATES.

The symbol "$" is used on the face of the 1040 U.S.Individual Income Tax REturn and upon State Income Tax REturns and upon other Sales, Duties, Imposts and Excise Returns. I also note it to be used in Title 26, United States Code, and understand it to be a symbol or abreviation for the word"dollar".

The word "dollar" is twice used in the Constitution of the United States. Once in Article One Section Nine paragraph One and again in Article Seven of the Bill of Rights.

At the time of the adoption of the Constitution in 1789 the word "dollar" meant the Spanish Milled Dollar then in circulation containing 416 grains Troy Weight of Standard Silver.

Bear in mind hereafter and through out, Article One Section 10 of the United States Constitution states " No State shall make any Thing but gold and silver Coin a Tender in Payment of Debts." Notice the word "Thing"is capitalized, which makes it a proper nound or a vivid personification for an inaminate object. Notice the Constitution does not say gold or silver Coin or Coins; or gold and/or silver Coins or Coin. It is very simple. Coin is in the singular and it is to contain both gold and silver. The Constitution is the will of the supreme legislative power, the People. We must assume that they meant what they said and said what they meant. The same Article states " No State shall grant any Title of Nobility" Obviously Congress is incompetent to pass a Law authorizing a State to grant a Title of Nobility. The Law would be in conflict directly with the Constitution and void. For the same reason Concress cannot constitutionally pass a Law authorizing a State to make any Thing but gold and silver Coin a Tender in Payment of Debts. If there is a conflict with or between an Act of Congress and the Constitution the Constitution must prevail.

The first United States Coinage Act was passed April 2,1792 entitled "An Act establishing a Mint, and regulating the Coins of the United States. The complete Act is attached hereto but it is in part as follows- (Notice it mentions the Spanish Milled Dollar and provides for the coinage of a Coin that contains both gold and silver for legal Tender purposes)

Species of the coins to be struck.

Eagles.

Half Eagles.

Quarter Eagles.

Dollars or Units.

Half Dollars.

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

Quarter Dollars. QUARTER DOLLARS—each to be of one fourth the value of the dollar or unit, and to contain ninety-two grains and thirteen sixteenth parts of a grain of pure, or one hundred and four grains of standard silver.

Dismes. DISMES—each to be of the value of one tenth of a dollar or unit, and to contain thirty-seven grains and two sixteenth parts of a grain of pure, or forty-one grains and three fifth parts of a grain of standard silver.

Half Dismes. HALF DISMES—each to be of the value of one twentieth of a dollar, and to contain eighteen grains and nine sixteenth parts of a grain of pure, or twenty grains and four fifth parts of a grain of standard silver.

Cents. CENTS—each to be of the value of the one hundredth part of a dollar, and to contain eleven penny-weights of copper.

Half Cents. HALF CENTS—each to be of the value of half a cent, and to contain five penny-weights and half a penny-weight of copper.(*a*)

Act of May 8, 1792.

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

SEC. 11. *And be it further enacted*, That the proportional value of gold to silver in all coins which shall by law be current as money within

(*a*) The acts regulating the gold and silver coins of the United States, are: An act establishing a mint and regulating the coins of the United States, April 2, 1792, chap. 16, sec. 9; an act concerning the gold coins of the United States, and for other purposes, June 28, 1834, chap. 9; an act supplementary to the act entitled, "An act to establish a mint, and regulating the coins of the United States, January 18, 1837, chap. 3, sec. 8, 9, 10.

Proportional value of gold to silver. the United States, shall be as fifteen to one, according to quantity in weight, of pure gold or pure silver; that is to say, every fifteen pounds weight of pure silver shall be of equal value in all payments, with one pound weight of pure gold, and so in proportion as to any greater or less quantities of the respective metals.(*a*)

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

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

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

Alloy.

Persons may bring gold and silver bullion, to be coined free of expense; SEC. 14. *And be it further enacted*, That it shall be lawful for any person or persons to bring to the said mint gold and silver bullion, in order to their being coined; and that the bullion so brought shall be there assayed and coined as speedily as may be after the receipt thereof, and that free of expense to the person or persons by whom the same shall have been brought.

The last Constitutional Act so far as legal Tender is concerned was passed in 1837 on January 18. It is set forth in full and is attached hereto but so far as the word "dollar" and lawful legal Tender is concerned the pertinant parts are as follows: (Notice it still provides for Coin containg both gold and silver)

Standard for gold and silver coins. Alloys.

SEC. 8. *And be it further enacted*, That the standard for both gold and silver coins of the United States shall hereafter be such, that of one thousand parts by weight, nine hundred shall be of pure metal, and one hundred of alloy; and the alloy of the silver coins shall be of copper; and the alloy of the gold coins shall be of copper and silver, provided that the silver do not exceed one-half of the whole alloy.

Weight of silver coins.

SEC. 9. *And be it further enacted*, That of the silver coins, the dollar shall be of the weight of four hundred and twelve and one-half grains; the half dollar of the weight of two hundred and six and one-fourth grains; the quarter dollar of the weight of one hundred and three and one-eighth grains; the dime, or tenth part of a dollar, of the weight of forty-one and a quarter grains; and the half dime, or twentieth part of a dollar, of the weight of twenty grains, and five-eighths of a grain.

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Dollars, &c., shall be legal tenders, &c.

And that dollars, half dollars, and quarter dollars, dimes, and half dimes, shall be legal tenders of payment, according to their nominal value, for any sums whatever.

Weight of gold coins. Eagles, &c., shall be a legal tender, &c.

SEC. 10. *And be it further enacted*, That of the gold coins, the weight of the eagle shall be two hundred and fifty-eight grains; that of the half eagle one hundred and twenty-nine grains; and that of the quarter eagle sixty-four and one-half grains. And that for all sums whatever, the eagle shall be a legal tender of payment for ten dollars; the half eagle for five dollars; and the quarter eagle for two and a half dollars.

Silver coins heretofore issued, and gold coins issued since 31st July, 1834, shall continue to be legal tenders.

SEC. 11. *And be it further enacted*, That the silver coins heretofore issued at the mint of the United States, and the gold coins issued since the thirty-first day of July, one thousand eight hundred and thirty-four, shall continue to be legal tenders of payment for their nominal values, on the same terms as if they were of the coinage provided for by this act.

Weight of copper coins.

SEC. 12. *And be it further enacted*, That of the copper coins, the weight of the cent shall be one hundred and sixty-eight grains, and the weight of the half-cent eighty-four grains. And the cent shall be considered of the value of one hundredth part of a dollar, and the half-cent of the value of one two-hundredth part of a dollar.

Proportional value of a dollar.

Devices and legends of coins.

SEC. 13. *And be it further enacted*, That upon the coins struck at the mint there shall be the following devices and legends: upon one side of each of said coins there shall be an impression emblematic of liberty, with an inscription of the word LIBERTY, and the year of the coinage; and upon the reverse of each of the gold and silver coins, there shall be the figure or representation of an eagle, with the inscription United States of America, and a designation of the value of the coin; but on the reverse of the dime and half dime, cent and half cent, the figure of the eagle shall be omitted.

The Act of February 12,1873, known as "The Crime of 73" is unconstitutional and void in so far as it provides for the coinage of Gold Dollars containing no silver alloy.

Standard of gold and silver coins.

SEC. 13. That the standard for both gold and silver coins of the United States shall be such that of one thousand parts by weight nine hundred shall be of pure metal and one hundred of alloy; and the alloy of the silver coins shall be of copper, and the alloy of the gold coins shall be of copper, or of copper and silver; but the silver shall in no case exceed one-tenth of the whole alloy.

Alloy.

Gold coins;

SEC. 14. That the gold coins of the United States shall be a one-dollar piece, which, at the standard weight of twenty-five and eight-tenths grains, shall be the unit of value; a quarter-eagle, or two-and-a-half dollar piece; a three-dollar piece; a half-eagle, or five-dollar piece; an eagle, or ten-dollar piece; and a double eagle, or twenty-dollar piece. And the standard weight of the gold dollar shall be twenty-five and eight-tenths grains; of the quarter-eagle, or two-and-a-half dollar piece, sixty-four and a half grains; of the three-dollar piece, seventy-seven and four-tenths grains; of the half-eagle, or five-dollar piece, one hundred and twenty-nine grains; of the eagle, or ten-dollar piece, two hundred and fifty-eight grains; of the double-eagle, or twenty-dollar piece, five hundred and sixteen grains; which coins shall be a legal tender in all payments at their nominal value when not below the standard weight and limit of tolerance provided in this act for the single piece, and, when reduced in weight, below said standard and tolerance, shall be a legal tender at valuation in proportion to their actual weight; and any gold coin of the United States, if reduced in weight by natural abrasion not more than one-half of one per centum below the standard weight prescribed by law, after a circulation of twenty years, as shown by its date of coinage, and at a ratable proportion for any period less than twenty years, shall be received at their nominal value by the United States treasury and its offices, under such regulations as the Secretary of the Treasury may prescribe for the protection of the government against fraudulent abrasion or

standard weight;

to be legal tender;

reduction in weight by natural abrasion;

where to be received.

other practices; and any gold coins in the treasury of the United States reduced in weight below this limit of abrasion shall be recoined.

Silver coins

SEC. 15. That the silver coins of the United States shall be a trade-dollar, a half-dollar, or fifty-cent piece, a quarter-dollar, or twenty-five-cent piece, a dime, or ten-cent piece; and the weight of the trade-dollar shall be four hundred and twenty grains troy; the weight of the half-dollar shall be twelve grams (grammes) and one-half of a gram, (gramme;) the quarter-dollar and the dime shall be respectively, one-half and one-fifth of the weight of said half-dollar; and said coins shall be a legal tender at their nominal value for any amount not exceeding five dollars in any one payment.

weight;

to be legal tender.

Minor coins, and their alloy;

SEC. 16. That the minor coins of the United States shall be a five-cent piece, a three-cent piece, and a one-cent piece, and the alloy for the five and three cent pieces shall be of copper and nickel, to be composed of three-fourths copper and one-fourth nickel, and the alloy of the one-cent piece shall be ninety-five per centum of copper and five per centum of tin and zinc, in such proportions as shall be determined by the director of the mint. The weight of the piece of five cents shall be seventy-seven and sixteen-hundredths grains, troy; of the three-cent piece, thirty grains; and of the one-cent piece, forty-eight grains; which coins shall be a legal tender, at their nominal value, for any amount not exceeding twenty-five cents in any one payment.

weight;

to be legal tender.

No coins, except, &c.

SEC. 17. That no coins, either of gold, silver, or minor coinage, shall hereafter be issued from the mint other than those of the denominations, standards, and weights herein set forth.

Devices and legends upon coins.

SEC. 18. That upon the coins of the United States there shall be the following devices and legends: Upon one side there shall be an impression emblematic of liberty, with an inscription of the word "Liberty" and the year of the coinage, and upon the reverse shall be the figure or representation of an eagle, with the inscriptions "United States of America" and "E Pluribus Unum," and a designation of the value of the coin; but on the gold dollar and three-dollar piece, the dime, five, three, and one cent piece the figure of the eagle shall be omitted; and on the reverse of the silver trade-dollar, the weight and fineness of the coin shall be inscribed; and the director of the mint, with the approval of the Secretary of the Treasury, may cause the motto "In God we trust" to be inscribed upon such coins as shall admit of such motto; and any one of the foregoing inscriptions may be on the rim of the gold and silver coins.

Inscriptions.

Note 314 which defines the standard unit of value. This is unconstitutional in so far as itattempts to give the President authority to Coin Money, regulate the Vaule thereof and fix the Standard of Weights and Measures and to regulate the value of Foreign Coin. The President cannot exercise a Legislative function See 16 Am Jur 2d on Constitutional Law Sections 216, 240 & 241 attached hereto. The Act of March 14,1900 is controlling.

It is common knowledge that there are no Silver Dollars in circulation and have not been since 1963. Likewise there have been no Gold Dollars or Eagles in circulation since 1934, Jan. 30; except for foreigners.

THE STANDARD UNIT BY WHICH REAL AND PERSONAL PROPERTY IS MEASURED IN VALUE OF "DOLLARS" AS DEFINED BY CONSTITUTIONAL STATUTE OR BY COMMON LAW MONEY OF INTRINSIC VALUE IS NOT IN CIRCULATION OR READILY AVAILABLE. Thus there is nothing of intrinsic value by which the value of property, goods or services may be measured by. The President cannot exercise a legislative function. The Silver clad copper coins are unconstitutional and void in so far as they attempt to represent 1/4 of a Dollar. They represent unconstitutional Executive Legislation, and are the product thereof. Money is something which must have intrinsic value in and of itself independent of legislative decree and must be readily acceptable any where in the World by common consent of the people of the World.

Federal REserve Notes are not lawful money, are not Dollars, are unconstitutional and void. The inability of the Federal Reserve Banks and the National Banks to redeem these Notes is openly avowed. These Notes are become the mere dishonored and depreciated evidences of debt. They are a false token and the tendering of them constitutes larceny as defined by criminal Statute.

The Constitution of the United States specifically states "No State shall make any Thing but gold and silver Coin a Tender in Payment of Debts. Article 9 Section 13 of the Minnesota Const. states "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." The State Banks in Minnesota have suspended specie payment. The tender and acceptance of a check drawn on a State Bank in payment of a debt in fact pays nothing. No rights can be acquired by fraud nor is a consideration prohibited by law valid for any purpose. Even if payment is attempted to be made by Bank Check or Federal Reserve Note it does not consititute payment in law or in fact and the taker of property by this medium does not gain or acquire a valid legal title.

I do not consider Federal Reserve Notes as lawful money or Bank Checks or Money Orders as lawful money within contemplation of the Laws of the United States.

See "THE DALY EAGLE" of February 7,1969 attached hereto. It contains the decision of the case of First National Bank of Montgomery vs. Jerome Daly by a Minnesota Trial Court Judge who declared the Federal Reserve and National Bnaking Acts and the activity of these Banks to be unconstitutional and Void; likewise it contains a decision that Federal Reserve Notes unconstitutional and void.

Note how the Act of January 18, 1837 provides for a constitutional Coin containing both gold and silver. Even if it barely complies, it still complies. This attempted amendment of the Law states ", and the alloy of gold coins shall be of copper, or of copper and silver; but the silver shall in no case exceed one-tenth of the whole alloy." This authorizes the Director of the Mints to place in circulation Coin that does not contain both gold and silver in it; nor are there Coins with intrinsic value that are exchangeable, freely, with Coin that contains both gold and silver.See 16 Am Jur 2d on Con-Stitutional Law which is also found in the "Daly Eagle" of February 7,1969 attached hereto and is as follows: - (Sec. 177)

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

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

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

The Act of 1873 is null and void in so far as it attempts to supersede the Act of 1837 which provides for the coinage of Legal Tender. It is a fundamental principle of constitutional Law that the Statutes must be sifted down to where they square with the Constitution if possible. Note in 1837 the Silver Dollar contained 412.5 grains of silver; in 1873 it was raised to 420 grains and then in 1878 it was reduced back down to 412.5 grains.

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

March 14, 1900.

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

Standard of value fixed. R. S., sec. 3511, p. 696.

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

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

SEC. 2. That United States notes, and Treasury notes issued under the Act of July fourteenth, eighteen hundred and ninety, when presented to the Treasury for redemption, shall be redeemed in gold coin of the standard fixed in the first section of this Act, and in order to secure the prompt and certain redemption of such notes as herein provided it shall be the duty of the Secretary of the Treasury to set

Redemption fund.

—how maintained.

apart in the Treasury a reserve fund of one hundred and fifty million dollars in gold coin and bullion, which fund shall be used for such redemption purposes only, and whenever and as often as any of said notes shall be redeemed from said fund it shall be the duty of the Secretary of the Treasury to use said notes so redeemed to restore and maintain such reserve fund in the manner following, to wit: First, by exchanging the notes so redeemed for any gold coin in the general fund of the Treasury; second, by accepting deposits of gold coin at the Treasury or at any subtreasury in exchange for the United States notes so redeemed; third, by procuring gold coin by the use of said notes, in accordance with the provisions of section thirty-seven hundred of the Revised Statutes of the United States.

—by bond issue.

See attached hereto in full the Sections on Coins and Coinage and Legal Tender from Title 31 United States Code. For the purposes of this return the pertinant parts are as follows:-

COINS AND COINAGE

CODIFICATION

Act Apr. 23, 1918, ch. 63, §§ 1—4, 40 Stat. 535, 536, authorized the Secretary of the Treasury from time to time to melt or break up and sell as bullion not in excess of 350,000,000 standard silver dollars then or thereafter in the Treasury; and made provisions for sales of such bullion, the retirement of outstanding silver certificates, the purchase of silver and coinage of dollars to replace those broken up, etc. Those sections were omitted from the Code as temporary.

CROSS REFERENCES

Gold Reserve Act of 1934, see sections 213, 411—415, 417, 467, of Title 12, Banks and Banking, and sections 315b, 405b, 408a, 408b, 440—446, 733, 734, 752, 753, 754a, 754b, 767, 771, 821, 822a, 822b, and 824 of this title.

§ 311. Policy of United States as to bimetallism.

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

COINAGE OF GOLD DISCONTINUED

The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

POSSESSION OF GOLD COINS AND BULLION

The possession of gold coins and bullion was prohibited except under Government license by Ex. Ord. No. 6260, eff. Aug. 28, 1933, set out in note under section 95a of Title 12, Banks and Banking.

§ 314. Standard unit of value.

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

DERIVATION

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

CODIFICATION

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

WEIGHT OF GOLD

Weight of gold dollar reduced to 15 5/21 grains nine-tenths fine, see Proc. No. 2072, Jan. 31, 1934, 48 Stat. 1750, set out as note to section 821 of this title.

§ 316. Silver coins; weight.

The silver coins of the United States shall be a dollar; a half-dollar, or fifty-cent piece; a quarter-dollar, or twenty-five-cent piece; and a dime, or ten-cent piece. The weight of said coins shall be that determined by the President under the provisions of section 821 of this title. (R. S. § 3513; Feb. 28, 1878, ch. 20, § 1, 20 Stat. 25; May 12, 1933, ch. 25, title III, § 43, 48 Stat. 51; June 5, 1933, ch. 48, § 2, 48 Stat. 113; Jan. 30, 1934, ch. 6, § 12, 48 Stat. 342; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704; Jan. 23, 1937, 2 p. m., ch. 5, § 2, 50 Stat. 4; July 6, 1939, ch. 260, § 3, 53 Stat. 998.)

DERIVATION

Act Feb. 12, 1873, ch. 131, § 15, 17 Stat. 427.

CODIFICATION

Words "said coins" * * * "that determined by the President under the provisions of section 821 of this title" have been substituted for words "four hundred and twelve and one-half grains troy of standard silver, the weight of the half-dollar shall be one hundred and ninety-two and nine-tenths grains; the quarter dollar and the dimes shall be respectively, one-half and one-fifth of the weight of said half-dollar," in view of authority of President to fix the weight of silver dollars and subsidiary coins within limitations under section 821 of this title.

R. S. § 3513 also provided for a trade dollar, but all laws and parts of laws authorizing the coinage and issuance of trade dollars, were repealed by act Mar. 3, 1887, ch. 396, § 3, 24 Stat. 635. The legal tender quality of such dollars had previously been abolished and the Secretary of the Treasury authorized to limit their coinage, by Res. July 22, 1876, No. 17, § 2, 19 Stat. 215.

The provisions concerning the dollar are based on act Feb. 28, 1878, ch. 20, § 1, providing for the coinage of such dollars of the weight specified in this section, on which should be the devices and superscriptions provided by act Jan. 18, 1837, ch. 3, 5 Stat. 137. The provision for the coinage of such dollars was omitted as superseded. See act July 14, 1890, ch. 708, §§ 1, 3, 26 Stat. 289; act Nov. 1, 1893, ch. 8, 28 Stat. 4; act June 13, 1898, ch. 448, § 34, 30 Stat. 467.

A portion of act Feb. 28, 1878, ch. 20, § 1, 20 Stat. 25, omitted here, is set out in section 458 of this title.

The coinage of silver twenty-cent pieces was authorized by act March 3, 1875, ch. 143, 18 Stat. 478. Act was repealed, and the coinage of such pieces prohibited, by act May 2, 1878, ch. 79, 20 Stat. 47.

Act March 14, 1900, ch. 41, § 8, 31 Stat. 47, authorized the use of silver bullion purchased under act July 14, 1890, ch. 708, 26 Stat. 289, for the coinage of subsidiary silver coin, and required the cancellation of a corresponding amount of Treasury notes. A proviso limited the amount of subsidiary silver coin that should be outstanding at any time, but act March 3, 1903, ch. 1007, § 1, 32 Stat. 1109, provided that the authority so given might be exercised without limitation as to the amount of subsidiary coin outstanding. These provisions were omitted from the Code as obsolete.

Federal Reserve Notes are not redeemable in lawful money at the United States Treasury, in law or in fact. The Privately owned Federal Reserve Banks get the Notes for the cost of printing only which is less than one cent. Congress cannot constitutionally toss the Federal Reserve Banks a blank check book and say, "go ahead write all the Notes payable on demand at the U.S.Treasury that you want to and the Treasurer will honor them." See Artile 9 of Section One of U.S.Constitution. "No Money shall be drawn from the Treasury except in consequence of appropriations made by law-".

Since there is no Standard Unit of Value readily in exchangeable circulation there is no known basis upon which an Income Tax or any other Tax can be based, laied, levied and inposed against me. I therefore am disabled from the ability to aid the Internal Revenue in arriving at a fair, just, equitable and lawful tax.

Federal Reserve Notes are Fiat Money and are prohibited by the Constitution of the United States. They are of no more validity than Children's Monopoly Game Dollars.

The money system now in effect in the United States is unconstitutional and void. Also the Rules and Regulations by which the Internal Revenue Service is set to use in the deprivation of my life, liberty or property are unconstitutional and void as will be hereinafter shown are enacted by the Secretary of the Treasury or his delegate. Also there are so many exemptions

in the Internal Revenue Laws for the rich and their foundations and others so as to amount to a grant of priviledges and a burden and liability on the working people, the small business man and Farmers, is discriminatory without public necessity and is unconstitutional and void, See Section 531.

The Constitution of the United States is both a law for the U.S.Gov. and the States. It provides, "No person shall be deprived of life, liberty, or property, without due process of Law."

The words,"due process of Law", are well settled as to their meaning in Constitutional Law. See L6 Am Jur Second, Constitutional Law Sections 546, 547 & 548.

The words, "life, liberty and property" have a well defined and settled meaning. See Sections 356, 357, 361, 362, 364, 366 and 367.

The Tax Court of the United States is a part of the Administrative Branch of the Government of the United States and is unconstitutional and void.

When the three powers of Government, The Executive, The Judicial and the Legislative are exercised by one and the same body of men, that is the total mark and charchter of a dictatorship.

I wish to amplify. In so far as the Executive Branch of the Government of the United States and the U.S.Treasury Department, Internal REvenue Service exercise or attempt to exercise The Judicial Power of the United States thru their appellate boards and Tax Courts this is unconstitutional and void and I object to submitting to the jurisdiction of the Internal REvenue Service for that purpose. If you are going to touch upon my rights to life, liberty or property and my priviledge of being left alone and my right to be secure in my person, papers and effects then I demand that you proceed by the regular service of a Summons and Complaint out of the United States District Court.

See 26 U.S.C. Sections 7441 to 7446 which are an unconstitutional delegation of Judicial Power to the Executive Branch of the U.S. Government.

A Court such as this is not competent to decide a Constitutional issue nor even try a case. See Section 101 Am Jur 2d, Const. Law. Also Sections 210, 212, 216, 217, 218 and 238.

Observe the specific grants of legislative power to the Congress of the United States. Article 1 Section 8, Clause 16---The Congress is to exercise exclusive legislation in all cases whatsoever over all Buildings and places purchased by the United States.

The Secretary of the Treasury or his delegate cannot enact a rule, regulation or law whatsoever that has any effect over, in or under the Treasury Department or any Federal Building. Nowhere in the Constitution of the United States is the executive Branch given the authority to make a Rule or Regulation, it is on the contrary, excluded from doing so. See also Amendments 4,5,9 and 10. See also the First Amendment and the 4th amendment and Section 353 of Am Jur 2d on Const Law and 47 Am Jur on Searches and Seizures Sec. 58. Also see Sections 52 to 58 attached hereto

I further object to the form of the return and the information requested thereon upon the grounds that it may tend to incriminate me under State or Federal Laws in violation of my rights and priviledges as securred by the 1st, 4th, 5th, 9th and 14th Amendments to the United States Constitution.

I further object to the use that the information is to be put to which the return calls for. In the event of a dispute or disagreement between the Internal REvenue Service and myself I am reduced to no alternative but the unconditional submission to the jurisdiction of irritated ministers with no chance of a fair hearing and resulting in the filing of a lien upon my property and slandering its title without due process of Law. The end result is taxation for the privately owned FEDERAL RESERVE BANK DICTATORSHIP which pays no Income Tax or any other Taxes except taxes upon their real Estate and which has effectively overthrown the Constitution of the United States.

I therefore intend to rely upon the priviledges and immunities securred to me by the Constitution of the United States. I am not refusing to pay a lawful Income Tax lawfully imposed. The 16th Amendment gives Congress the power to lay and collect an Income Tax. It does not say lay and extort an Income Tax.

Relying on the case of Manly S. Sullivan vs. The United States of America; 71 Lawyers Ed. 1037, 274 U.S.259 which states in part as follows: " If the form of the return provided for answers that the Defendant(Taxpayer) was privileged from making he could have raised the objection in the return,-----".

I invite the United States Government and the Internal REvenue Service of the Treasury Department and also the State of [redacted] and their proper agents to bring a Civil Action against me if they think that I owe an Income Tax under the present Unconstitutional Statutes. I claim that I owe no Income Tax, however, if the said governmental units can, by due process of law, before the Judicial Branch of the Government, obtain a final Judgment against me for Taxes, I have sufficient property to satisify a lawful Judgment for the same.

I am not refusing to pay a lawful Income Tax Lawfully imposed according to the requirements of due process of law.

Also with reference to the requirement that a 1040 Return be filed and the information you require thereon to be clear you can consider this my statment. I did not recieve $600.00 in gold and Silver Coin during the year covered by this return. Also I did not recieve 600 gold dollars or 600 silver dollars or 600 gold or silver dollars as is defined by constitutional statute or otherwise during the year covered by this return, nor did I recieve any paper or Notes or Currence that was readily convertible or redeemable into gold and, or, silver dollars. I do not consider Federal Reserve Notes and Bank Credit as lawful for any purpose for the reasons set forth in the publication "The Daly Eagle" attached hereto. The return does not show the receipt of such as it is unconstitutional and void and the Treasury Department is a part of the Executive Branch of the Government of the United States and is not competent to decide the question or to overrule the decision by Justice of the Peace Martin V. Mahoney attached hereto. The inability of the Banks, Federal Reserve, National and State, to redeem their Notes in gold and silver Coin (Legal Tender), or the Standard unit of value is openly avowed.

You can consider this and the various Secions of Title 31, United States Code Code as a part of my Tax Return or statment. Also so that there is no misunderstanding in so far as these Statutes run contrary to the express authority of Congress to legislate, they are unconstitutional and void. In so far as they violate the principle of separation of powers in Gov. they are unconstitutional and void.

The remedy is very simple. A Court ought to be set up which is a part of the Judicial Branch of the Government of the United States. It should be readily accessable to the people and provide a Jury Trial promptly and without delay. If the Gov. is going to sue any Taxpayer pass a Statute giving complete immunity to the Taxpayer from any State or Federal Prosecution that may result from any information that may be securred. Give the Citizen due process of Law

Further the Government of the United States, its Officers and Agents and likewise the Government of the State of Minn. and its officers and Agents can consider this as a Petition to my Government for a redress of grievances. It would be to the benefit of all to correct this inflationary fiat money system so that it can operate for the benefit of all the people and not just an idle monopoly.

Dated 2-4-70

Jerome Daly

On the other hand, where the subject matter upon which the power is to be exercised is local and limited in its nature or sphere of operation, the rule is well established that the several states may prescribe regulations until Congress intervenes,[17] this is clearly the case where the regulations which should govern may in many respects be different in different localities, and for that reason better understood and more wisely established by the local authorities.[18] It has also been said that the silence of Congress as to the subjection of its instrumentalities to state regulation is to be interpreted in the setting of the applicable legislation and the particular state regulation.[19]

In order to determine whether a state statute is a just exercise of the state power or is intended by roundabout means to invade the domain of federal authority, the courts will look into its operation and effect in order to discern its true purpose.[1]

VIII. DEPARTMENTAL SEPARATION OF GOVERNMENTAL POWERS

A. In General

§ 210. Principle of separation, generally.

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

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

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

The right of the several states to enact legislation during the silence of Congress has been recognized in respect to such subjects as—

— insolvency. See Insolvency (1st ed § 8).

— the regulation of dealers in patented articles. See Patents (1st ed § 8).

— the recital of the consideration of notes given for the price of patent rights. Woods v Carl, 203 US 358, 51 L ed 219, 27 S Ct 99.

— the prohibition for the use of the United States flag for advertising purposes. Halter v Nebraska, 205 US 34, 51 L ed 696, 27 S Ct 419, affg 74 Neb 757, 105 NW 298.

— the establishment of quarantine regulations. See Health (1st ed § 7).

— regulations with regard to the speed of railroad trains. See Railroads.

— regulations with regard to rates of transportation between points within the boundaries of a state. See Public Utilities.

— the erection of bridges, dams, and other structures constituting obstructions to navigation or otherwise pertaining to navigation. See Highways, Streets, and Bridges (1st ed, Bridges § 11); Waters.

— pilotage. See Shipping.

18. Morgan's L. & T. R. & S. S. Co. v Board of Health, 118 US 455, 30 L ed 237, 6 S Ct 1114.

19. Mayo v United States, 319 US 441, 87 L ed 1504, 63 S Ct 1137, 147 ALR 761, reh den 320 US 810, 88 L ed 489, 64 S Ct 27.

1. Compagnie Francaise de Nav. a Vapeur v State Bd. of Health, 186 US 380, 46 L ed 1209, 22 S Ct 811.

And see § 150, supra.

2. Livingston v Moore, 7 Pet (US) 469, 8 L ed 751 (per Johnson, J.).

A characteristic feature,[3] and one of the cardinal[4] and fundamental principles, of the American constitutional system is that the governmental powers are divided among the three departments of government, the legislative, executive, and judicial, and that each of these is separate from the others.[5] The principle of separation of the powers of government operates in a broad manner to confine legislative powers to the legislature, executive powers to the executive department, and those which are judicial in character to the judiciary.[6] We are not a parliamentary government in which the executive branch is also part of the legislature.[7]

It has been said that the object of the Federal Constitution was to establish three great departments of government: the legislative, the executive, and the judicial departments. The first was to pass the laws, the second, to approve and execute them, and the third, to expound and enforce them.[8] And since the

3. Trybulski v Bellows Falls Hydro-Electric Corp. 112 **Vt** 1, 20 A2d 117.

4. Bloemer v Turner, 281 **Ky** 832, 137 SW 2d 387.

5. O'Donoghue v United States, 289 **US** 516, 77 L ed 1356, 53 S Ct 740; Springer v Philippine Islands, 277 **US** 189, 72 L ed 845, 48 S Ct 480; J. W. Hampton Jr., & Co. v United States, 276 **US** 394, 72 L ed 624, 48 S Ct 348; Evans v Gore, 253 **US** 245, 64 L ed 887, 40 S Ct 550, 11 ALR 519; Kilbourn v Thompson, 103 **US** 168, 26 L ed 377; Fox v McDonald, 101 **Ala** 51, 13 So 416; Hawkins v Governor, 1 **Ark** 570; Denver v Lynch, 92 **Colo** 102, 18 P2d 907, 86 ALR 907; Stockman v Leddy, 55 **Colo** 24, 129 P 220; Norwalk Street R. Co.'s Appeal, 69 **Conn** 576, 37 A 1080, 38 A 708; Florida Nat. Bank of Jacksonville v Simpson (**Fla**) 59 So 2d 751, 33 ALR2d 581; Burnett v Green, 97 **Fla** 1007, 122 So 570, 69 ALR 244; Re Speer, 53 **Idaho** 293, 23 P2d 239, 88 ALR 1086; People v Kelly, 347 **Ill** 221, 179 NE 898, 80 ALR 890; People ex rel. Rusch v White, 334 **Ill** 465, 166 NE 100, 64 ALR 1006; Greenfield v Russel, 292 **Ill** 392, 127 NE 102, 9 ALR 1334; Ellingham v Dye, 178 **Ind** 336, 99 NE 1, error dismd 231 **US** 250, 58 L ed 206, 34 S Ct 92; Overshiner v State, 156 **Ind** 187, 59 NE 468; Parker v State, 135 **Ind** 534, 35 NE 179; State v Barker, 116 **Iowa** 96, 89 NW 204; Harris v Allegany County, 130 **Md** 488, 100 A 733; Opinion of Justices, 279 **Mass** 607, 180 NE 725, 81 ALR 1059; Anway v Grand Rapids R. Co. 211 **Mich** 592, 179 NW 350, 12 ALR 26; People v Dickerson, 164 **Mich** 148, 129 NW 199; Veto Case, 69 **Mont** 325, 222 P 428, 35 ALR 592; Searle v Yensen, 118 **Neb** 835, 226 NW 464, 69 ALR 257; Tyson v Washington County, 78 **Neb** 211, 110 NW 634; Saratoga Springs v Saratoga Gas, E. L. & P. Co. 191 **NY** 123, 83 NE 693; State ex rel. Atty.-Gen. v Knight, 169 **NC** 333, 85 SE 418; Re Minneapolis, St. P. & S. Ste. M. R. Co. 30 **ND** 221, 152 NW 513; State v Blaisdell, 22 **ND** 86, 132 NW 769; Riley v Carter, 165 **Okla** 262, 25 P2d 666, 88 ALR 1018; Simpson v Hill, 128 **Okla** 269, 263 P 635, 56 ALR 706; Baskin v State, 107 **Okla** 272, 232 P 388, 40 ALR 941; Wilson v Philadelphia School Dist. 328 **Pa** 225, 195 A 90, 113 ALR 1401; State ex rel. Richards v Whisman, 36 **SD** 260, 154 NW 707, error dismd 241 **US** 643, 60 L ed 1218, 36 S Ct 449; Langever v Miller, 124 **Tex** 80, 76 SW2d 1025, 96 ALR 836; Trimmier v Carlton, 116 **Tex** 572, 296 SW 1070; Peterson v Grayce Oil Co. (**Tex** Civ App) 37 SW2d 367, affd 128 **Tex** 550, 98 SW2d 781; Kimball v Grantsville City, 19 **Utah** 368, 57 P 1; Sabre v Rutland R. Co. 86 **Vt** 347, 85 A 693; State v Huber, 129 **W Va** 198, 40 SE2d 11, 168 ALR 808; State v Thompson, 149 **Wis** 488, 137 NW 20.

Annotation: 3 ALR 451; 69 ALR 266.

The theory of our government is one of separation of powers. Att. Gen. ex rel. Cook v O'Neill, 280 **Mich** 649, 274 NW 445.

Our constitution and fabric of government divide governmental powers into three grand divisions and prohibit the assumption by those exercising the powers of one of them of the just powers of another. Butler v Printing Comrs. 68 **W Va** 493, 70 SE 119.

See State v Bates, 96 **Minn** 110, 104 NW 709, for a good discussion of the source of the doctrine of the separation of the powers of government.

6. Norwalk Street R. Co.'s Appeal, 69 **Conn** 576, 37 A 1080, 38 A 708; State v Warmoth, 22 **La** Ann 1; McCrea v Roberts, 89 **Md** 238, 43 A 39; Wright v Wright, 2 **Md** 429; Wenham v State, 65 **Neb** 394, 91 NW 421; Henry v Cherry, 30 **RI** 13, 73 A 97; State v Fleming, 7 Humph (**Tenn**) 152.

Annotation: 69 ALR 266.

Neither the legislative, executive, nor judicial department of the federal government can lawfully exercise any authority beyond the limits marked out by the Constitution. Scott v Sandford, 19 How (**US**) 393, 15 L ed 691.

7. People v Tremaine, 281 **NY** 1, 21 NE2d 891.

8. Martin v Hunter, 1 Wheat (**US**) 304, 4 L ed 97.

The difference between the departments is that the legislature makes, the executive exe-

constitutional distribution of the powers of government was made on the assumption by the people that the several departments would be equally careful to use the powers granted for the public good alone, the doctrine is generally accepted that none of the several departments is subordinate, but that all are co-ordinate,[9] independent,[10] coequal,[11] and potentially coextensive.[12] The rule is generally recognized that constitutional restraints are overstepped where one department of government attempts to exercise powers exclusively delegated to another;[13] officers of any branch of the government may not usurp or exercise the powers of either of the others,[14] and, as a general rule, one branch of government cannot permit its powers to be exercised by another branch.[15]

§ 211. — As express or implied constitutional requirement.[16]

Frequently, there appears in a state constitution an express division of the powers of government among the three departments;[17] and all persons charged

cutes, and the judiciary construes, the law; but the maker of the law may commit something to the discretion of the other departments. Wayman v Southard, 10 Wheat (US) 1, 6 L ed 253.

9. Hale v State, 55 **Ohio** St 210, 45 NE 199; Blalock v Johnston, 180 **SC** 40, 185 SE 61, 105 ALR 1115.

10. § 213, infra.

The United States Supreme Court has said that so far as their powers are derived from the Constitution the departments may be regarded as independent of each other, but beyond that all are subject to regulations by law touching upon the discharge of duties required to be performed. Evans v Gore, 253 **US** 245, 64 L ed 887, 40 S Ct 550, 11 ALR 519; Kendall v United States, 12 Pet (US) 524, 9 L ed 1181; People v McCullough, 254 **Ill** 9, 98 NE 156.

11. Humphrey v United States, 295 **US** 602, 79 L ed 1611, 55 S Ct 869.

12. Per Marshall, Ch. J., Osborn v Bank of United States, 9 Wheat (US) 738, 6 L ed 204.

13. Snodgrass v State, 67 **Tex** Crim 615, 150 SW 162.

By reason of the distribution of powers under a constitution, assigning to the legislature and the judiciary each its separate and distinct functions, one department is not permitted to trench upon the functions and powers of the other. State ex rel. Bushman v Vandenberg, 203 **Or** 326, 276 P2d 432, 280 P2d 344.

14. State ex rel. Du Fresne v Leslie, 100 **Mont** 449, 50 P2d 959, 101 ALR 1329; State v Fabbri, 98 **Wash** 207, 167 P 133.

15. Any fundamental or basic power necessary to government cannot be delegated. Wilson v Philadelphia School Dist. 328 **Pa** 225, 195 A 90, 113 ALR 1401.

16. As to whether the Federal Constitution requires departmental separation of state governmental powers, see § 215, infra.

17. Porter v Investors' Syndicate, 287 **US** 346, 77 L ed 354, 53 S Ct 132 (Montana Constitution); Abbott v McNutt, 218 **Cal** 225, 22 P2d 510, 89 ALR 1109; Re Battelle, 207 Cal 227, 277 P 725, 65 ALR 1497; Denver v Lynch, 92 **Colo** 102, 18 P2d 907, 86 ALR 907; Stockman v Leddy, 55 **Colo** 24, 129 P 220; Burnett v Greene, 97 **Fla** 1007, 122 So 570, 69 ALR 244; State v Atlantic Coast Line R. Co. 56 **Fla** 617, 47 So 969; Re Speer, 53 **Idaho** 293, 23 P2d 239, 88 ALR 1086; Winter v Barrett, 352 **Ill** 441, 186 NE 113, 89 ALR 1398; People v Kelly, 347 **Ill** 221, 179 NE 898, 80 ALR 890; People ex rel. Rusch v White, 334 **Ill** 465, 166 NE 100, 64 ALR 1006; State v Shumaker, 200 **Ind** 716, 164 NE 408, 63 ALR 218; State v Barker, 116 **Iowa** 96, 89 NW 204; Rouse v Johnson, 234 **Ky** 473, 28 SW2d 745, 70 ALR 1077; State ex rel. Young v Butler, 105 **Me** 91, 73 A 560; Harris v Allegany County, 130 **Md** 488, 100 A 733; Re Opinion of Justices, 279 **Mass** 607, 180 NE 725, 81 ALR 1059; American State Bank v Jones, 184 **Minn** 498, 239 NW 144, 78 ALR 770; University of Mississippi v Waugh, 105 **Miss** 623, 62 So 827, affd 237 **US** 589, 59 L ed 1131, 35 S Ct 720; State v J. J. Newman Lumber Co. 102 **Miss** 802, 59 So 923; State ex rel. Hadley v Washburn, 167 **Mo** 680, 67 SW 592; State v Field, 17 **Mo** 529; Searle v Yensen, 118 **Neb** 835, 226 NW 464, 69 ALR 257; Follmer v State, 94 **Neb** 217, 142 NW 908; Tyson v Washington County, 78 **Neb** 211, 110 NW 634; State v Roy, 40 **NM** 397, 60 P2d 646, 110 ALR 1; State ex rel. Dushek v Watland, 51 **ND** 710, 201 NW 680, 39 ALR 1169; Riley v Carter, 165 **Okla** 262, 25 P2d 666, 88 ALR 1018; Simpson v Hill, 128 **Okla** 269, 263 P 635, 56 ALR 706; Hopper v Oklahoma County, 43 **Okla** 288, 143 P 4; Macartney v Shipherd, 60 **Or** 133, 117 P 814; State v George, 22 **Or** 142, 29 P 356; Biggs v McBride, 17 **Or** 640, 21 P 878; Langever v Miller, 124 **Tex** 80, 76 SW2d 1025, 96 ALR 836; Union Cent. L. Ins. Co. v Chowning, 86 **Tex** 654, 26 SW 982; State v Mounts, 36 **W Va** 179, 14 SE 407; Public Serv. Com. v Grimshaw, 49 **Wyo** 158, 53 P2d 1, 109 ALR 534. See also State ex rel. Dushek v Watland, 51 **ND** 710, 201 NW 680, 39 ALR 1169.

with official duties under one of the departments may be forbidden from exercising any of the functions of another except as expressly permitted by the constitution itself.[18] A state constitutional provision that no person belonging to one department shall exercise the powers properly belonging to another is to be strictly applied.[19] The constitution may, however, make it a duty for officers of one department of the government to assist in the functions of another department, and laws passed in furtherance of such acts are not violative of the doctrine of separation of powers.[20]

A constitutional requirement with respect to the separation of the three departments of the government which exists in a state constitution is generally held to refer to the state government and state officers, and not to the government of municipal corporations or their officers.[1]

Annotation: 69 ALR 266; 89 ALR 1114, 1115; 79 L ed 476.

The origin of a constitutional provision decreeing a separation of powers is very well known. It first found expression, at least with clarity and precision, in the writings of Montesquieu, with which the members of the Federal Constitutional Convention of 1787 were familiar, early appeared in the organic laws of some of the states, and was adopted as a basic principle in the Constitution of the United States in 1787, from which it entered into the constitutions of nearly all of the states, including that of Texas, both as a republic and as a state. Langever v Miller, 124 **Tex** 80, 76 SW2d 1025, 96 ALR 836.

18. Porter v Investors' Syndicate, 287 **US** 346, 77 L ed 354, 53 S Ct 132 (Montana Constitution); Montgomery v State, 231 **Ala** 1, 163 So 365, 101 ALR 1394; Hawkins v Governor, 1 **Ark** 570; Abbott v McNutt, 218 **Cal** 225, 22 P2d 510, 89 ALR 1109; Re Battelle, 207 **Cal** 227, 277 P 725, 65 ALR 1497; Denver v Lynch, 92 **Colo** 102, 18 P2d 907, 86 ALR 907; Stockman v Leddy, 55 **Colo** 24, 129 P 220; Florida Nat. Bank of Jacksonville v Simpson (**Fla**) 59 So 2d 751, 33 ALR2d 581; Burnett v Greene, 97 **Fla** 1007, 122 So 570, 69 ALR 244; Singleton v State, 38 **Fla** 297, 21 So 21; Re Speer, 53 **Idaho** 293, 23 P 2d 239, 88 ALR 1086; Winter v Barrett, 352 **Ill** 441, 186 NE 113, 89 ALR 1398; People v Kelly, 347 **Ill** 221, 179 NE 898, 80 ALR 890; Fergus v Marks, 321 **Ill** 510, 152 NE 557, 46 ALR 960; State v Shumaker, 200 **Ind** 716, 164 NE 408, 63 ALR 218; State v Noble, 118 **Ind** 350, 21 NE 244; Rouse v Johnson, 234 **Ky** 473, 28 SW2d 745, 70 ALR 1077; Re Dennett, 32 **Me** 508; Harris v Allegany County, 130 **Md** 488, 100 A 733; Re Opinion of Justices, 279 **Mass** 607, 180 NE 725, 81 ALR 1059; American State Bank v Jones, 184 **Minn** 498, 239 NW 144, 78 ALR 770; State ex rel. Hadley v Washburn, 167 **Mo** 680, 67 SW 592; Searle v Yensen, 118 **Neb** 835, 226 NW 464, 69 ALR 257; Follmer v State, 94 **Neb** 217, 142 NW 908; State v Roy, 40 **NM** 397, 60 P2d 646, 110 ALR 1; Riley v Carter, 165 **Okla** 262, 25 P2d 666, 88 ALR 1018; Simpson v Hill, 128 **Okla** 269, 263 P 635, 56 ALR 706; Hopper v Oklahoma County, 43 **Okla** 288, 143 P 4; Union Cent. L. Ins. Co. v Chowning, 86 **Tex** 654, 26 SW 982; Kimball v Grantsville City, 19 **Utah** 368, 57 P 1; Public Serv. Com. v Grimshaw, 49 **Wyo** 158, 53 P2d 1, 109 ALR 534.

Annotation: 69 ALR 266, 267; 89 ALR 1115; 79 L ed 476.

A state constitutional provision that no person or group of persons charged with the exercise of powers properly belonging to one of the departments of government shall exercise any power properly belonging to either of the others establishes a government of laws instead of a government of men, a government in which laws authorized to be made by the legislative branch are equally binding upon all citizens, including public officers and employees. Springfield v Clouse, 356 **Mo** 1239, 206 SW2d 539.

The plain meaning of state constitutional provisions declaring that neither of the three departments of government shall exercise powers properly belonging to either of the others, and that no person shall exercise the powers of more than one of them at the same time, is that no judge of any court can act as a member of the legislature or fill an executive office, and that no member of the legislature or any official of the executive department can fill a judicial office. State v Huber, 129 **W Va** 198, 40 SE2d 11, 163 ALR 808.

19. Transport Workers Union, etc. v Gadola, 322 **Mich** 332, 34 NW2d 71.

20. A statute requiring the governor to secure the introduction into the legislature of budget bills prepared by the budget commission and cause amendments to be presented, if desirable, during the passage of the bill is not invalid on the theory that it attempts to confer power on the governor and budget commission to dictate the introduction of bills in the legislature, where the constitution makes it the governor's duty to recommend for the consideration of the legislature such measures as he may deem expedient, and also makes it the duty of the officials who constitute the budget commission to prepare a general revenue bill to be presented to the house of representatives by the governor. Tayloe v Davis, 212 **Ala** 282, 102 So 433, 40 ALR 1052.

1. Poynter v Walling (**Del**) 177 A2d 641;

On the other hand, in the Federal Constitution,[2] and in a few of the state constitutions,[3] no specific provision is made for a separation of governmental powers. Under these constitutions, however, and even under the constitutions in which such a clause has actually been inserted, irrespective of the existence of such a distributing clause, it is held that the creation of the three departments may operate as an apportionment of the different classes of powers. It has been said that where the provision that the legislative, executive, and judicial powers shall be preserved separate and distinct is not found in a constitution in terms, it may exist there in substance in the organization and distribution of the powers of the department.[4] The basis of this theory is that the distribution of the powers of the state by the constitution to the legislative, executive, and judicial departments operates by implication as an inhibition against the imposition upon any one department of such powers which distinctively belong to one of the other departments.[5] Thus, it has been said that grants of legislative, executive, and judicial powers of the three departments of government are, in their nature, exclusive, and that no department, as such, can rightfully exercise any of the functions necessarily belonging to the other.[6] It has also been said that the mere apportionment of sovereign powers among the three co-ordinate branches of the government, without more, imposes upon each of those branches the affirmative duty of exercising its own peculiar powers for itself, and prohibits the delegation of any of those powers, except in cases expressly permitted.[7]

A distributive clause in a state constitution prevents the exercise of the functions of one department of the government by another department, but has no relation to the exercise or division of the powers of one particular branch of the government by the officers who comprise that branch and does not control the question as to which one of several executive officers should perform an executive function.[8]

§ 212. — Importance of principle.

It has been said that the principle of the separation of the powers of government is fundamental to the very existence of constitutional government as

Sarlls v State, 201 **Ind** 88, 166 NE 270, 67 ALR 718 (statute providing commission and city manager forms of governments for cities); State v Mankato, 117 **Minn** 458, 136 NW 264; Barnes v Kirksville, 266 **Mo** 270, 180 SW 545; State v Neble, 82 **Neb** 267, 117 NW 723; Greenville v Pridmore, 86 **SC** 442, 68 SE 636; Walker v Spokane, 62 **Wash** 312, 113 P 775.

Annotation: 67 ALR 740.

2. Springer v Philippine Islands, 277 **US** 189, 72 L ed 845, 48 S Ct 480.

Annotation: 79 L ed 476.

3. Re Sims, 54 **Kan** 1, 37 P 135 (Kansas Constitution).

Ohio, for another example, has no specific constitutional provision for a separation of powers.

4. Springer v Philippine Islands, 277 US 189, 72 L ed 845, 48 S Ct 480 (Federal Constitution); State v Brill, 100 **Minn** 499, 111 NW 294, 639; Zanesville v Zanesville Tel. & Tel. Co. 64 **Ohio** St 67, 59 NE 781; Kimball v Grantsville City, 19 **Utah** 368, 57 P 1.

The doctrine of separation of powers arises not from any single provision of the Federal Constitution but because behind the words of the constitutional provisions are postulates which limit and control. National Mut. Ins. Co. v Tidewater Transfer Co. 337 **US** 582, 93 L ed 1556, 69 S Ct 1173.

5. Zanesville v Zanesville Tel. & Tel. Co. 64 **Ohio** St 67, 59 NE 781.

6. State ex rel. Mason v Baker, 69 **ND** 488, 288 NW 202.

7. Reelfoot Lake Levee Dist. v Dawson, 97 **Tenn** 151, 36 SW 1041, ovrld on another point Arnold v Knoxville, 115 **Tenn** 195, 90 SW 469.

8. State ex rel. Kostas v Johnson, 224 **Ind** 540, 69 NE2d 592, 168 ALR 1118; Follmer v State, 94 **Neb** 217, 142 NW 908.

established in the United States.[9] The principle has also been referred to as one of the chief merits of the American system of written constitutions.[10] It has been declared that the division of governmental powers into executive, legislative, and judicial represents probably the most important principle of government declaring and guaranteeing the liberties of the people,[11] and that it is a matter of fundamental necessity,[12] and is essential to the maintenance of a republican form of government.[13] One of America's most distinguished jurists has stated that no maxim has been more universally received and cherished as a vital principle of freedom.[14]

Although there may be a blending of powers in certain respects,[15] in a broad sense the safety of our institutions depends in no small degree on the strict observance of the independence of the several departments.[16] Each constitutes a check upon the exercise of its power by any other department,[17] and, accordingly, a concentration of power in the hands of one person or class is prevented,[18] and a commingling of essentially different powers in the same hands is precluded.[19] No arbitrary and unlimited power is vested in any department;[20]

9. National Mut. Ins. Co. v Tidewater Transfer Co. 337 US 582, 93 L ed 1556, 69 S Ct 1173; Norwalk Street R. Co.'s Appeal, 69 Conn 576, 37 A 1080, 38 A 708; People ex rel. Leaf v Orvis, 374 Ill 536, 30 NE2d 28, 132 ALR 1382, cert den 312 US 705, 85 L ed 1138, 61 S Ct 827; Tyson v Washington County, 78 Neb 211, 110 NW 634; Enterprise v State, 156 Or 623, 69 P2d 953; Langever v Miller, 124 Tex 80, 76 SW2d 1025, 96 ALR 836.

It is necessary, if government is to function constitutionally, for each of the repositories of constitutional power to keep within its power. Rescue Army v Municipal Court of Los Angeles, 331 US 549, 91 L ed 1666, 67 S Ct 1409.

10. O'Donoghue v United States, 289 US 516, 77 L ed 1356, 53 S Ct 740; Kilbourn v Thompson, 103 US 168, 26 L ed 377; People v Brady, 40 Cal 198; State v Brill, 100 Minn 499, 111 NW 294, 639; Searle v Yensen, 118 Neb 835, 226 NW 464, 69 ALR 257; Enterprise v State, 156 Or 623, 69 P2d 953.

11. Searle v Yensen, 118 Neb 835, 226 NW 464, 69 ALR 257; Enterprise v State, 156 Or 623, 69 P2d 953 (quoting the famous declaration of Montesquieu that "there can be no liberty . . . if the power of judging be not separated from the legislative and executive powers").

12. Tucker v State, 218 Ind 614, 35 NE2d 270.

13. Tucker v State, supra; Dearborn Twp. v Dail, 334 Mich 673, 55 NW2d 201.

14. Dash v Van Kleeck, 7 Johns (NY) 477 (per Kent, Ch. J.).

15. § 214, infra.

16. McCray v United States, 195 US 27, 49 L ed 78, 24 S Ct 769; Powell v Pennsylvania, 127 US 678, 32 L ed 253, 8 S Ct 992, 1257; Kilbourn v Thompson, 103 US 168, 26 L ed 377; Sinking Fund Cases, 99 US 700, 25 L ed 496; Lincoln Federal Labor Union v Northwestern Iron & Metal Co. 149 Neb 507, 31 NW2d 477; Wenham v State, 65 Neb 394, 91 NW 421; Ex parte Kair, 28 Nev 127, 425, 80 P 463, 82 P 453; State ex rel. Schorr v Kennedy, 132 Ohio St 510, 9 NE2d 278, 110 ALR 1428; State ex rel. Bushman v Vandenberg, 203 Or 326, 276 P2d 432, 280 P2d 344; Enterprise v State, 156 Or 623, 69 P2d 953; U'Ren v Bagley, 118 Or 77, 245 P 1074, 46 ALR 1173; State v Peel Splint Coal Co. 36 W Va 802, 15 SE 1000.

The preservation of the inherent powers of the three branches of government, free from encroachment or infringement by one upon the other, is essential to the safekeeping of the American system of constitutional rule. Simmons v State, 160 Fla 626, 36 So 2d 207.

As to the independence of the separate departments, see § 213, infra.

17. Greenwood Cemetery Land Co. v Routt, 17 Colo 156, 28 P 1125; Re Davies, 168 NY 89, 61 NE 118.

18. State v Denny, 118 Ind 382, 21 NE 252; Enterprise v State, 156 Or 623, 69 P2d 953; De Chastellux v Fairchild, 15 Pa 18.

By the mutual checks and balances by and between the branches of government, democracy undertakes to preserve the liberties of the people from excessive concentrations of authority. United Public Workers v Mitchell, 330 US 75, 91 L ed 754, 67 S Ct 556.

The primary purpose of the doctrine of separation of powers is to prevent the combination in the hands of a single person or group of the basic or fundamental powers of government. Parker v Riley, 18 Cal 2d 83, 113 P2d 873, 134 ALR 1405.

19. O'Donoghue v United States, 289 US 516, 77 L ed 1356, 53 S Ct 740.

It is particularly essential that the respective branches of the government keep within the powers assigned to each by the constitution. Lichter v United States, 334 US 742,

such power is regarded as a condition subversive of the constitution,[1] and the chief characteristic and evil of tyrannical and despotic forms of government.[2]

§ 213. Independence of separate departments.

Each of the several departments of government derives its authority directly or indirectly from the people and is responsible to them.[3] Each has exclusive cognizance of the matters within its jurisdiction[4] and is supreme within its own sphere.[5] In the exercise of the powers of government assigned to them severally, the departments operate harmoniously and independently of each other, and the action of any one of them in the lawful exercise of its own powers is not subject to control by either of the others.[6] Each department of government must exercise its own delegated powers, and unless otherwise limited by the constitution, each exercises such inherent power as will protect it in the performance of its major duty; one department may not be controlled or even embarrassed by another department unless the constitution so ordains.[7] For any one of the three equal and co-ordinate branches of government to police or supervise the operations of the others strikes at the very heart and core of the entire structure.[8]

92 L ed 1694, 68 S Ct 1294, reh den 335 US 836, 93 L ed 389, 69 S Ct 11.

Separation of powers is not a mere matter of convenience or of governmental mechanism, but its object is basic and vital, namely, to preclude a commingling of the essentially different powers of government in the same hands. State ex rel. Black v Burch, 226 **Ind** 445, 80 NE2d 294, 560, 81 NE2d 850.

20. State ex rel. Davis v Stuart, 97 **Fla** 69, 120 So 335, 64 ALR 1307.

1. Sinking Fund Cases, 99 **US** 700, 25 L ed 496; McPherson v State, 174 **Ind** 60, 90 NE 610; State v Johnson, 61 **Kan** 803, 60 P 1068.

2. State v Barker, 116 **Iowa** 96, 89 NW 204; State v Johnson, 61 **Kan** 803, 60 P 1068; State v Brill, 100 **Minn** 499, 111 NW 294, 639; Enterprise v State, 156 **Or** 623, 69 P2d 953.

3. Wright v Wright, 2 **Md** 429; De Chastellux v Fairchild, 15 **Pa** 18; Ekern v McGovern, 154 **Wis** 157, 142 NW 595; State ex rel. Mueller v Thompson, 149 **Wis** 488, 137 NW 20.

4. Fox v McDonald, 101 **Ala** 51, 13 So 416; White County v Gwin, 136 **Ind** 562, 36 NE 237; State v Denny, 118 **Ind** 382, 21 NE 252; State v Noble, 118 **Ind** 350, 21 NE 244; State v Doherty, 25 **La Ann** 119; McCully v State, 102 **Tenn** 509, 53 SW 134.

5. Montgomery v State, 231 **Ala** 1, 163 So 365, 101 ALR 1394; Hawkins v Governor, 1 **Ark** 570; Denver v Lynch, 92 **Colo** 102, 18 P2d 907, 86 ALR 907; People ex rel. Billings v Bissell, 19 **Ill** 229; Wright v Wright, 2 **Md** 429; Re Opinion of Justices, 279 **Mass** 607, 180 NE 725, 81 ALR 1059; State v Blaisdell, 22 **ND** 86, 132 NW 769; McCully v State, 102 **Tenn** 509, 53 SW 134; Langever v Miller, 124 **Tex** 80, 76 SW2d 1025, 96 ALR 836; Kimball v Grantsville City, 19 **Utah** 368, 57 P 1; State ex rel. Mueller v Thompson, 149 **Wis** 488, 137 NW 20.

6. Humphrey v United States, 295 **US** 602, 79 L ed 1611, 55 S Ct 869; O'Donoghue v United States, 289 **US** 516, 77 L ed 1356, 53 S Ct 740; Parsons v Tuolomne County Water Co. 5 **Cal** 43; State v Atlantic Coast Line R. Co. 56 **Fla** 617, 47 So 969; People v Bissell, 19 **Ill** 229; State v Shumaker, 200 **Ind** 716, 164 NE 408, 63 ALR 218; Blalock v Johnston, 180 **SC** 40, 185 SE 51, 105 ALR 1115; Langever v Miller, 124 **Tex** 80, 76 SW2d 1025, 96 ALR 836; Christie v Lueth, 265 **Wis** 326, 61 NW2d 338.

Each department should be kept completely independent of the others, independent not in the sense that they shall not co-operate in the common end of carrying into effect the purpose of the constitution, but in the sense that the acts of each shall never be controlled by, or subjected to, directly or indirectly, the coercive influence of either of the other departments. State ex rel. Black v Burch, 226 **Ind** 445, 80 NE2d 294, 560, 81 NE2d 850.

Annotation: 153 ALR 522.

7. State v Shumaker, 200 **Ind** 716, 164 NE 408, 63 ALR 218.

When a written constitution provides for the separation of powers of government between three major branches, it is presumed to intend that within the scope of their constitutionally conferred fields of activities the three separate departments of government are to be independent, subject, of course, to any limitations upon this presumption found in the clear and express provisions of the constitution itself. Du Pont v Du Pont (Sup) 32 **Del** Ch 413, 85 A2d 724.

8. Renck v Superior Court of Maricopa County, 66 **Ariz** 320, 187 P2d 656.

The completeness of the separation of the three departments and their mutual independence does not extend to the point that those in authority in one department can ignore and treat the acts of those in authority in another department, done pursuant to the authority vested in them, as nugatory and not binding on every department of the state government,[9] since each department is to a limited extent affected by the action of the other departments.[10] Such limited control over the other departments is illustrated by the power of the legislative department to enact laws by which both the other departments are controlled and bound. The chief executive has a qualified veto power upon legislative action and has the right to convene the legislature when he chooses. He may also practically annul the judgments of the judiciary in certain cases, by the exercise of the pardoning power.[11]

§ 214. Blending of powers of separate departments.

The true meaning of the general principle of the separation of powers seems to be that the whole power of one department should not be exercised by the same hands which possess the whole power of either of the other departments.[12] It has been held that this doctrine should be applied only to the powers which because of their nature are assigned by the constitution itself to one of the departments exclusively.[13] Hence, it does not necessarily follow that an entire and complete separation is either desirable or was ever intended.[14] The courts have perceived the necessity of avoiding a narrow construction of a state constitutional provision for the division of the powers of the government into three

9. White County v Gwin, 136 **Ind** 562, 36 NE 237.

Under our trisystem of government, it appears not only logical, but sustained by authority, that none of the three branches has any right to question the motive which prompted action on the part of another, but always the question is reduced to that of power or authority to do that which is assailed. First Federal Sav. & Loan Asso. v Loomis (First Federal Sav. & L. Asso. v Martin) (CA7 Wis) 97 F2d 831, 121 ALR 99, cert dismd 305 **US** 666, 83 L ed 432, 59 S Ct 363.

10. Greenwood Cemetery Land Co. v Routt, 17 **Colo** 156, 28 P 1125; People v Bissell, 19 **Ill** 229.

11. People v Bissell, supra.

Although the chief executive official usually has the veto power in the enactment of laws, this power is legislative and not executive in character. Gottstein v Lister, 88 **Wash** 462, 153 P 595. See also Arnett v Meredith, 275 **Ky** 223, 121 SW2d 36, 119 ALR 1183.

As to the executive power of convening the legislature, see STATES, TERRITORIES, AND DEPENDENCIES (1st ed § 29).

As to the pardoning power of the governor, see PARDON AND PAROLE (1st ed § 17).

As to the veto power and its exercise see STATUTES (1st ed §§ 95 et seq.).

12. Dreyer v Illinois, 187 **US** 71, 47 L ed 79, 23 S Ct 28; People v Simon, 176 **Ill** 165, 52 NE 910; Saratoga Springs v Saratoga Gas, E. L. & P. Co. 191 **NY** 123, 83 NE 693; Bailey v State Board of Public Affairs, 194 **Okla** 495, 153 P2d 235; Henrico County v Richmond, 106 **Va** 282, 55 SE 683.

13. State v Bates, 96 **Minn** 110, 104 NW 709.

14. Ex parte Grossman, 267 **US** 87, 69 L ed 527, 45 S Ct 332, 38 ALR 131; People v Kelly, 347 **Ill** 221, 179 NE 898, 80 ALR 890; People ex rel. Rusch v White, 334 **Ill** 465, 166 NE 100, 64 ALR 1006; State v Shumaker, 200 **Ind** 716, 164 NE 408, 63 ALR 218; Re Sims, 54 **Kan** 1, 37 P 135 (per Johnston, J., concurring); Baltimore v State, 15 **Md** 376; Sabre v Rutland R. Co. 86 **Vt** 347, 85 A 693.

Annotation: 32 ALR2d 444, § 4.

There can be no complete separation of powers of government in an ever-changing social order. Laisne v California State Board of Optometry, 19 **Cal** 2d 831, 123 P2d 457.

"It sometimes happens that power properly belonging to one department is exercised by another department, but properly, and only, as an incident to its own legitimate functions." Stockman v Leddy, 55 **Colo** 24, 129 P 220.

The theory of the separation of the three powers of government does not mean that the distinction between the three can be carried out with precision; there may be a certain degree of blending of the three powers. Bailey v State Board of Public Affairs, 194 **Okla** 495, 153 P2d 235.

There is no absolute separation of functions. Trybulski v Bellows Falls Hydro-Electric Corp. 112 **Vt** 1, 20 A2d 117.

distinct departments, for it is impractical to view the provision from the standpoint of a doctrinaire.[15] The doctrine of separation of powers has never been strictly applied, and indeed could not be, to all the ramifications of state or national governments.[16] The doctrine does not require such a rigid classification of all the incidental activities of government as to make it improper for one branch of the government to use any technique or method of procedure already adopted by another branch of the government.[17] At the same time, it is the duty of the courts to attempt to enforce the true meaning, intent, and purpose of the constitutional provision declaring the distribution of governmental powers, notwithstanding there is necessarily some mingling and overlapping of powers between the three departments of government which cannot be avoided, rather than to encourage departure therefrom.[18]

The doctrine as to the separation of the powers of government has never been strictly applied to all the ramifications of the national government. The duties of the officers of the several departments have, to some extent at least, overlapped and interlaced until it is hard to say in some cases where the one leaves off and the other begins;[19] hence, in classifying those powers and in determining to which class various powers created by statute exclusively or properly belong, difficulties are encountered and many nice distinctions have been made.[20] For example, the President is so far made a part of the legislative power that his assent is required to the enactment of all statutes and resolutions of Congress. This, however, is so only to a limited extent, for a bill may become a law, notwithstanding the refusal of the President to approve it, by a vote of two-thirds of each house of the legislature. So, also, the Senate is made a partaker in the functions of appointing officers and making treaties, which are supposed to be properly executive, by requiring its consent to the appointment of such officers and the ratification of treaties. The Senate also exercises the judicial power of trying impeachments, and the House of Representatives of preferring articles of impeachment. In the main, however, the Constitution of the United States has blocked out with singular precision, and in bold lines, in its three primary articles, the allotment of power to the executive, the legislative, and the judicial departments of the government. It also remains true, as a general rule, that the powers confided by the Constitution to one of these departments cannot be exercised by another.[1]

15. Re Hull, 163 **Minn** 439, 204 NW 534, 205 NW 613, 49 ALR 320, error dismd 275 **US** 491, 72 L ed 390, 48 S Ct 33.

Delaware has never strictly adhered to the principle of separation of powers. State ex rel. Craven v Schorr (Sup) 50 **Del** 365, 131 A2d 158.

16. San Christina Invest. Co. v San Francisco, 167 **Cal** 762, 141 P 384; Parsons v Tuolumne County Water Co. 5 **Cal** 43; Ellingham v Dye, 178 **Ind** 336, 99 NE 1, error dismd 231 **US** 250, 58 L ed 206, 34 S Ct 92; Franks v Smith, 142 **Ky** 232, 134 SW 484; Bowden's Case, 123 **Me** 359, 123 A 166; Anway v Grand Rapids R. Co. 211 **Mich** 592, 179 NW 350, 12 ALR 26; Cooke v Iverson, 108 **Minn** 388, 122 NW 251; State ex rel. Major v Shields, 272 **Mo** 342, 198 SW 1105; Gay v District Ct. 41 **Nev** 330, 171 P 156, 173 P 885, 3 ALR 224; State ex rel. Linde v Taylor, 33 **ND** 76, 156 NW 561, error dismd 245 **US** 627, 62 **L ed** 518, 38 S Ct 60; Zanesville v Zanesville Tel. & Tel. Co. 64 **Ohio** St 67, 59 NE 781; Hopper v Oklahoma County, 43 **Okla** 288, 143 P 4; Henry v State, 10 **Okla** Crim 369, 136 P 982; Ekern v McGovern, 154 **Wis** 157, 142 NW 595.

17. Parker v Riley, 18 **Cal** 2d 83, 113 P2d 873, 134 ALR 1405.

18. State v Huber, 129 **W Va** 198, 40 SE2d 11, 168 ALR 808.

19. Cooper v Telfair, 4 Dall (US) 14, 1 L ed 721.

20. State ex rel. Thompson v Neble, 82 **Neb** 267, 117 NW 723; Zanesville v Zanesville Tel. & Tel. Co. 64 **Ohio** St 67, 59 NE 781.

1. Myers v United States, 272 **US** 52, 71 L ed 160, 47 S Ct 21; Kilbourn v Thompson, 103 **US** 168, 26 L ed 377.

The blending of powers in certain specific instances is also illustrated in cases construing state constitutional provisions,[2] for it has been said that there is not a constitution of any one of the states which does not to a certain extent blend the powers of government notwithstanding declarations in bills of rights to the contrary.[3] The several departments are not kept wholly separate and unmixed by any of the state constitutions. In some of them the executive was, at one time, appointed by the legislature, and the judiciary, in some, is appointed by the executive, and in others the powers of the several departments are still more blended and mingled together.[4] There may also be a case where a particular power cannot be affirmed to be either executive, legislative, or judicial; and if such power is not by the constitution unequivocally entrusted to either the executive or judicial departments, the mode of its exercise and the agency must necessarily be determined by the legislature.[5]

It is clear that blended or mixed powers as such are not recognized under the constitutional provisions as to the separation of powers of government.[6] An officer whose duties appertain exclusively to one department of government may not exercise power and perform functions and duties appertaining exclusively to another department, where the constitution provides that no member of any of the three departments, legislative, executive, and judicial, shall exercise any power properly belonging to either of the others.[7] In this connection, however, it has been said that a constitutional provision forbidding the exercise by an officer of one department of any powers belonging to another is not to be construed as a declaration that every act pertaining to the government must be exercised exclusively by officers belonging to one of the particular departments.[8] Frequently, there are functions which are performed by one or another of these departments of such a character that their performance does not necessarily belong to it; and where such is the case, the authority of the department is not necessarily exclusive, and another department may be required to perform the same or a similar function.[9]

2. Riggs v Martin, 5 **Ark** 506; People v Kelly, 347 **Ill** 221, 179 NE 898, 80 ALR 890; People ex rel. Rusch v White, 334 **Ill** 465, 166 NE 100, 64 ALR 1006; Klafter v State Examiners, 259 **Ill** 15, 102 NE 193; Hurst v Warner, 102 **Mich** 238, 60 NW 440; Stewart v Griffith, 33 **Mo** 13; State ex rel. Thompson v Neble, 82 **Neb** 267, 117 NW 723; State ex rel. Standard Oil Co. v Blaisdell, 22 **ND** 86, 132 NW 769; Biggs v McBride, 17 **Or** 640, 21 P 878; Minneapolis, St. P. & S. Ste. M. R. Co. v Railroad Com. 136 **Wis** 146, 116 NW 905.

Annotation: 79 L ed 479, 480.

The judicial department recognizes and sustains the powers of other departments. Peay v Nolan, 157 **Tenn** 222, 7 SW2d 815, 60 ALR 408.

3. Dreyer v Illinois, 187 **US** 71, 47 L ed 79, 23 S Ct 28; Devine v Brunswick-Balke-Collender Co. 270 **Ill** 504, 110 NE 780; People ex rel. Deneen v Simon, 176 **Ill** 165, 52 NE 910; Baltimore v State, 15 **Md** 376.

4. Crane v Meginnis, 1 Gill & J (**Md**) 463.

5. State v Bates, 96 **Minn** 110, 104 **NW** 709.

6. Greenough v Greenough, 11 **Pa** 489.

The constitution should be expected to blend the departments of government no more than it affirmatively requires. Dearborn **Twp.** v Dail, 334 **Mich** 673, 55 NW2d 201.

7. Rouse v Johnson, 234 **Ky** 473, 28 SW2d 745, 70 ALR 1077.

8. Fox v McDonald, 101 **Ala** 51, 13 So 416.

9. Fox v McDonald, supra; Re Opinion of Justices, 87 **NH** 492, 179 A 344, 110 ALR 819.

In determining what Congress may do in seeking assistance from another branch of the government, the extent and character of that assistance must be fixed according to the common sense and the inherent necessities of the governmental co-ordination. J. W. Hampton, Jr., & Co. v United States, 276 **US** 394, 72 L ed 624, 48 S Ct 348.

In all of the state constitutions, the legislative, judicial, and executive functions are vested in different departments. Though one department may perform acts which, in substance, are of the character of another, yet this may be done only when coupled with its own paramount power and in use of some

§ 215. Effect of Federal Constitution upon separation of state governmental powers.

The Constitution of the United States does not in terms prohibit one department of the government of a state from exercising the powers which are conferred upon either of the other departments.[10] Whether the legislative, executive, and judicial powers of a state shall be kept altogether distinct and separate, or whether persons or collections of persons belonging to one department may, in respect of some matters, exert powers which, strictly speaking, pertain to another department of government, is for the determination of the state,[11] which may distribute its powers as it sees fit, provided it acts consistently with due process and does not transgress restrictions of the Federal Constitution applicable to state authority.[12] The blending of the powers of different departments in the same official does not violate the guaranty of a republican form of government.[13] A state constitution may therefore unite certain legislative and judicial powers in a single person without violating the requirements of the Federal Constitution.[14] Moreover, there is nothing in the Federal Constitution which prohibits the legislature of a state or territory from exercising judicial functions.[15]

B. Executive Powers

§ 216. Generally.

The executive power is the power to execute the laws, that is, to carry them into effect, as distinguished from the power to make the laws and the power to judge them.[16] It has been said that the executive power is more limited than legislative powers, extending merely to the details of carrying into effect laws enacted by the legislature as they may be interpreted by the courts, the legislature having the power, except where limited by the constitution itself, to stipulate what actions executive officers shall or shall not perform.[17]

discretion essential to its existence. Watkins v Holman, 16 Pet (US) 25, 10 L ed 873.

A distributive provision in the constitution is not infringed by the appointment of a member of the legislature as auditor of the board of railroad commissioners, where he is wholly subject to the power of the board, and having no powers, can exercise none. State ex rel. Barney v Hawkins, 79 Mont 506, 257 P 411, 53 ALR 583.

A statute conferring the power to appoint state highway commissioners upon a board of which the lieutenant governor of the state is a member is not unconstitutional as an attempt to confer executive power upon a legislative officer, notwithstanding the lieutenant governor is president of the senate, by virtue of his office, with power, when the senate is equally divided, to cast the deciding vote. Rouse v Johnson, 234 Ky 473, 28 SW2d 745, 70 ALR 1077. Annotation: 70 ALR 1095.

10. State v Brill, 100 Minn 499, 111 NW 294, 639.

Annotation: 79 L ed 478.

11. Highland Farms Dairy v Agnew, 300 US 608, 81 L ed 835, 57 S Ct 549; Dreyer v Illinois, 187 US 71, 47 L ed 79, 23 S Ct 28; Livingston v Moore, 7 Pet (US) 469, 8 L ed 751; State v Atlantic Coast Line R. Co. 56 Fla 617, 47 So 969.

12. Crowell v Benson, 285 US 22, 76 L ed 598, 52 S Ct 285.

13. § 393, infra.

14. O'Donoghue v United States, 289 US 516, 77 L ed 1356, 53 S Ct 740; Prentis v Atlantic Coast Line Co. 211 US 210, 53 L ed 150, 29 S Ct 67; Dreyer v Illinois, 187 US 71, 47 L ed 79, 23 S Ct 28; Watkins v Holman, 16 Pet (US) 25, 10 L ed 873; Re Minneapolis, St. P. & S. Ste. M. R. Co. 30 ND 221, 152 NW 513.

The Fourteenth Amendment leaves the states free to distribute the powers of their government as they will between their legislative and judicial branches. Hughes v Superior Court of California, 339 US 460, 94 L ed 985, 70 S Ct 718.

15. Randall v Kreiger, 23 Wall (US) 137, 23 L ed 124; Satterlee v Matthewson, 2 Pet (US) 380, 7 L ed 458.

See §§ 231 et seq., infra.

16. Tucker v State, 218 Ind 614, 35 NE 2d 270.

17. State v Huber, 129 W Va 198, 40 SE2d 11, 168 ALR 808.

In the allotment of the powers of state government to the three departments,[18] the executive power is placed in the hands of the governor.[19] Executive power includes, for example, the power to issue pardons.[20] The due execution of county bonds is also an executive act.[1] Other powers which originally were part of the prerogative of royalty, such as the right to make appointments to public office, may under certain circumstances be exercised by other departments, but it is generally conceded that the power to appoint to a public office is in its nature an executive function.[2]

Although the performance of administrative duties is characteristically the function of the executive branch, administrative duties are frequently required to be performed in order to give full operation to, and to make effective the respective powers of, the legislative and judicial as well as the executive department. An administrative officer may properly assist any of the departments in making the exercise of the powers appertaining to each complete in operation and effective in enforcement.[3]

In accordance with the general principles of the separation of powers,[4] the executive department cannot generally exercise judicial or legislative power;[5] but in certain particular instances the chief executive apparently possesses powers not completely executive in nature, which must be exercised by him and not by a subordinate. This is, at any rate, the perceptible effect of a Supreme Court decision that the President of the United States exercises a judicial, and not an administrative, power in effecting a sentence of dismissal of an officer of the army, arising out of court-martial in times of peace, and this duty cannot be delegated to an administrative officer, such as the Secretary of War.[6]

All executive power is granted by the constitution and the executive branch can exercise no power not derived from the instrument.[7] As are all of the three main branches of government,[8] the executive is independent. Thus, the executive power of the federal government is vested in a President, and, as far as his powers are derived from the constitution, he is beyond the reach of any other department, except in the mode prescribed in the constitution, through the impeaching power.[9] But this is not true of other executive officers. The

18. §§ 210 et seq., supra.

19. The powers of a governor are discussed in GOVERNOR (1st ed §§ 5 et seq.).

20. See PARDON AND PAROLE (1st ed § 17).

1. Hoff v Jasper County, 110 US 53, 28 L ed 68, 3 S Ct 416.

2. See PUBLIC OFFICERS AND EMPLOYEES (1st ed §§ 90 et seq.).

3. State v Atlantic Coast Line R. Co. 56 Fla 617, 47 So 969; Spartanburg County v Miller, 135 SC 348, 132 SE 673.

4. §§ 210 et seq., supra.

5. §§ 217, 218, 248, 252, infra.

6. Runkle v United States, 122 US 543, 30 L ed 1167, 7 S Ct 1141.

7. Ex parte Quirin, 317 US 1, 87 L ed 3, 63 S Ct 2.

8. § 213, supra.

9. Kendall v United States, 12 Pet (US) 524, 9 L ed 1181; People v McCullough, 254 Ill 9, 98 NE 156.

The right of a naval officer, disabled in the line of duty, to retirement on pay is by statute dependent on the judgment of the President of the United States, over which the courts have no control. Denby v Berry, 263 US 29, 68 L ed 148, 44 S Ct 74.

The courts may not inquire into an asserted excess or abuse of discretion by the President in exerting the authority conferred upon him by Joint Resolution of July 16, 1918, to take over and operate telephone and telegraph systems as a war emergency measure. Dakota Cent. Tel. Co. v South Dakota, 250 US 163, 63 L ed 910, 39 S Ct 507, 4 ALR 1623.

When through mistake, or misapprehension, or for any other reason, a naval officer has been unjustly dismissed from the service by the President, Congress has the power to accord relief; but the courts cannot, of their own motion, review the grounds of action taken in the constitutional exercise of execu-

obligation imposed on the President to see the laws executed does not render executive officers subject to his discretion and control alone, with respect to the execution of duties imposed upon them by law.[10]

§ 217. Limitations as respects judiciary.[11]

Executive officers cannot usurp judicial functions,[12] such as passing upon the constitutionality of legislation,[13] nor can they prevent the courts from exercising such functions.[14]

§ 218. Limitations as respects legislature.[15]

It is clear that the executive can neither encroach upon the functions of the legislature[16] nor interfere in its duties. The executive cannot discharge the functions of the legislature in any manner by so acting in his official capacity that his conduct is tantamount to a repeal of legislation.[17] Similarly, since the whole legislative power is assigned to the legislative department of the government, the general rule is that there exists no power in the executive department to suspend the operation of statutes.[18] Thus, the President of the United States has no authority, even under the clause requiring him to see that the laws are faithfully executed, to suspend of his own motion the operation of acts of Congress.[19] But, as has already been noted,[20] no unconstitutional encroachment on the powers of the Congress occurs when the President of the United States participates in the law-making power by means of exercise of his veto power.

tive power. Quackenbush v United States, 177 US 20, 44 L ed 654, 20 S Ct 530.

10. Kendall v United States, 12 Pet (US) 524, 9 L ed 1181.

11. As to the limitations, with respect to the judiciary, which bind administrative agencies, see 1 Am Jur 2d, ADMINISTRATIVE LAW §§ 145, 146.

12. United States v Morton Salt Co. 338 US 632, 94 L ed 401, 70 S Ct 357.

The refusal of the attorney general to bring a suit to set aside the sale, under a power, of properties held by the trustees of a charitable trust for the entire public is not a usurpation of judicial power by an executive officer, nor does he infringe such power by challenging the right of an unsuccessful bidder for the property to maintain the suit, when he is brought by such bidder into court as an unwilling party, in response to process issued at the bidder's instance. Dickey v Volker, 321 Mo 235, 11 SW2d 278, 62 ALR 858.

Commissioners to assist a court do not usurp judicial functions or exercise any judicial power by taking such transcripts and briefs as the court shall assign to them and reporting the result of their examination thereof, with opinions and suggestions merely for the consideration of the court as to the proper disposition of the cases. People ex rel. Morgan v Hayne, 83 Cal 111, 23 P 1.

13. Payne v Providence Gas Co. 31 RI 295, 77 A 145.

As to the sole power of the courts to ultimately determine the validity of legislation, see § 104, supra.

14. Johnson v Duncan, 3 Mart (La) 530.

A court may enforce the execution of its judgment for contempt, notwithstanding an attempted pardon by the governor. State v Shumaker, 200 Ind 716, 164 NE 408, 63 ALR 218.

15. As to the limitations, with respect to the legislature, which bind administrative agencies, see 1 Am Jur 2d, ADMINISTRATIVE LAW §§ 98 et seq.

16. Dearborn Twp. v Dail, 334 Mich 673, 55 NW2d 201.

17. The governor of a state cannot undertake any indirect repeals by the power of pardon, commutation, or parole merely because he does not believe in the policy of the law enacted by the lawmaking body or because the legislature is hostile to his views. Henry v State, 10 Okla Crim 369, 136 P 982.

18. Johnson v Duncan, 3 Mart (La) 530; Holden v James, 11 Mass 396.

The suspension of a statute is a legislative act unless based upon some condition, contingency, exigency, or state of facts declared by the legislative enactment to be sufficient to warrant the suspension by an executive or administrative body whose duty it is to execute or administer the law suspended. Winslow v Fleischner, 112 Or 23, 228 P 101, 34 ALR 826.

19. Kendall v United States, 12 Pet (US) 524, 9 L ed 1181.

20. § 214, supra.

particular acts, such as the sale of the land of persons under disability[4] or the curing of defects in past transactions.[5] Such statutes, so far as they do not deprive any person of any right, are not unconstitutional as encroaching on the prerogative of the judicial department of the government.[6] On the other hand, if a special act divests a person's rights—for example, an act authorizing a guardian to sell the ward's lands to pay his ancestor's debts—it is judicial in its character and unconstitutional, and it is immaterial that the infant has consented to the passage of the act.[7]

The legislature cannot prevent judicial inquiry as to the validity of the passage of a law by curative measures. The lawmakers usurp judicial power if they attempt to divest judicial control as to the question of the validity of the passage of a law. Thus, a statute intended to cure the invalidity of earlier legislation, which the governor approved after the time limit fixed by the constitution for his approval, by providing that all bills passed and approved by the governor shall be presumed to have been presented to him for approval within three days preceding approval, and declaring valid such presentation of bills to the governor as may have been made, whatever the irregularity of time, place, and manner, is unconstitutional as encroaching upon judicial authority.[8]

§ 237. — Interference in litigation.

Since the legislature does not possess and may not assume the exercise of judicial powers, it cannot interfere in any way with pending judicial controversies[9] or change procedure affecting past transactions in such a way as to prevent judicial control of such situations.[10] As a general rule the legislature cannot annul, vacate, set aside, reverse, modify, or impair the final judgment of a court of competent jurisdiction,[11] and it cannot take particular cases out

4. Hoyt v Sprague, 103 US 613, 26 L ed 585 (guardian's sale); Watkins v Holman, 16 Pet (US) 25, 10 L ed 873 (sale by administratrix to pay debts of deceased); Todd v Flournoy, 56 Ala 99; Doe ex dem. Chandler v Douglass, 8 Blackf (Ind) 10 (sale by administrator of lands of infant heirs); Louisville, N. O. & T. R. Co. v Blythe, 69 Miss 939, 11 So 111.

Annotation: 4 ALR 1552 (guardian's sale).

5. Wilkinson v Leland, 2 Pet (US) 627, 7 L ed 542 (confirming void sale by executrix).

And see 1 Am Jur 2d, ACKNOWLEDGMENTS, § 112, and §§ 430 et seq., infra.

As to curative legislation affecting judgments, see JUDGMENTS (Rev ed § 7).

6. Linsley v Hubbard, 44 Conn 109; Davison v Johonnot, 7 Met (Mass) 388; Louisville, N. O. & T. R. Co. v Blythe, 69 Miss 939, 11 So 111; Boon v Bowers, 30 Miss 246; Stewart v Griffith, 33 Mo 13.

Annotation: 4 ALR 1552 (guardian's sale).

The violation of constitutional inhibitions is clear where the legislature attempts to validate the presentation of bills or acts to the governor, however far the time of presentation may depart from a constitutional requirement. Preveslin v Derby & A. Developing Co. 112 Conn 129, 151 A 518, 70 ALR 1426.

7. Jones v Perry, 10 Yerg (Tenn) 59.

Annotation: 4 ALR 1554.

8. Preveslin v Derby & A. Developing Co. 112 Conn 129, 151 A 518, 70 ALR 1426.

Annotation: 70 ALR 1438.

9. Miller v Hay, 143 Miss 471, 109 So 16 (attempt by legislature to abate a suit and give permission to others to revive it); Hoke v Henderson, 15 NC (4 Dev L) 1, ovrld on another point Mial v Ellington, 134 NC 131, 46 SE 961; Roles Shingle Co. v Bergerson, 142 Or 131, 19 P2d 94; Re Cannon, 206 Wis 374, 240 NW 441.

A statute imposing a liability on municipal corporations for mob violence is not unconstitutional as an exercise of judicial power, because it does not adjudicate any transaction, case, or controversy which arose before its enactment and of which the judicial tribunals might have been cognizant, but rather becomes binding on the courts after enactment, so that it is not in any sense a trespass upon the province of the courts. Champaign County v Church, 62 Ohio St 318, 57 NE 50. Annotation: 13 ALR 758, s. 23 ALR 297, 44 ALR 1137, 52 ALR 562.

10. Preveslin v Derby & A. Developing Co. 112 Conn 129, 151 A 518, 70 ALR 1426.

11. See JUDGMENTS (Rev ed § 7).

of a settled course of judicial proceedings,[12] grant a rehearing or appeal after the parties to a final judgment have lost the right to any further hearing,[13] grant new trials,[14] order the discharge of offenders,[15] require that a certain deposition be read in the trial of a cause then pending,[16] provide for the sale of a decedent's land without notice to the heirs and for the application of the proceeds to certain claims,[17] or direct the steps which shall be taken in the progress of a judicial inquiry.[18] Any other rule would seriously interfere with the discretion and independence of the judiciary.[19]

§ 238. — Imposition of judicial functions upon nonjudicial officers or private individuals.[20]

Under the principle of separation of powers, it is settled that the legislature may not confer judicial functions upon members of the executive branch of government;[1] ministerial officers are incompetent to receive grants of judicial power from the legislature, and their acts in attempting to exercise such powers are necessarily nullities.[2]

However, in some states the state constitution expressly provides for the exercise of actual judicial powers and functions by nonjudicial officers. Thus, a statute creating a board of commissioners of the state bar and conferring upon them, inter alia, the power to suspend or disbar attorneys subject to the court's power of review is within the constitutional powers of the legislature, in view of an affirmative provision of the constitution that powers of a judicial nature may be invested in such persons as the legislature may designate.[3]

12. Denny v Mattoon, 2 Allen (Mass) 361; Roles Shingle Co. v Bergerson, 142 Or 131, 19 P2d 94; Baggs' Appeal, 43 Pa 512; State v Fleming, 7 Humph (Tenn) 152; Re Cannon, 206 Wis 374, 240 NW 441.

Congress can neither withdraw from judicial cognizance any matter which from its nature was the substance of a suit at common law, in equity, or admiralty, nor bring under the judicial power a matter which from its nature is not a subject for judicial determination. Den ex dem. Murray v Hoboken Land & Improv. Co. 18 How (US) 272, 15 L ed 372.

13. Roles Shingle Co. v Bergerson, 142 Or 131, 19 P2d 94; Handley's Estate, 15 Utah 212, 49 P 829; Staniford v Barry, 1 Aik (Vt) 314.

Under the Oregon Constitution, art 3, § 1, the Oregon statute which, after reciting that certain sections of the Code had created doubts as to whether the time to take an appeal ran from the date of the entry of the judgment or from the entry of the order granting or denying a new trial, provided that appeals filed within 6 months after the denial of a motion for new trial should be validated, is unconstitutional as an encroachment on judicial powers in that it grants no new right of appeal, but construes former enactments. Macartney v Shipherd, 60 Or 133, 117 P 814.

14. See NEW TRIAL (1st ed § 8).

15. Allen v State Auditors, 122 Mich 324, 81 NW 113; Roles Shingle Co. v Bergerson, 142 Or 131, 19 P2d 94.

16. Roles Shingle Co. v Bergerson, supra; Dupy v Wickwire, 1 D Chip (Vt) 237.

17. Lane v Doe, 4 Ill 238; Roles Shingle Co. v Bergerson, 142 Or 131, 19 P2d 94.

The House of Representatives, in passing a resolution reciting that the United States is a creditor of Jay Cooke & Company and appointing a committee to inquire into the nature and history of the real-estate pool, not only exceeded its own authority, but assumed a power belonging to the judicial department. Kilbourn v Thompson, 103 US 168, 26 L ed 377.

18. Stephens v Cherokee Nation, 174 US 445, 43 L ed 1041, 19 S Ct 722; Roles Shingle Co. v Bergerson, 142 Or 131, 19 P2d 94.

19. Lawson v Jeffries, 47 Miss 686; Roles Shingle Co. v Bergerson, 142 Or 131, 19 P2d 94.

20. As to imposition of judicial functions upon administrative officers, see 1 Am Jur 2d, ADMINISTRATIVE LAW §§ 138 et seq.

1. Tucker v State, 218 Ind 614, 35 NE2d 270.

2. Denver v Lynch, 92 Colo 102, 18 P2d 907, 86 ALR 907; Otto v Harllee, 119 Fla 266, 161 So 402; People ex rel. Kern v Chase, 165 Ill 527, 46 NE 454; Dallas Fuel Co. v Horne, 230 Iowa 1148, 300 NW 303; State v Blaisdell, 22 ND 86, 132 NW 769; Commonwealth v Gryctko, 22 Pa D & C 462; Morrow v Corbin, 122 Tex 553, 62 SW2d 641.

3. Ex parte Thompson, 228 Ala 113, 152 So 229, 107 ALR 671.

Ordinarily, the legislature may not delegate judicial functions to private individuals.[4]

§ 239. Interference with judiciary.[5]

The constitutional grant to the courts of judicial power includes all powers necessary for the complete performance of the judicial function and establishes certain limits beyond which the legislature may not go in specifying how judicial power is to be exercised.[6] The legislature cannot ordinarily diminish, enlarge, or interfere with the jurisdiction of a court as defined by the constitution.[7] It may, however, create courts not mentioned in the constitution, but it may not confer upon them powers which could not have been conferred upon the courts already existing.[8]

The rule is well settled that the judicial power cannot be taken away by legislative action.[9] Any legislation that hampers judicial action or interferes with the discharge of judicial functions is unconstitutional.[10] The legislature

4. Anderson v Carlson, 171 **Neb** 741, 107 NW2d 535, 83 ALR2d 831; Nickel v School Board of Axtell, 157 **Neb** 813, 61 NW2d 566.

5. As to legislative interference with the courts by attempting to delegate to them legislative powers or confer upon them nonjudicial functions, see §§ 223 and 232, supra, and §§ 255 and 256, infra.

As to legislative interference in litigation, see § 237, supra.

6. People v Spegal, 5 **Ill** 2d 211, 125 NE 2d 468, 51 ALR2d 1337.

7. Brown v Allbright, 110 **Ark** 394, 161 SW 1036; State ex rel. Buckwalter v Lakeland, 112 **Fla** 200, 150 So 508, 90 ALR 704; Board of County Comrs. of Wyandotte County v General Secur. Corp. 157 **Kan** 64, 138 P2d 479; Thompson v Redington, 92 **Ohio** St 101, 110 NE 652; Bandy v Mickelson, 73 **SD** 485, 44 NW2d 341, 22 ALR2d 1129.

"It is clear from this provision of the Constitution that, in so far as judicial powers are concerned, the court of appeals obtains all its jurisdiction, both original and appellate, directly from the Constitution itself. The General Assembly has no power to extend or limit its jurisdiction, but is limited solely to the power to provide by law for the exercise by that court of the jurisdiction conferred upon it by the Constitution." Thompson v Redington, 92 **Ohio** St 101, 110 NE 652.

8. Sabre v Rutland R. Co. 86 **Vt** 347, 85 A 693.

An act creating a court of industrial relations is not void under the Constitution of Kansas because it commingles functions of separate departments of government or because it attempts to enlarge the original jurisdiction of this court. State ex rel. Hopkins v Howat, 109 **Kan** 376, 198 P 686, 25 ALR 1210, error dismd 258 **US** 181, 66 L ed 550, 42 S Ct 277.

9. State ex rel. Buckwalter v Lakeland, 112 **Fla** 200, 150 So 508, 90 ALR 704; State ex rel. Brubaker v Pritchard, 236 **Ind** 222, 138 NE2d 233, 60 ALR2d 1239; Board of County Comrs. of Wyandotte County v General Secur. Corp. 157 **Kan** 64, 138 P2d 479; Dearborn Twp. v Dail, 334 **Mich** 673, 55 NW2d 201; State ex rel. Grant v Eaton, 114 **Mont** 199, 133 P2d 588; Hedden v Hand, 90 **NJ** Eq 583, 107 A 285, 5 ALR 1463; Re Boyett, 136 **NC** 415, 48 SE 789; Re Miller's Estate, 160 **Ohio** St 529, 117 NE2d 598, 52 Ohio Ops 437, 46 ALR2d 493; Hale v State, 55 **Ohio** St 210, 45 NE 199; Ex parte Tillman, 84 **SC** 552, 66 SE 1049; Aucutt v Aucutt, 122 **Tex** 518, 62 SW2d 77, 89 ALR 1198.

It is beyond the power of the legislature to interfere with the constitutional jurisdiction of the supreme court. State ex rel. McKittrick v Wymore, 343 **Mo** 98, 119 SW2d 941, 119 ALR 710.

Judicial scrutiny of legislation to prevent transgression of constitutional guaranties of due process of law, right to compensation for property taken for public use, and equal protection of the laws, cannot be precluded by legislative declaration or finding, or by authorizing an agent to make findings that the agent has kept within such limitations. Lakewood Exp. Service v Board of Public Utility Comrs. 1 **NJ** 45, 61 A2d 730, 7 ALR2d 1259.

A law which provides that the mere filing of an affidavit charging bias and prejudice is sufficient to disqualify a judge without any hearing or determination of whether the affidavit is true or false is unconstitutional as depriving the court of judicial power and vesting the same in the litigants to that extent. Diehl v Crump, 72 **Okla** 108, 179 P 4, 5 ALR 1272. Annotation: 5 ALR 1275, s. 46 ALR 1179.

10. Simmons v State, 160 **Fla** 626, 36 So 2d 207; Noble County Council v State, 234 **Ind** 172, 125 NE2d 709; State ex rel. Kostas v Johnson, 224 **Ind** 540, 69 NE2d 592, 168 ALR 1118; Knox County Council v State, 217 **Ind** 493, 29 NE2d 405, 130 ALR 1427; Board of County Comrs. of Wyandotte County v General Secur. Corp. 157 **Kan** 64, 138 P2d 479; State ex rel. Grant v Eaton, 114 **Mont**

is therefore not permitted to interfere with the courts in the performance of their duties, as, for example, by declaring the forfeiture of the salary of a judge for a failure to perform his duties.[11] It has no power to direct the judiciary in the interpretation of existing statutes.[12] It cannot by statute interfere with the power vested in the courts by the state constitution to issue writs of mandamus to enforce the performance of an official duty.[13] Similarly, a statute forbidding the courts to direct a verdict is unconstitutional as invalidly attempting to limit the constitutional powers vested in the judiciary.[14]

The general rule is subject to some modification. The fact that courts have all the inherent and implied powers necessary to function properly and effectively does not mean that they are wholly independent of the legislature, which may put reasonable restrictions upon constitutional functions of the courts, provided that such restrictions do not defeat or materially impair the exercise of those functions.[15] Thus, the legislature may, within proper bounds, prescribe rules of practice and procedure for the exercise of jurisdiction.[16] Moreover, the suspension of a possessory remedy is not an impairment of the constitutional jurisdiction of a court.[17]

It has been generally, though not universally,[18] held that a statute which

199, 133 P2d 588; People ex rel. Burby v Howland, 155 NY 270, 49 NE 775.

While the legislature may impose duties judicial in character upon the courts, having once imposed these powers, it has no right to control the exercise thereof. State v Huber, 129 W Va 198, 40 SE2d 11, 168 ALR 808.

The judicial power with which a statutory court created by the legislature is vested comes from the constitution, which alone bestows judicial power, and the legislature may not interfere with that power any more than it may interfere with judicial power of a court created by the constitution itself. State ex rel. Kostas v Johnson, 224 Ind 540, 69 NE2d 592, 168 ALR 1118.

A statute providing that a party to a civil action or his attorney may peremptorily challenge a judge assigned to hear the cause, whereupon, without any further act or proof, another judge shall be assigned, is unconstitutional as an unwarranted interference with the constitutional powers and duties of the courts. Austin v Lambert, 11 Cal 2d 73, 77 P2d 849, 115 ALR 849.

11. Ex parte Tully, 4 Ark 220.

It is the duty of the court to protect the rights of individuals against legislative investigation by refusing to permit the legislature thus to invade the jurisdiction of the court. Greenfield v Russel, 292 Ill 392, 127 NE 102, 9 ALR 1334.

Judicial opinion cannot be controlled by legislative opinion of what are fundamental rights. Rast v Van Deman & L. Co. 240 US 342, 60 L ed 679, 36 S Ct 370.

12. State v Schlenker, 112 Iowa 642, 84 NW 698; Board of County Comrs. of Wyandotte County v General Secur. Corp. 157 Kan 64, 138 P2d 479; State ex rel. Grant v Eaton, 114 Mont 199, 133 P2d 588.

13. State ex rel. Buckwalter v Lakeland, 112 Fla 200, 150 So 508, 90 ALR 704.

14. Thoe v Chicago, M. & St. P. R. Co. 181 Wis 456, 195 NW 407, 29 ALR 1280.

Annotation: 29 ALR 1287.

15. Brydonjack v State Bar, 208 Cal 439, 281 P 1018, 66 ALR 1507.

16. Sibbach v Wilson & Co. 312 US 1, 85 L ed 479, 61 S Ct 422, reh den 312 US 713, 85 L ed 1144; St. Louis, I. M. & S. R. Co. v Taylor, 210 US 281, 52 L ed 1061, 28 S Ct 616; Thompson v Redington, 92 Ohio St 101, 110 NE 652; Aucutt v Aucutt, 122 Tex 518, 62 SW2d 77, 89 ALR 1198; American Furniture Co. v I. B. of T. C. & H. 222 Wis 338, 268 NW 250, 106 ALR 335.

The legislature may properly confer on the courts the power to regulate matters of detail, such as the returning of writs and processes, the filing of declarations, the leaving of property seized under execution in the debtor's custody pending sale, or the terms on which a sale shall be made. Wayman v Southard, 10 Wheat (US) 1, 6 L ed 253.

The legislature has power reasonably to regulate and control the forms of procedure for the administration of justice, and may ordinarily regulate the procedure by which jurisdiction conferred by the constitution may be exercised, and may prescribe practice and procedures so long as it does not defeat or materially impair the exercise of such jurisdiction. State ex rel. McPike v Hughes, 355 Mo 1022, 199 SW2d 405.

17. People ex rel. Durham Realty Corp. v La Fetra, 230 NY 429, 130 NE 601, 16 ALR 152, error dismd 257 US 665, 66 L ed 424, 42 S Ct 47.

18. James v Appel, 192 US 129, 48 L ed 377, 24 S Ct 222; Nendel v Meyers, 162 Or 661, 94 P2d 680.

There was no unconstitutional assumption of judicial functions, either in form or in substance, undertaken by the enactment of a

requires the judiciary to act or refrain from acting within a specified time is unconstitutional as an unwarranted encroachment by the legislative branch upon the prerogatives and functioning of the judiciary.[19]

2. Delegation of Powers[20]

a. Rule Barring Delegation

§ 240. Generally.

Since under the doctrine of the separation of the powers of government[1] the lawmaking function is assigned exclusively to the legislature,[2] it is a cardinal principle of representative government (and one not uncommonly stated, in terms, in state constitutional provisions),[3] that except when authorized by the constitution[4]—as may be the case in reference to municipal corporations[5]—

statute requiring that a motion for a new trial be determined at the term of the court at which the motion was made, and further providing that in case there should be no ruling on a motion for a new trial during the term at which it was filed, then the said motion should be denied and the question that might have been raised thereby would be subject to review by the Supreme Court as if said motion had been overruled and exceptions thereto reserved and entered on the minutes of the court. James v Appel, 192 **US** 129, 48 L ed 377, 24 S Ct 222.

The constitutionality of a statute requiring a 60-day cooling off period before prosecuting a suit for divorce, under a constitutional guaranty of right of access to the courts, depends upon whether the prescribed delay occurs before or after the institution of the suit; if before, the statute is unconstitutional, but if afterward, as where the statute requires the filing of a praecipe for summons and then a wait of 60 days before the filing of the complaint, it is constitutional. People ex rel. Doty v Connell, 9 **Ill** 2d 390, 137 NE2d 849, 62 ALR2d 1255.

Annotation: 168 ALR 1129.

19. Holliman v State, 175 **Ga** 232, 165 SE 11; State ex rel. Kostas v Johnson, 224 **Ind** 540, 69 NE2d 592, 168 ALR 1118; Re Tracy, 197 **Minn** 35, 266 NW 88, 267 NW 142; Sliosberg v New York L. Ins. Co. 217 App Div 67, 216 **NYS** 215, affd 244 NY 482, 599, 155 NE 749, 913, cert den 275 **US** 526, 72 L ed 407, 48 S Ct 19; Schario v State, 105 **Ohio** St 535, 138 NE 63; Atchison, T. & S. F. R. Co. v Long, 122 **Okla** 86, 251 P 486.

Annotation: 168 ALR 1125.

A statute, applicable to trial of questions of fact by the court, providing that when any issue of fact or law is submitted to the court for trial and taken under advisement by the judge, the judge shall not, except in case of severe illness of himself or his family, hold the issue under advisement for more than 60 days, and that if he fails to determine the issue within 90 days after having taken the same under advisement, the submission shall, upon the application of a party to the action or his attorney, filed in the office of the clerk of court and called to the attention of the judge before announcement of the decision of the issue, be thereupon withdrawn and the judge disqualified to hear or determine any of the issues in the cause, which shall then be heard by a special judge appointed under regulations prescribed in cases where a judge is disqualified for hearing in a given cause, is, to the extent that it attempts to fix the time within which a court shall rule upon an issue submitted to it, unconstitutional and void as a legislative interference with judicial functions. State ex rel. Kostas v Johnson, 224 **Ind** 540, 69 NE2d 592, 168 ALR 1118.

20. It is important for the reader to note that modern case law touching upon the question of permissibility of delegation of legislative powers is, to a very large extent, confined to cases involving delegation to administrative authorities. Issues as to delegation to such authorities are discussed in detail in 1 Am Jur 2d, Administrative Law §§ 100 et seq.

1. § 210, supra.

2. § 227, supra.

3. See, for example, Marr v Fisher, 182 **Or** 383, 187 P2d 966, involving Oregon constitutional provision that no law shall be passed "the taking effect of which shall be made to depend upon any authority, except as provided in this constitution." See also § 258, infra.

4. Schaezlein v Cabaniss, 135 **Cal** 466, 67 P 755; Pursley v Ft. Myers, 87 **Fla** 428, 100 So 366; State v Purcell, 39 **Idaho** 642, 228 P 796; State v Nelson, 36 **Idaho** 713, 213 P 358; Potts v Breen, 167 **Ill** 67, 47 NE 81; State v Great Northern R. Co. 100 **Minn** 445, 111 NW 289; Re North Milwaukee, 93 **Wis** 616, 67 NW 1033.

5. Pursley v Ft. Myers, 87 **Fla** 428, 100 So 366; Potts v Breen, 167 **Ill** 67, 47 NE 81; Marion County v Jewett, 184 **Ind** 63, 110 NE 553 (county board); State v Great Northern R. Co. 100 **Minn** 445, 111 NW 289.

As to the power of the legislature general-

the legislature cannot delegate the power to make laws to any other authority or body.[6] The legislature may not in any degree abdicate its power; it may not make the effectiveness of a specific act dependent upon the will of another, and certainly it may not delegate to another the power to enact a law, whether in form or effect.[7] Any attempt to abdicate legislative power in any particular field, although valid in form, is unconstitutional and void.[8]

ly to vest local subdivisions with authority to legislate on local matters, see §§ 250, 251, infra.

6. United States v Shreveport Grain & Elevator Co. 287 **US** 77, 77 L ed 175, 53 S Ct 42; Phenix City v Alabama Power Co. 239 **Ala** 547, 195 So 894; Whaley v State, 168 **Ala** 152, 52 So 941; Peters v Frye, 71 **Ariz** 30, 223 P2d 176; Crane v Frohmiller, 45 **Ariz** 490, 45 P2d 955; Terrell v Loomis, 218 **Ark** 296, 235 SW2d 961; State v Davis, 178 **Ark** 153, 10 SW2d 513; Sandstrom v California Horse Racing Board, 31 **Cal** 2d 401, 189 P2d 17, 3 ALR2d 90, cert den 335 **US** 814, 93 L ed 369, 69 S Ct 31, reh den 335 **US** 905, 93 L ed 439, 69 S Ct 404; Dougherty v Austin, 94 **Cal** 601, 28 P 834, 29 P 1092; Harbor Comrs. v Excelsior Redwood Co. 88 **Cal** 491, 26 P 375; Hazlet v Gaunt, 126 **Colo** 385, 250 P2d 188; Burcher v People, 41 **Colo** 495, 93 P 14; State v Stoddard, 126 **Conn** 623, 13 A2d 586; H. Duys & Co. v Tone, 125 **Conn** 300, 5 A2d 23; Hoff v State, 39 **Del** 134, 197 A 75; Asbell v Green, 159 **Fla** 702, 32 So 2d 593; Mayo v Texas Co. 137 **Fla** 218, 188 So 206; State v Atlantic Coast Line R. Co. 56 **Fla** 617, 47 So 969; Telford v Gainesville, 208 **Ga** 56, 65 SE2d 246; State v Heitz, 72 **Idaho** 107, 238 P2d 439; State v Purcell, 39 **Idaho** 642, 228 P 796; State v Nelson, 36 **Idaho** 713, 213 P 358; People v Belcastro, 356 **Ill** 144, 190 NE 301, 92 ALR 1223; People ex rel. Thomson v Barnett, 344 **Ill** 62, 176 NE 108, 76 ALR 1044; Chicago R. Co. v Commerce Com. 336 **Ill** 51, 167 NE 840, 67 ALR 938; Zoercher v Agler, 202 **Ind** 214, 172 NE 186, 907, 70 ALR 1232; Sarlls v State, 201 **Ind** 88, 166 NE 270, 67 ALR 718; Marion County v Jewett, 184 **Ind** 63, 110 NE 553; Blume v Crawford County, 217 **Iowa** 545, 250 NW 733, 92 ALR 757; Pierce v Doolittle, 130 **Iowa** 333, 106 NW 751; State ex rel. Howe v Des Moines, 103 **Iowa** 76, 72 NW 639; State ex rel. Anderson v Fadely, 180 **Kan** 652, 308 P2d 537; State v Crawford, 104 **Kan** 141, 177 P 360, 2 ALR 880; State v Keener, 78 **Kan** 649, 97 P 860; Henry v Parrish, 307 **Ky** 559, 211 SW2d 418; Ashland Transfer Co. v State Tax Com. 247 **Ky** 144, 56 SW 2d 691, 87 ALR 534; Commonwealth v Beaver Dam Coal Co. 194 **Ky** 34, 237 SW 1086, 27 ALR 920; State v Morrow, 231 **La** 572, 92 So 2d 70; State v Gauthier, 121 **Me** 522, 118 A 380, 26 ALR 652; State v Butler, 105 **Me** 91, 73 A 560; Wyeth v Board of Health, 200 **Mass** 474, 86 NE 925; Opinion of Justices, 160 **Mass** 586, 36 NE 488; Williams v Evans, 139 **Minn** 32, 165 NW 495, 166 NW 504; State v Allstate Ins. Co. 231 **Miss** 869, 97 So 2d 372; Automobile Club of Missouri v St. Louis (**Mo**) 334 SW2d 355, 83 ALR2d 612; Nickel v School Board of Axtell, 157 **Neb** 813, 61 NW2d 566; Moore v Humboldt County, 48 **Nev** 397, 232 P 1078; Hudspeth v Swayze, 85 **NJL** 592, 89 A 780; Barto v Himrod, 8 **NY** 483; State ex rel. Taylor v Carolina Racing Asso. 241 **NC** 80, 84 SE2d 390; Medical Properties, Inc. v North Dakota Board of Pharmacy (**ND**) 80 NW2d 87; Harmon v State, 66 **Ohio** St 249, 64 NE 117; Gordon v State, 46 **Ohio** St 607, 23 NE 63; Rush v Brown, 187 **Okla** 97, 101 P2d 262; Livesay v De Armond, 131 **Or** 563, 284 P 166, 68 ALR 422; Wilson v Philadelphia School Dist. 328 **Pa** 225, 195 A 90, 113 ALR 1401; Banks v Batesburg Hauling Co. 202 **SC** 273, 24 SE2d 496; Clark v State, 172 **Tenn** 429, 113 SW2d 374, 782; Texas Nat. Guard Armory Board v McCraw, 132 **Tex** 613, 126 SW2d 627; Thompson v Smith, 155 **Va** 367, 154 SE 579, 71 ALR 604; State ex rel. Everett Fire Fighters v Johnson, 46 **Wash** 2d 114, 278 P2d 662; State ex rel. Adams v Burdge, 95 **Wis** 390, 70 NW 347.

Annotation: 76 ALR 1055 et seq.; 79 L ed 476 et seq.

The prohibition against the delegation of legislative power is a necessary outgrowth of the fundamental theory of the separation of governmental functions. Holgate Bros. Co. v Bashore, 331 **Pa** 255, 200 A 672, 117 ALR 639.

The legislature cannot delegate power either to declare whether there shall be a law or to fix the limits within which the law shall operate. Milwaukee v Sewerage Com. 268 **Wis** 342, 67 NW2d 624.

That no part of the legislative power can be delegated by the legislature to any other department of the government, executive or judicial, is a fundamental principle in constitutional law, essential to the integrity and maintenance of the system of government established by the constitution. Dowling v Lancashire Ins. Co. 92 **Wis** 63, 65 NW 738.

7. Goodpaster v Foster, 296 **Ky** 614, 178 SW2d 29; Bloemer v Turner, 281 **Ky** 832, 137 SW2d 387.

8. Johnson v San Diego, 109 **Cal** 468, 42 P 249; Pursley v Ft. Myers, 87 **Fla** 428, 100 So 366; Oakland State Bank v Bolin, 141 **Kan** 126, 40 P2d 437; Springfield v Clouse, 356 **Mo** 1239, 206 SW2d 539; State v Roy, 40 **NM** 397, 60 P2d 646, 110 ALR 1; Carolina-Virginia Coastal Highway v Coastal Turnpike Authority, 237 **NC** 52, 74 SE2d 310; State ex rel. Everett Fire Fighters v Johnson,

§ 241. Congress as within rule.

The general doctrine as to the inalienability of the lawmaking function applies to the federal government.[9] Congress cannot delegate to any other body its strictly legislative powers.[10]

§ 242. What legislative powers are within rule.

As has already been indicated, the rule of nondelegability is applicable to legislative powers only;[11] the rule does not bar Congress[12] or other legislatures from delegating such of their powers as are not legislative in nature.[13] Thus, the rule is that in order that a court may be justified in holding a statute unconstitutional as a delegation of legislative power, it must appear that the power involved is purely legislative in nature—that is, one appertaining exclusively to the legislative department.[14] It is the nature of the power, and not the liability of its use or the manner of its exercise, which determines the validity of its delegation.[15] Purely legislative power, which can never be delegated, has been described as the authority to make a complete law—complete as to the time

46 **Wash** 2d 114, 278 P2d 662; State v Thompson, 149 **Wis** 488, 137 NW 20.

Regardless of any exigency or emergency which may arise, the legislature may not delegate its authority or duty to another branch of government. Holgate Bros. Co. v Bashore, 331 **Pa** 255, 200 A 672, 117 ALR 639.

9. ***Annotation:*** 79 L ed 476.

The source of the inhibition against the delegation of legislative power by the Congress is the provision of Article 1, § 1, of the Federal Constitution that "all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives." There is no purpose avowed in the Federal Constitution to separate or distribute the powers of the government, such as appears in the state constitutions, but the instrument actually makes a distribution of powers to the three departments. Annotation: 79 L ed 476.

10. A. L. A. Schechter Poultry Corp. v United States, 295 **US** 495, 79 L ed 1570, 55 S Ct 837, 97 ALR 947; Panama Ref. Co. v Ryan, 293 **US** 388, 79 L ed 446, 55 S Ct 241; Knickerbocker Ice Co. v Stewart, 253 **US** 149, 64 L ed 834, 40 S Ct 438, 11 ALR 1145; Union Bridge Co. v United States, 204 **US** 364, 51 L ed 523, 27 S Ct 367; Wayman v Southard, 10 Wheat (US) 1, 6 L ed 253; People ex rel. First Nat. Bank v **Brady**, 271 **Ill** 100, 110 NE 864; State v Normand, 76 **NH** 541, 85 A 899.

§§ 244, 246, infra.

Delegation by Congress of its essential legislative functions is precluded by the provisions of the Federal Constitution, Article 1, § 1, that all legislative powers granted to the federal government shall be vested in Congress, and of Article 1, § 8, ¶ 18, empowering Congress to make all laws which shall be necessary and proper for carrying into execution its general powers. Panama Ref. Co. v Ryan, 293 **US** 388, 79 L ed 446, 55 S Ct 241.

11. § 240, supra.

12. Selective Draft Law Cases (Arver v United States) 245 **US** 366, 62 L ed 352, 38 S Ct 159; Interstate Commerce Com. v Goodrich Transit Co. 224 **US** 194, 56 L ed 729, 32 S Ct 436; Kansas Gas & E. Co. v Independence (CA10) 79 **F**2d 32, 100 ALR 1479; Hurst v Warner, 102 **Mich** 238, 60 NW 440.

Annotation: 79 L ed 484.

Generally, as to application to Congress of the rule of nondelegability, see § 241, supra.

13. Alexandria v Alexandria Fire Fighters Asso. 220 **La** 754, 57 So 2d 673; Motsinger v Perryman, 218 **NC** 15, 9 SE2d 511.

14. Peters v Frye, 71 **Ariz** 30, 223 P2d 176; Ray v Parker, 15 **Cal** 2d 275, 101 P2d 665; Jersey Maid Milk Products Co. v Brock, 13 **Cal** 2d 620, 91 P2d 577; People ex rel. Lindstrand v Emmerson, 333 **Ill** 606, 165 NE 217, 62 ALR 912; Chicago v Marriotto, 332 **Ill** 44, 163 NE 369, 60 ALR 501; Campbell v Commonwealth, 229 **Ky** 264, 17 SW2d 227, 63 ALR 932; State ex rel. Orr v Kearns, 304 **Mo** 685, 264 SW 775; State v Wells, F. & Co. 38 **Nev** 505, 150 P 836, affd 248 **US** 165, 63 L ed 190, 39 S Ct 62; Hatfield v New Mexico State Board of Registration, 60 **NM** 242, 290 P2d 1077; Livesay v De Armond, 131 **Or** 563, 284 P 166, 68 ALR 422; Dowling v Lancashire Ins. Co. 92 **Wis** 63, 65 NW 738.

Annotation: 79 L ed 484, 485.

15. Lee v Delmont, 228 **Minn** 101, 36 NW 2d 530.

The creation of offices and the assignment of their compensation is a legislative function, and the delegation of that function and the extent of its delegation must have clear expression or implication. Cochnower v United States, 248 **US** 405, 63 L ed 328, 39 S Ct 137.

when it shall take effect and as to whom it shall be applicable—and to determine the expediency of its enactment.[16]

There are many powers so far legislative that they may properly be exercised by the legislature, but which may nevertheless be delegated,[17] since the legislature may delegate any technically nonlegislative power which it may itself lawfully exercise.[18] It has been said that a constitutional power implies a power of delegation of authority under it sufficient to effect its purposes,[19] and that delegation of legislative power is necessary in order that the exertion of such power does not become a futility.[20] While a legislative body cannot abdicate its general lawmaking powers, it may authorize others to do things which it might properly do, but which it cannot conveniently or advantageously perform.[1]

The difficulty in determining what powers may or may not be delegated seems in part to be due to a confusion between such strictly legislative powers coming within the constitutional limitation and such other powers as, although at times exercised by the legislature, are not strictly legislative and may be exercised in proper cases by persons belonging to the other departments of government.[2] It has been stated that the power to make a law and the conferring of authority and discretion as to its execution, which authority is to be exercised under and in pursuance of the law, marks the true distinction between the powers which the legislature can, and those which it cannot, delegate.[3]

In those instances in which the legislature may delegate authority, it may place upon the authority so granted such restrictions and limitations as it chooses.

16. Lee v Delmont, 228 **Minn** 101, 36 NW 2d 530.

17. Hatfield v New Mexico State Board of Registration, 60 **NM** 242, 290 P2d 1077; Sabre v Rutland R. Co. 86 **Vt** 347, 85 A 693.

Where the legislature has authority to provide a governmental regulation and the organic law does not prescribe the manner of adopting or providing it, and the nature of the regulation does not require that it be afforded by direct legislative act, such regulation may be provided either directly by the legislature or indirectly by the legislative use of any appropriate instrumentality where no provision or principle of organic law is thereby violated. Jacksonville v Bowden, 67 **Fla** 181, 64 So 769.

Legislative power often has been delegated, with full court approval, and it is not necessary to disguise such action in form of expression or words which have no verity. Commonwealth v Associated Industries of Kentucky (**Ky**) 370 SW2d 584.

18. Hatfield v New Mexico State Board of Registration, 60 **NM** 242, 290 P2d 1077.

Annotation: 79 L ed 484, 485.

19. Lichter v United States, 334 **US** 742, 92 L ed 1694, 68 S Ct 1294, reh den 335 **US** 836, 837, 93 L ed 389, 69 S Ct 11.

20. Sunshine Anthracite Coal Co. v Adkins, 310 **US** 381, 84 L ed 1263, 60 S Ct 907.

1. People ex rel. Curren v Schommer, 392 **Ill** 17, 63 NE2d 744, 167 ALR 1347; McDougall v Lueder, 389 **Ill** 141, 58 NE2d 899, 156 ALR 1059; Hatfield v New Mexico State Board of Registration, 60 **NM** 242, 290 P2d 1077; Dickerson v Commonwealth, 181 **Va** 313, 24 SE2d 550.

Annotation: 79 L ed 484, 485.

Congress does not abdicate its functions or unduly delegate power when it describes what job must be done, who must do it, and what is the scope of his authority; in our complex economy that is frequently the only way in which the legislative process can go forward. Bowles v Willingham, 321 **US** 503, 88 L ed 892, 64 S Ct 641.

The vesting of some legislative power in other bodies so that the government may function in a world that progressively is becoming more complex involves nothing wrong, so long as the delegating authority retains the right to revoke the power. Commonwealth v Associated Industries of Kentucky (**Ky**) 370 SW2d 584.

The legislature may delegate to other departments of the government some of the powers which it may rightfully exercise. Bailey v State Board of Public Affairs, 194 **Okla** 495, 153 P2d 235.

2. Dowling v Lancashire Ins. Co. 92 **Wis** 63, 65 NW 738.

Annotation: 79 L ed 484, 485.

3. McDougall v Lueder, 389 **Ill** 141, 58 NE 2d 899, 156 ALR 1059.

Congress may commit something to the discretion of the other departments in respect to legislation enacted by it. Union Bridge Co. v United States, 204 **US** 364, 51 L ed 523, 27 S Ct 367; Wayman v Southard, 10 Wheat (**US**) 1, 6 L ed 253.

The legislature, although it may not dele-

compasses freedom to remain silent, it has been said that there is justification for the view that the two freedoms are separate, and that freedom to remain silent is a freedom of privacy, different in characteristics and governed by different considerations from the constitutionally protected freedom of speech.[19] It has been pointed out that the public policy which supports freedom of speech is that the safety of democratic government lies in open discussion, while the public interest in privacy is premised upon the individual's right to the pursuit of happiness.[20]

§ 352. Freedom of legislative debate; parliamentary freedom.

In some of the states provisions are contained in the Bills of Rights specially guaranteeing the freedom of deliberation, speech, and debate in legislative assemblies.[1] The privileges of members of the British Parliament of having their debates unquestioned, although it was at first denied by the Crown and its exercise was often attended by actual punishment, became in the course of time generally conceded; and even though speeches made in Parliament by a member are to the prejudice of any other person, or calumnious, or hazardous to the public peace, that member must enjoy complete immunity. In the United States this principle is universally recognized, and a speech or debate in either house of the national or of any state legislature cannot be the foundation of any accusation or prosecution, action, or complaint in any court or place whatsoever.[2] Constitutional provisions securing freedom of debate should be construed liberally, so that their full design may be answered. They should be extended to every act resulting from the nature of the member's office, and done in the execution of it, and should exempt him from a liability for everything said or done by him as a representative, whether according to the rules of the house or not; such freedom is particularly the privilege of the individual members rather than of the house as an organized body, and being derived from the will of the people, the individual members are entitled to this privilege, even against the will of the house.[3]

3. Right to Assemble Peaceably and to Petition Government; Right of Free Association

§ 353. Generally.

The First Amendment to the Federal Constitution provides that Congress shall make no law abridging the right of the people peaceably to assemble and to petition the government for a redress of grievances.[4] Although the First Amendment itself is merely a limitation against federal abridgment of the right,[5] the express guaranty that the right shall not be abridged by Congress does not argue exclusion of abridgment of the power by the states. The due process clause of the Fourteenth Amendment prevents any denial of the right

19. Barsky v United States, 83 App DC 127, 167 F2d 241, cert den 334 US 843, 92 L ed 1767, 68 S Ct 1511, reh den 339 US 971, 94 L ed 1379, 70 S Ct 1001.

20. Barsky v United States, supra.

1. Coffin v Coffin, 4 Mass 1.

2. Kilbourn v Thompson, 103 US 168, 26 L ed 377.

3. Coffin v Coffin, 4 Mass 1.

4. De Jonge v Oregon, 299 US 353, 81 L ed 278, 57 S Ct 255; United States v Cruikshank, 92 US 542, 23 L ed 588; Spriggs v Clark, 45 Wyo 62, 14 P2d 667, 83 ALR 1364.

Practice Aids.—Allegation as to unconstitutionality in denial of right of assembly. 6 Am Jur Pl & Pr Forms 6:316.

5. Presser v Illinois, 116 US 252, 29 L ed 615, 6 S Ct 580; United States v Cruikshank, 92 US 542, 23 L ed 588; Spriggs v Clark, 45 Wyo 62, 14 P2d 667, 83 ALR 1364.

by the states.[6] Morcover, in the Bills of Rights of many of the states are also found provisions asserting the right of the people to assemble and to consult together for the common good and to petition the government for redress of grievances.[7] Freedom of association is included in the bundle of First Amendment rights made applicable to the states by the due process clause of the Fourteenth Amendment.[8] It is an inseparable aspect of the liberty assured by the due process clause.[9]

§ 354. Nature of right.

The right of the people so to assemble for the purpose of petitioning Congress for a redress of grievances or for anything else connected with the powers or the duties of the National Government is an attribute of national citizenship,[10] and thus a right and privilege secured to citizens of the United States by the Constitution.[11] It is a right cognate to those of free speech and free press and is equally fundamental.[12]

6. Hague v CIO, 307 US 496, 83 L ed 1423, 59 S Ct 954; Herndon v Lowry, 301 US 242, 81 L ed 1066, 57 S Ct 732; De Jonge v Oregon, 299 US 353, 81 L ed 278, 57 S Ct 255.

The due process clause of the Fourteenth Amendment makes applicable to states freedom of speech and freedom of press guaranteed by the First Amendment, as well as the right of peaceable assembly without which speech would be unduly trammeled. Palko v Connecticut, 302 US 319, 82 L ed 288, 58 S Ct 149.

7. Britton v Election Comrs. 129 Cal 337, 61 P 1115; State v Sinchuk, 96 Conn 605, 115 A 33, 20 ALR 1515; Thomas v Indianapolis, 195 Ind 440, 145 NE 550, 35 ALR 1194; Yancey v Commonwealth, 135 Ky 207, 122 SW 123; Commonwealth v Surridge, 265 Mass 425, 164 NE 480, 62 ALR 402; Wheelock v Lowell, 196 Mass 220, 81 NE 977; State v Junkin, 85 Neb 1, 122 NW 473; State v Butterworth, 104 NJL 579, 142 A 57, 58 ALR 744; Spayd v Ringing Rock Lodge, 270 Pa 67, 113 A 70, 14 ALR 1443; McKee v Hughes, 133 Tenn 455, 181 SW 930; Love v Wilcox, 119 Tex 256, 28 SW2d 515, 70 ALR 1484; State ex rel. La Follette v Kohler, 200 Wis 518, 228 NW 895, 69 ALR 348; Re Stolen, 193 Wis 602, 214 NW 379, 216 NW 127, 55 ALR 1355; State ex rel. Van Alstine v Frear, 142 Wis 320, 125 NW 961; Spriggs v Clark, 45 Wyo 62, 14 P2d 667, 83 ALR 1364.

8. Louisiana ex rel. Gremillion v NAACP, 366 US 293, 6 L ed 2d 301, 81 S Ct 1333; Bates v Little Rock, 361 US 516, 4 L ed 2d 480, 80 S Ct 412.

9. Gibson v Florida Legislative Investigation Committee, 372 US 539, 9 L ed 2d 929, 83 S Ct 889.

10. Maxwell v Dow, 176 US 581, 44 L ed 597, 20 S Ct 448, 494; Presser v Illinois, 116 US 252, 29 L ed 615, 6 S Ct 580; United States v Cruikshank, 92 US 542, 28 L ed 588; Slaughter-House Cases, 16 Wall (US) 36, 21 L ed 394; Spriggs v Clark, 45 Wyo 62, 14 P2d 667, 83 ALR 1364.

It is of course apparent that the purpose of the assembly should have some proper reference to the National Government. Twining v New Jersey, 211 US 78, 53 L ed 97, 29 S Ct 14.

There is some modicum of freedom of thought, speech, and assembly which all citizens of the Republic may exercise throughout its length and breadth, which no state, nor all together, nor the nation itself, can prohibit, restrain, or impede. Thomas v Collins, 323 US 516, 89 L ed 430, 65 S Ct 315, reh den 323 US 819, 89 L ed 650, 65 S Ct 557.

11. Maxwell v Dow, 176 US 581, 44 L ed 597, 20 S Ct 448, 494; Re Quarles, 158 US 532, 39 L ed 1080, 15 S Ct 959; Slaughter-House Cases, 16 Wall (US) 36, 21 L ed 394.

All citizens have the constitutional right to peaceably assemble and organize for any purpose, to speak freely, and to present their views and desires to any public officer or legislative body. Springfield v Clouse, 356 Mo 1239, 206 SW2d 539.

An expression of opinion by the electors of a state upon the question whether a provision of the Federal Constitution shall be repealed is an exercise of the right to petition guaranteed by the Federal Constitution. Spriggs v Clark, 45 Wyo 62, 14 P2d 767, 83 ALR 1364.

12. De Jonge v Oregon, 299 US 353, 81 L ed 278, 57 S Ct 255; State ex rel. La Follette v Kohler, 200 Wis 518, 228 NW 895, 69 ALR 348.

It was not by accident or coincidence that the rights to freedom of speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances, all these being, though not identical, inseparable. Thomas v Collins, 323 US 516, 89 L ed 430, 65 S Ct 315, reh den 323 US 819, 89 L ed 650, 65 S Ct 557.

"The principles governing the right of assembly and the right of free speech are the

The Constitution does not confer the right of assembly, but guarantees its free exercise.[13] Indeed, the right of the people peaceably to assemble for lawful purposes existed long before the adoption of the Constitution of the United States. It is and always has been one of the attributes of citizenship under a free government, and is found wherever civilization exists.[14] The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation with respect to public affairs and to petition for a redress of grievances.[15]

The right of assembly guaranteed in the Federal Constitution to the people is not restricted to the literal right of meeting together "to petition the government for a redress of grievances."[16] And the grievances for redress of which the right of petition was insured, and with it the right of assembly, are not solely religious or political ones.[17] The guaranty must be given the most liberal and comprehensive construction, although it must be enjoyed in a peaceable and law-abiding manner.[18] The right of free association is closely allied to freedom of speech and, like free speech, lies at the foundation of a free society.[19] The Constitution protects free association without regard to the race, creed, or political or religious affiliation of the members of the group which invokes its shield.[20] Freedom of association for the purpose of advancing ideas and airing grievances is constitutionally protected not only against heavy-handed frontal attack, but also from being stifled by more subtle government inter-

same." State v Diamond, 27 NM 477, 202 P 988, 20 ALR 1527.

13. Spriggs v Clark, 45 Wyo 62, 14 P2d 667, 83 ALR 1364.

14. United States v Cruikshank, 92 US 542, 23 L ed 588; Neelley v Farr, 61 Colo 485, 158 P 458; Spayd v Ringing Rock Lodge, 270 Pa 67, 113 A 70, 14 ALR 1443; Re Stolen, 193 Wis 602, 214 NW 379, 216 NW 127, 55 ALR 1355; Spriggs v Clark, 45 Wyo 62, 14 P2d 667, 83 ALR 1364.

"The right of the people to meet in public places to discuss in open and public manner all questions affecting their substantial welfare, and to vent their grievances, to protest against oppression, economic or otherwise, and to petition for the amelioration of their condition, and to discuss the ways and means of attaining that end, were rights confirmed and guaranteed them by the Magna Charta Petition of Right, and the Bill of Rights, the mainstay of the British Constitution, and the bases of both our Federal and State Constitutions. Of course, it goes without saying this inestimable boon of liberty was to be enjoyed by the people in a peaceful and law-abiding manner." State v Butterworth, 104 NJL 579, 142 A 57, 58 ALR 744.

15. De Jonge v Oregon, 299 US 353, 81 L ed 278, 57 S Ct 255; United States v Cruikshank, 92 US 542, 23 L ed 588; Neelley v Farr, 61 Colo 485, 158 P 458; Spriggs v Clark, 45 Wyo 62, 14 P2d 667, 83 ALR 1364.

It is one of the fundamental principles of the American system of government that the people have the right to discuss their government without fear of being called to account in the courts for their expressions of opinion. Chicago v Tribune Co. 307 Ill 595, 139 NE 86, 28 ALR 1368.

Organization by citizens is a method of the democratic way of life and most helpful to the proper functioning of our representative form of government; it should be safeguarded and encouraged as a means for citizens to discuss their problems together and to bring them to the attention of public officers and legislative bodies. Springfield v Clouse, 356 Mo 1239, 206 SW2d 539.

16. American Federation of Labor v Reilly, 113 Colo 90, 155 P2d 145, 160 ALR 873.

17. Thomas v Collins, 323 US 516, 89 L ed 430, 65 S Ct 315, reh den 323 US 819, 89 L ed 650, 65 S Ct 557.

It has been held that individuals have a right, protected by the constitutional guaranty of freedom of speech and press and of the right of peaceable assembly, to organize into parties and even into pressure groups for the purpose of advancing causes in which they believe, and as incident thereto have a right to engage in printing and circulating their views and in advocating their cause in public assemblies and over the radio. Bowe v Secretary of Commonwealth, 320 Mass 230, 69 NE 2d 115, 167 ALR 1447.

18. Lair v State (Okla Crim) 316 P2d 225, 71 ALR2d 856.

19. Shelton v Tucker, 364 US 479, 5 L ed 2d 231, 81 S Ct 247.

20. NAACP v Button, 371 US 415, 9 L ed 2d 405, 83 S Ct 328.

ference.[1] By limiting the power of the states to interfere with freedom of association, the Fourteenth Amendment protects all persons, no matter what their calling; however, in the case of teachers, inhibition of freedom of thought, and of action upon thought, brings these safeguards vividly into operation.[2] The right to free association may be infringed, even though unintentionally, by many forms of governmental action.[3]

Peaceable assembly for lawful discussion cannot be made a crime,[4] and neither state nor federal officers—whether executive, legislative, or judicial—may assume the power to deny or curtail the right of the people to petition the government.[5] And in a jurisdiction in which the question has been actually presented for determination, the court has taken the position that the right cannot be lawfully infringed by individuals, even momentarily, any more than by the state itself.[6]

§ 355. Limitations.

The right to assemble freely and the right to petition[7] are not unlimited rights.[8] Similarly, freedom of association, as protected by the First and Fourteenth Amendments, is not an "absolute," not only in the undoubted sense that

1. Bates v Little Rock, 361 US 516, 4 L ed 2d 480, 80 S Ct 412.

A state-compelled disclosure of affiliation with groups engaged in advocacy may constitute an effective restraint on the freedom of association which the due process clause of the Fourteenth Amendment protects; inviolability of privacy in group association may in many circumstances be indispensable to preservation of the freedom of association, particularly where it espouses dissident beliefs. Bates v Little Rock, supra; NAACP v Alabama, 357 US 449, 2 L ed 2d 1488, 78 S Ct 1163.

A conviction of violating an occupation license tax ordinance by refusing a demand to furnish city officials with a list of names of the members of a local branch of the National Association for the Advancement of Colored People cannot stand under the due process clause of the Fourteenth Amendment where the municipality has failed to demonstrate a controlling justification for the deterrence of free association which compulsory disclosure of the membership list would cause. Bates v Little Rock, 361 US 516, 4 L ed 2d 480, 80 S Ct 412.

The right of free association bars the state from requiring an organization for the advancement of colored people to disclose the name and address of each resident of a state who has made donations to the organization. N.A.A.C.P. Legal Defense & Educational Fund v Committee on Offenses Against the Administration of Justice, 204 Va 693, 133 SE 2d 540.

2. Shelton v Tucker, 364 US 479, 5 L ed 2d 231, 81 S Ct 247.

3. NAACP v Alabama, 357 US 449, 2 L ed 2d 1488, 78 S Ct 1163.

4. Thomas v Collins, 323 US 516, 89 L ed 430, 65 S Ct 315, reh den 323 US 819, 89 L ed 650, 65 S Ct 557.

The holding of meetings for peaceable political action cannot be proscribed. Those who assist in the conduct of such meetings cannot be branded as criminals on that score. The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects. De Jonge v Oregon, 299 US 353, 81 L ed 278, 57 S Ct 255.

Citizens have a right, in a peaceable manner, to assemble together for their common good, to instruct their representatives, and to apply to those invested with the powers of government for redress of grievances, and other proper purposes, by address or remonstrance. McKee v Hughes, 133 Tenn 455, 181 SW 930.

5. Spriggs v Clark, 45 Wyo 62, 14 P2d 667, 83 ALR 1364.

6. Spayd v Ringing Rock Lodge, 270 Pa 67, 113 A 70, 14 ALR 1443, holding that the constitutional right to petition those invested with the powers of government, being conferred to work out the public welfare rather than to serve private ends, can be neither denied by others nor surrendered by the citizen himself, and that accordingly, a corporation bylaw which punishes with expulsion involving forfeiture of property rights an exercise of the right to petition is void. Annotation: 14 ALR 1446.

7. McKee v Hughes, 133 Tenn 455, 181 SW 930.

8. The right to petition, like all other constitutional rights, is subject to reasonable regulations to preserve and protect the general welfare. § 302, supra.

where the constitutional protection exists it must prevail, but also in the sense that the scope of that protection must be gathered solely from a literal reading of the First Amendment;[9] a state government's interest of self-preservation outweighs tenuous individual rights in associational privacy.[10]

The right of petition, natural and inherent though it is, has never been invoked to shatter the standards of propriety entertained for the conduct of courts. Throughout the many centuries that the right of petition has been recognized, it has never been considered that a court may be properly approached by a petition to make a specific disposition of a cause pending before it.[11] The right of petition is no more sacred than the right of free speech, and as there may be an abuse of the right of free speech, so may there be an abuse of the right of petition.[12] And the freedom of assembly is dependent upon the power of constitutional government to survive.[13] However, the power of the state to abridge freedom of assembly is the exception rather than the rule. It must find justification in a reasonable apprehension of danger to organized government; the limitation upon individual liberty must have appropriate relation to the safety of the state.[14]

9. Konigsberg v State Bar of California, 366 US 36, 6 L ed 2d 105, 81 S Ct 997.

10. Uphaus v Wyman, 360 US 72, 3 L ed 2d 1090, 79 S Ct 1040, later app 364 US 388, 5 L ed 2d 148, 81 S Ct 153.

11. Re Stolen, 193 Wis 602, 214 NW 379, 216 NW 127, 55 ALR 1355, holding that while the state constitution protects and preserves the right of petition, it is the right as it was known and exercised at the time of the adoption of the constitution; that right never included the right to attempt to influence the decision of a court through the medium of a petition.

12. Re Stolen, supra.

The right of petition cannot be used as a basis for a defense to an action for damages if the petition submitted under the right is groundless, instigated only by malice, with intention to injure some person. McKee v Hughes, 133 Tenn 455, 181 SW 930 (recognizing rule, but holding no malice existed).

The right may be abused by using assembly in order to incite to violence and crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The right itself must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional right of free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government. De Jonge v Oregon, 299 US 353, 81 L ed 278, 57 S Ct 255.

13. American Communications Asso., CIO v Douds, 339 US 382, 94 L ed 925, 70 S Ct 674, reh den 339 US 990, 94 L ed 1391, 70 S Ct 1017.

An ordinance requiring every municipal employee to execute an affidavit stating whether or not he is or ever was a member of the Communist Party is not invalid as depriving the employee of freedom of speech and assembly and of the right to petition for redress of grievances. Garner v Board of Public Works, 341 US 716, 95 L ed 1317, 71 S Ct 909, reh den 342 US 843, 96 L ed 637, 72 S Ct 21.

14. Herndon v Lowry, 301 US 242, 81 L ed 1066, 57 S Ct 732.

For state action to be constitutionally supportable notwithstanding that it has an admittedly deterrent effect upon the free exercise of citizens of their constitutionally protected right of association, the interest of the state must be compelling. NAACP v Alabama, 357 US 449, 2 L ed 2d 1488, 78 S Ct 1163, holding that a state does not demonstrate an interest in obtaining the names of the membership within the state of the NAACP sufficient to justify the deterrent effect which the disclosure of names of members will have upon the free exercise by the members of their constitutionally protected right of association where (1) the disclosure is sought in connection with ouster proceedings which the state has instituted against the association; (2) the issues in the ouster proceedings are whether the character of the association and its activities within the state are such as to make it subject to the statute requiring registration of foreign corporations, and whether the extent of the association's activities without qualifying suggest its permanent ouster; and (3) the association, in the ouster proceedings, admits its presence and conduct of activities in the state and offers to comply in all respects with the state registration statute, although preserving its contention that the statute does not apply to it, and complies satisfactorily with the production order, except

Whenever the constitutional freedom of association is asserted against the exercise of valid governmental powers a reconciliation must be effected, requiring an appropriate weighing of the respective interests involved.[15] Thus, an angry public opinion, and the evils which it may spawn, are relevant considerations in adjudging, in light of the totality of relevant considerations, the validity of legislation which, in effecting disclosure, may thereby entail some restraints on association, although the existence of an ugly public temper does not, as such and without more, incapacitate government to require publicity demanded by rational interests high in the scale of national concern.[16] While the First Amendment in some circumstances protects an individual from being compelled to disclose his associational relationships, the protections of the First Amendment, unlike a proper claim of the privilege against self-incrimination under the Fifth Amendment, do not afford a witness the right to resist inquiry in all circumstances; where First Amendment rights are asserted to bar governmental interrogation, resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown.[17]

4. Life, Liberty, and Pursuit of Happiness

a. In General

§ 356. Generally.

The theory upon which the political institutions and social structure of America rest is that all men have certain rights of life, liberty, and the pursuit of happiness, which are inalienable,[18] fundamental,[19] and inherent.[20]

for the membership list, by furnishing the state's attorney general with varied business records, its charter and statement of purposes, the names of all of its directors and officers, and the total number of members within the state and the amount of their dues.

However reprehensible a legislature may regard certain connections or affiliations, it cannot forbid them if they present no clear and present danger that they will bring about substantive evils that the legislature has a right to prevent. Danskin v San Diego Unified School Dist. 28 Cal 2d 536, 171 P2d 885.

15. Konigsberg v State Bar of California, 366 US 36, 6 L ed 2d 105, 81 S Ct 997.

16. Communist Party v Subversive Activities Control Board, 367 US 1, 6 L ed 2d 625, 81 S Ct 1357.

17. Barenblatt v United States, 360 US 109, 3 L ed 2d 1115, 79 S Ct 1081.

18. Cummings v Missouri, 4 Wall (US) 277, 18 L ed 356; Lawrence E. Tierney Coal Co. v Smith (Lawrence E. Tierney Coal Co. v Kash) 180 Ky 815, 203 SW 731, 4 ALR 1540; Cameron v International Alliance, T. S. E. 118 NJ Eq 11, 176 A 692, 97 ALR 594; Byers v Sun Sav. Bank, 41 Okla 728, 139 P 948; Dennis v Moses, 18 Wash 537, 52 P 333.

The surrender of a fundamental right is not within the power of an individual if the public interest is thereby prejudiced. Cameron v International Alliance, T. S. E. 118 NJ Eq 11, 176 A 692, 97 ALR 594.

19. Lawrence E. Tierney Coal Co. v Smith (Lawrence E. Tierney Coal Co. v Kash) 180 Ky 815, 203 SW 731, 4 ALR 1540; Carter v Craig, 77 NH 200, 90 A 598; Cameron v International Alliance, T. S. E. 118 NJ Eq 11, 176 A 692, 97 ALR 594.

20. Dennis v Moses, 18 Wash 537, 52 P 333; Ekern v McGovern, 154 Wis 157, 142 NW 595.

Government would not be free if the rights of personal liberty and private property were not held sacred. Wilkinson v Leland, 2 Pet (US) 627, 7 L ed 542; Lawrence E. Tierney Coal Co. v Smith (Lawrence E. Tierney Coal Co. v Kash) 180 Ky 815, 203 SW 731, 4 ALR 1548.

Only on a recognition of the existence of certain inherent rights can free institutions be maintained. Butchers Union S. H. & L. S. L. Co. v Crescent City L. S. L. & S. H. Co. 111 US 746, 28 L ed 585, 4 S Ct 652.

The entire social and political structure of America rests upon the cornerstone that all men have certain rights which are inherent and inalienable, and among these are the right to be protected in life, liberty, and the pursuit of happiness; the right to acquire, possess, and enjoy property; the right to establish a home and family relations—all under equal and impartial laws which govern the whole com-

In the protection of these basic rights all persons are equal before the law.[1] It has been said that these rights are before and higher than any constitutional sanction,[2] although it has been pointed out that in a practical aspect the only rights an individual has—or for that matter ever had—are the rights secured to him by law, and that therefore the rights to life, liberty, and property which the people had in mind when they adopted the Constitution were those secured to them by existing laws.[3]

A constitutional guaranty of the enjoyment of life, liberty, and property carries with it all that effectuates and renders complete the unrestrained enjoyment of that guaranty.[4] And it has been said that the rights to life, liberty, property, and the equal protection of the law are so related that the deprivation of any one of those separate and independent rights may lessen or extinguish the value of the other three.[5]

The Fourteenth Amendment recognizes liberty and property as coexistent and debars the states from any unwarranted interference with either.[6]

§ 357. Meaning of "life, liberty, and property."

The words "life, liberty, and property" as used in constitutions are representative terms and are intended to cover every right to which a member of the body politic is entitled under the law.[7] These terms include the right of self-defense, freedom of speech, religious and political freedom, exemption from arbitrary arrests, the right freely to buy and sell as others may,[8] the right to labor, to contract, to terminate contracts,[9] to acquire property,[10] and the right to all our liberties, personal, civil, and political—in short, all that makes life worth living.[11]

munity and each member thereof. Thiede v Scandia Valley, 217 Minn 218, 14 NW2d 400.

1. Cummings v Missouri, 4 Wall (US) 277, 18 L ed 356.

2. Dennis v Moses, 18 Wash 537, 52 P 333.
As to "natural" rights, see § 330, supra.

3. Carter v Craig, 77 NH 200, 90 A 598.

4. Gillespie v People, 188 Ill 176, 58 NE 1007; State v Julow, 129 Mo 163, 31 SW 781.

5. Smith v Texas, 233 US 630, 58 L ed 1129, 34 S Ct 681.

6. Coppage v Kansas, 236 US 1, 59 L ed 441, 35 S Ct 240; New Orleans v Miller, 142 La 163, 76 So 596.

7. Gillespie v People, 188 Ill 176, 58 NE 1007; McKinster v Sager, 163 Ind 671, 72 NE 854; Re Flukes, 157 Mo 125, 57 SW 545; People v King, 110 NY 418, 18 NE 245.

The enjoyment of life, liberty, and property, and the right to pursue happiness, embrace all the comforts and pleasures which man's physical, intellectual, and moral nature is capable of acquiring, by the application and exercise of the various faculties with which he is endowed, and all that the world can afford him. Lawrence E. Tierney Coal Co. v Smith (Lawrence E. Tierney Coal Co. v Kash) 180 Ky 815, 203 SW 731, 4 ALR 1540, permitting a guardian to grant leases for mining coal from his ward's land, to extend beyond the minority of his ward, violates the constitutional right of the latter to pursue happiness.

The enjoyment of private reputation unassailed is a right entitled to the protection of the law and of the constitution as much as are the rights to the possession of life, liberty, or property. Harris v Nashville Trust Co. 128 Tenn 573, 162 SW 584.

Among the most fundamental of personal rights is the right of personal security, including the preservation of a man's health from such practices as may prejudice or annoy it. Tomlinson v Armour & Co. 75 NJL 748, 70 A 314.

8. Gillespie v People, 188 Ill 176, 58 NE 1007; Coffeyville Vitrified Brick & Tile Co. v Perry, 69 Kan 297, 76 P 848; Re Flukes, 157 Mo 125, 57 SW 545; State v Julow, 129 Mo 163, 31 SW 781; State v Loomis, 115 Mo 307, 22 SW 350; Wright v Hart, 182 NY 330, 75 NE 404.

9. Gillespie v People, 188 Ill 176, 58 NE 1007.

10. Booth v People, 186 Ill 43, 57 NE 798; Republic Iron & Steel Co. v State, 160 Ind 379, 66 NE 1005; Wright v Hart, 182 NY 330, 75 NE 404.

11. Re Flukes, 157 Mo 125, 57 SW 545.

b. LIBERTY

§ 358. Generally.

It is a fundamental guaranty of American constitutional government that no person shall be deprived of his liberty without due process of law.[12] The liberty thus guaranteed is a very broad and extensive concept. Judicial interpretation has given to this word, as so used, its most comprehensive signification; it has been said to embrace every form and phase of individual right that is not necessarily taken away by some valid law for the common good.[13] In each of its phases it has its history and connotations.[14] The guaranty of due process protects the liberty of the individual. The cardinal precept upon which the constitutional safeguards of personal liberty ultimately rest is that a government should be one of law.[15] Although the liberty protected by the Fourteenth Amendment consists mainly of the vital rights of a citizen as asserted at common law when the Constitution was adopted,[16] it is settled that the "liberty" safeguarded by the due process clause includes protection from violation for any of the fundamental conceptions of justice which lie at the base of our civil and political institutions. This concept of liberty contained in the Fourteenth Amendment is constantly enveloping the protection of more and more fundamental rights.[17]

Although the rule is well settled that a corporation is, generally speaking, a person within the meaning of the due process clause of the amendment,[18] it is equally well settled that the liberty guaranteed under this amendment against deprivation without due process of law is a liberty of natural, and not artificial, persons.[19]

§ 359. Elements.

The right to liberty guaranteed by a constitution includes the right to exist and the right to the enjoyment of life while existing, and is invaded not only by a deprivation of life, but also by a deprivation of those things which are necessary to the enjoyment of life according to the nature, temperament, and lawful desires of the individual.[20] Moreover, the principles that embody the

12. US Const Fifth and Fourteenth Amendments. Virtually all state constitutions contain similar guaranties. § 542, infra.

Every person is guaranteed the right of enjoying and defending life and liberty. Shavers v Duval County (Fla) 73 So 2d 684.

13. Wright v Hart, 182 NY 330, 75 NE 404.

The word "liberty," as used in the Constitution of the United States and the several states, means the right to do such acts as one may judge best for his interest, not inconsistent with the rights of others. Ex parte Drexel, 147 Cal 763, 82 P 429.

14. West Coast Hotel Co. v Parish, 300 US 379, 81 L ed 703, 57 S Ct 578, 108 ALR 1330.

15. Jones v Securities & Exch. Com. 298 US 1, 80 L ed 1015, 56 S Ct 654.

16. Sinclair v State, 161 Miss 142, 132 So 581, 74 ALR 241.

17. § 335, supra.

The due process clause of the Fourteenth Amendment protects an area of personal liberty not yet wholly delimited. Perez v Lipold, 32 Cal 2d 711, 198 P2d 17.

18. CORPORATIONS (1st ed § 10).

19. Western Turf Asso. v Greenberg, 204 US 359, 51 L ed 520, 27 S Ct 384; Northwestern Nat. L. Ins. Co. v Riggs, 203 US 243, 51 L ed 168, 27 S Ct 126.

20. Pavesich v New England Mut. L. Ins. Co. 122 Ga 190, 50 SE 68, in which the court said that personal liberty includes the right "to be let alone" to determine one's mode of life—whether it shall be a life of publicity or of privacy—and to order one's life and manage one's affairs in a manner that may be most agreeable to him, so long as he does not violate the rights of others or of the public.

It is not consonant with due process to require a person to swear to a fact that he cannot be expected to know, or alternatively to refrain from a wholly lawful activity. Louisiana ex rel. Gremillion v NAACP, 366 US 293, 6 L ed 2d 301, 81 S Ct 1333.

essence of constitutional liberty and security forbid all invasions, on the part of the government and its employees, of the sanctity of a man's home and the privacies of his life.[21]

Liberty consists partially of the right to be free from arbitrary personal restraint or servitude.[1] In this sense it consists largely of freedom from arbitrary physical restraint.[2] Certain services, however, may be demanded of the individual by society without unconstitutionally depriving him of liberty. He may be required to do certain labors or to furnish a substitute to see that they are done.[3]

The term "liberty," as used in the Constitution, is not dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to be free in the enjoyment of the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare.[4] Where there is a significant encroachment upon personal liberty, the state may prevail only upon showing a subordinating interest which is compelling.[5]

Constitutionally protected liberty includes the right to worship God according to the dictates of one's own conscience,[6] and the right to acquire useful knowledge, to marry, to establish a home and bring up children, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.[7]

21. Interstate Commerce Com. v Brimson, 154 US 447, 38 L ed 1047, 14 S Ct 1125, later report 155 US 3, 39 L ed 49, 15 S Ct 19.

As to the right of privacy, see PRIVACY.

1. Smith v Texas, 233 US 630, 58 L ed 1129, 34 S Ct 681; Watertown v Christnacht, 39 SD 290, 164 NW 62; Block v Schwartz, 27 Utah 387, 76 P 22.

2. Moyers v Memphis, 135 Tenn 263, 186 SW 105; Ex parte Hudgins, 86 W Va 526, 103 SE 327, 9 ALR 1361.

3. Butler v Perry, 240 US 328, 60 L ed 672, 36 S Ct 258. See Henley v State, 98 Tenn 665, 41 SW 352, 1104.

4. Grosjean v American Press Co. 297 US 233, 80 L ed 660, 56 S Ct 444; Pierce v Society of Sisters, 268 US 510, 69 L ed 1070, 45 S Ct 571, 39 ALR 468; Meyer v Nebraska, 262 US 390, 67 L ed 1042, 43 S Ct 625, 29 ALR 1446; Adams v Tanner, 244 US 590, 61 L ed 1336, 37 S Ct 662; Hall v Geiger-Jones Co. 242 US 539, 61 L ed 480, 37 S Ct 217; Toney v State, 141 Ala 120, 37 So 332; Pavesich v New England Mut. L. Ins. Co. 122 Ga 190, 50 SE 68; Hyatt v Blackwell Lumber Co. 31 Idaho 452, 173 P 1083, 1 ALR 1663; Mt. Vernon v Julian, 369 Ill 447, 17 NE2d 52, 119 ALR 747; McKinster v Sager, 163 Ind 671, 72 NE 854; State v Old Tavern Farm, 133 Me 468, 180 A 473, 101 ALR 810; Sinquefield v Valentine, 159 Miss 144, 132 So 81, 76 ALR 238; State v Armstead, 103 Miss 790, 60 So 778; Re Boyce, 27 Nev 299, 75 P 1; Frank L. Fisher Co. v Woods, 187 NY 90, 79 NE 836; Wright v Hart, 182 NY 330, 75 NE 404; People v Gillson, 109 NY 389, 17 NE 343; State v Ballance, 229 NC 764, 51 SE2d 731, 7 ALR2d 407; Celina & M. County Tel. Co. v Union-Center Mut. Tel. Asso. 102 Ohio St 487, 133 NE 540, 21 ALR 1145; Hibbard v State, 65 Ohio St 574, 64 NE 109; Crouch v Central Labor Council, 134 Or 612, 293 P 729, 83 ALR 193; State v Dalton, 22 RI 77, 46 A 234; Ex parte Tillman, 84 SC 552, 66 SE 1049; Moyers v Memphis, 135 Tenn 263, 186 SW 105; Block v Schwartz, 27 Utah 387, 76 P 22; Moore v Sutton, 185 Va 481, 39 SE2d 348; Ex parte Hudgins, 86 W Va 526, 103 SE 327, 9 ALR 1361; State v Goodwill, 33 W Va 179, 10 SE 285.

"Liberty" includes the right, among others, to entertain the belief and to teach the doctrine that war, training for war, and military training are immoral, wrong, and contrary to the precepts of Christianity. Hamilton v University of California, 293 US 245, 79 L ed 343, 55 S Ct 197, reh den 293 US 633, 79 L ed 717, 55 S Ct 345, holding that the enforcement of an order of the board of regents of a state university prescribing instruction in military science and tactics as a required course does not unconstitutionally deprive any person of liberty without due process of law in violation of the Fourteenth Amendment to the Federal Constitution.

5. Bates v Little Rock, 361 US 516, 4 L ed 2d 480, 80 S Ct 412.

6. §§ 336 et seq., supra.

7. Pierce v Society of Sisters, 268 US 510, 69 L ed 1070, 45 S Ct 571, 39 ALR 468; Meyer v Nebraska, 262 US 390, 67 L ed 1042, 43 S Ct 625, 29 ALR 1446; Sinquefield v Valentine, 159 Miss 144, 132 So 81, 76 ALR 238.

The term "liberty" as used in the Four-

Personal liberty largely consists of the right of locomotion—to go where and when one pleases—only so far restrained as the rights of others may make it necessary for the welfare of all other citizens.[8] Under this constitutional guaranty one may, therefore, under normal conditions, travel at his inclination along the public highways or in public places, and while conducting himself in an orderly and decent manner, neither interfering with nor disturbing another's rights, he will be protected, not only in his person, but in his safe conduct.[9] Personal liberty also includes the right of the citizen to be free to use his faculties in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or vocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out these purposes to a successful conclusion.[10]

teenth Amendment denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home, and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. State v Williams, 253 NC 337, 117 SE 2d 444, 92 ALR2d 513.

8. Williams v Fears, 179 US 270, 45 L ed 186, 21 S Ct 128; Pinkerton v Verberg, 78 Mich 573, 44 NW 579; Watertown v Christnacht, 39 SD 290, 164 NW 62.

Even though one may not have a constitutional right to be in a certain place, the government may not prohibit one from going there unless by means consonant with due process of law. Cafeteria & Restaurant Workers Union v McElroy, 367 US 886, 6 L ed 2d 1230, 81 S Ct 1743.

Freedom to travel is an important aspect of the citizen's "liberty," of which the citizen cannot be deprived without due process of law under the Fifth Amendment. Kent v Dulles, 357 US 116, 2 L ed 2d 1204, 78 S Ct 1113.

The weight of authority is opposed to the recognition of any restrictions on the personal liberty or movements of any members of the community, even if they are such as are commonly termed immoral persons. Milliken v Weatherford, 54 Tex 388.

The Uniform Act to Secure Attendance of Out-of-State Witnesses does not violate the privileges and immunities clauses of Article 4, § 2, clause 1, of the Federal Constitution and of the Fourteenth Amendment, by unduly restricting a citizen's right to ingress and egress. New York v O'Neill, 359 US 1, 3 L ed 2d 585, 79 S Ct 564.

9. Pinkerton v Verberg, 78 Mich 573, 44 NW 579. See St. Louis v Gloner, 210 Mo 502, 109 SW 30 (loitering on the street).

The right of a citizen to travel upon the public highways and to transport his property thereon, by horse-drawn carriage, wagon, or automobile, is not a mere privilege which may be permitted or prohibited at will, but a common right which he has under his right to life, liberty, and the pursuit of happiness. Slusher Safety Coach Transit Co. 229 Ky 731, 17 SW2d 1012, 66 ALR 1378; Teche Lines, Inc. v Danforth, 195 Miss 226, 12 So 2d 784; Thompson v Smith, 155 Va 367, 154 SE 579, 71 ALR 604. See HIGHWAYS, STREETS, AND BRIDGES (1st ed § 163).

10. See the following decisions, representative of the vast amount of supporting authority: Adams v Tanner, 244 US 590, 61 L ed 1336, 37 S Ct 662; Smith v Texas, 233 US 630, 58 L ed 1129, 34 S Ct 681; Chicago, B. & Q. R. Co. v McGuire, 219 US 549, 55 L ed 328, 31 S Ct 259; Muller v Oregon, 208 US 412, 52 L ed 551, 28 S Ct 324; Northwestern Nat. L. Ins. Co. v Riggs, 203 US 243, 51 L ed 168, 27 S Ct 126; Toney v State, 141 Ala 120, 37 So 332; Arkansas Stave Co. v State, 94 Ark 27, 125 SW 1001; Ex parte Drexel, 147 Cal 763, 82 P 429; Re Morgan, 26 Colo 415, 58 P 1071; Brown v Jacobs' Pharmacy Co. 115 Ga 429, 41 SE 553; Hyatt v Blackwell Lumber Co. 31 Idaho 452, 173 P 1083, 1 ALR 1663; People v Steele, 231 Ill 340, 83 NE 236; O'Brien v People, 216 Ill 354, 75 NE 108; Mathews v People, 202 Ill 389, 67 NE 28; Republic Iron & Steel Co. v State, 160 Ind 379, 66 NE 1005; Russell v Pittsburgh, C. C. & St. L. R. Co. 157 Ind 305, 61 NE 678; State v Wilson, 101 Kan 789, 168 P 679; State v Haun, 61 Kan 146, 59 P 340; Rawles v Jenkins, 212 Ky 287, 279 SW 350; State ex rel. Galle v New Orleans, 113 La 371, 36 So 999; Opinion of Justices, 271 Mass 582, 171 NE 294, 69 ALR 388; Opinion of Justices, 267 Mass 607, 166 NE 401, 63 ALR 838; State v Fairmont Creamery Co. 162 Minn 146, 202 NW 714, 42 ALR 548; State v Armstead, 103 Miss 790, 60 So 778; State v Loomis, 115 Mo 307, 22 SW 350; Hall v State, 100 Neb 84, 158 NW 362; Marymont v Nevada State Bkg. Bd. 33 Nev 333, 111 P 295; Re Boyce, 27 Nev 299, 75 P 1; Ives v South Buffalo R. Co. 201 NY 271, 94 NE 431; People v Metz, 193 NY 148, 85 NE 1070; Frank L. Fisher Co. v Woods, 187 NY 90, 79 NE 836; State v Moore, 113 NC 697, 18 SE 342; Crouch v Central Labor Council, 134 Or 612, 293 P 729, 83 ALR 193; Prata Undertaking Co. v State Bd. of Embalming, 55 RI 454, 182 A 808, 104 ALR 389; O'Neil v Providence Amusement Co. 42 RI 479, 108 A

Within the meaning of the term "liberty" is also included the right to buy and sell,[11] to select freely such tradesmen as the citizen himself may desire to patronize,[12] to manufacture,[13] to acquire property,[14] to live in a community,[15] to have a free and open market, the right of free speech, of self-defense against unlawful violence,[16] and, in general, the opportunity to do those things which are ordinarily done by free men.[17]

The guaranty of "liberty" assured by the due process clause of the Fourteenth Amendment, which embraces freedom of speech, encompasses protection of privacy of association in organizations such as the National Association for the Advancement of Colored People.[18]

§ 360. Limitations.

In spite of the broad scope of the fundamental right of liberty and the jealous protection by the Constitution of the rights of the individual,[19] liberty is not a right which is uncontrollable[20] or which is absolute under all circumstances and conditions.[1] It is liberty in a social organization,[2] and when one becomes

887, 8 ALR 1590; Ex parte Tillman, 84 SC 552, 66 SE 1049; McCullough v Brown, 41 SC 220, 19 SE 458, ovrld on another point State ex rel. George v Aiken, 42 SC 222, 20 SE 221; State v Scougal, 3 SD 55, 51 NW 858; Harbison v Knoxville Iron Co. 103 Tenn 421, 53 SW 955; State v Holtgreve, 58 Utah 563, 200 P 894, 26 ALR 696; State v International Paper Co. 96 Vt 506, 120 A 900, 32 ALR 632; Moore v Sutton, 185 Va 481, 39 SE2d 348; State v Clausen, 65 Wash 156, 117 P 1101; Ex parte Hudgins, 86 W Va 526, 103 SE 327, 9 ALR 1361; State v Goodwill, 33 W Va 179, 10 SE 285; State v Kreutzberg, 114 Wis 530, 90 NW 1098.

The right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the "liberty" and "property" concepts of the Fifth Amendment. Greene v McElroy, 360 US 474, 3 L ed 2d 1377, 79 S Ct 1400.

Liberty, in the constitutional meaning, includes absence of arbitrary and unreasonable restraint upon an individual in the conduct of his business and the use and enjoyment of property. Blauvelt v Beck, 162 Neb 576, 76 NW2d 738.

As to the right to a livelihood or vocation, see § 371, infra. As to the right to contract, see § 373, infra.

11. § 357, supra.

12. New Method Laundry Co. v McCann, 174 Cal 26, 161 P 990.

13. New Orleans v Toca, 141 La 551, 75 So 238.

14. Republic Iron & Steel Co. v State, 160 Ind 379, 66 NE 1005.

15. New Orleans v Miller, 142 La 163, 76 So 596, in which the court said that each person in a community has the essential right to live there in such place as he may choose, provided he lives there in conformity with the laws of the land and does not engage in any occupation in his domicil which is prohibited by law.

16. State v Missouri Tie & Timber Co. 181 Mo 536, 80 SW 933; State v Loomis, 115 Mo 307, 22 SW 350.

As to free speech, see §§ 341 et seq., supra.

17. State v Kreutzberg, 114 Wis 530, 90 NW 1098.

The word "liberty" as used in a state constitution means more than freedom from restraint, and more than merely the right to go where one chooses; it means the right to do such acts as one may judge best for his interests, not inconsistent with the equal rights of others. Moore v Sutton, 185 Va 481, 39 SE2d 348.

18. Gibson v Florida Legislative Investigation Committee, 372 US 539, 9 L ed 2d 929, 83 S Ct 889.

19. State v Brown, 37 Wash 97, 79 P 635.

20. West Coast Hotel Co. v Parrish, 300 US 379, 81 L ed 703, 57 S Ct 578, 108 ALR 1330.

1. West Coast Hotel Co. v Parrish, supra; Jacobson v Massachusetts, 197 US 11, 49 L ed 643, 25 S Ct 358; Sheppard v Dowling, 127 Ala 1, 28 So 791; Shavers v Duval County (Fla) 73 So 2d 684; Lindsay v Lindsay, 257 Ill 328, 100 NE 892; Wight v Baltimore & O. R. Co. 146 Md 66, 125 A 881, 37 ALR 864; State v Loomis, 115 Mo 307, 22 SW 350; Cameron v International Alliance, T. S. E. 118 NJ Eq 11, 176 A 692, 97 ALR 594; People v Lochner, 177 NY 145, 69 NE 373, revd on other grounds 198 US 45, 49 L ed 937, 25 S Ct 539; State v Sopher, 25 Utah 318, 71 P 482; State Bd. of Health v St. Johnsbury, 82 Vt 276, 73 A 581.

Individual liberty secured by the Federal Constitution does not import an absolute right in each person to be at all times and under all circumstances wholly freed from restraint. Cameron v International Alliance, T. S. E. 118 NJ Eq 11, 176 A 692, 97 ALR 594.

a member of society, he necessarily parts with some privileges which, as an individual not affected by his relations to others, he might retain.[3] It has been said that society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy,[4] and that the liberty of one individual must necessarily be subject to the same right in all others.[5] Hence, liberty does not signify unrestrained license to follow the dictates of an unbridled will.[6] Individuals may be deprived of life or liberty as punishment for crime.[7] And one who is prevented from injuring another cannot justly assert that he has himself been deprived of any right.[8]

Constitutional liberty is always a relative term and, at most, means liberty regulated by just and impartial laws;[9] in other words, such liberty is natural liberty so far restrained by human laws as is necessary and expedient for the general advantage of the public.[10] It implies the absence of arbitrary restraint,[11] and not immunity from reasonable regulations and prohibitions imposed

2. West Coast Hotel Co. v Parrish, 300 US 379, 81 L ed 703, 57 S Ct 578, 108 ALR 1330.

So far as persons are concerned, it is civil, not natural, liberty of which a person may not be deprived without due process of law. Bryant v Brown, 151 Miss 398, 118 So 184, 60 ALR 1325.

3. Munn v Illinois, 94 US 113, 24 L ed 77; Shavers v Duval County (Fla) 73 So 2d 684.

"Sir W. Blackstone says that every man, when he enters into society, gives up a part of his natural liberty, as the price of so valuable a purchase as the acquisition of social and municipal relations. Mr. Jefferson denied this doctrine, because he was of opinion that no man had a natural right to commit aggression on the equal rights of another, and that every man was under the natural duty of contributing to the necessities of society, and that no man had the natural right to be the judge between himself and another, but was bound to submit to the umpirage of an impartial third. This contrariety of opinion between Judge Blackstone and the American statesman is rather apparent than real, for Blackstone's definition of natural rights is far more comprehensive than Mr. Jefferson's. The former supposes 'natural liberty to consist properly in a power of acting as one thinks fit, without any restraint or control unless by the law of nature.' If this law of nature, as Mr. Jefferson thinks, comprehends those restrictions which 'the equal rights of others'—the duty of contributing to the necessities of society, and submitting to the decision of impartial judges, in disputes between individuals—would imply, there is no essential difference between the opinions alluded to." Snyder v Warford, 11 Mo 513.

4. Jacobson v Massachusetts, 197 US 11, 49 L ed 643, 25 S Ct 358; Shavers v Duval County (Fla) 73 So 2d 684; State v Durein, 70 Kan 1, 78 P 152, affd 208 US 613, 52 L ed 645, 28 S Ct 567; State Bd. of Health v St. Johnsbury, 82 Vt 276, 73 A 581.

5. Shavers v Duval County (Fla) 73 So 2d 684; Downs v Swann, 111 Md 53, 73 A 653; Hathorn v Natural Carbonic Gas Co. 194 NY 326, 87 NE 504; State v Brown, 37 Wash 97, 79 P 635; State v Kreutzberg, 114 Wis 530, 90 NW 1098.

6. Crowley v Christensen, 137 US 86, 34 L ed 620, 11 S Ct 13; Shavers v Duval County (Fla) 73 So 2d 684; State v Gurry, 121 Md 534, 88 A 546; Downs v Swann, 111 Md 53, 73 A 653; Commonwealth v Karvonen, 219 Mass 30, 106 NE 556; Commonwealth v Libbey, 216 Mass 356, 103 NE 923; State Bd. of Health v Greenville, 86 Ohio St 1, 98 NE 1019.

The due process provisions of the Fifth and Fourteenth Amendments are not a guaranty of untrammeled freedom of action and of contract. Virginian R. Co. v System Federation, R. E. D. 300 US 515, 81 L ed 789, 57 S Ct 592.

7. Johnson v Jones, 44 Ill 142; Mack v State, 203 Ind 355, 180 NE 279, 83 ALR 1349; State v Kreutzberg, 114 Wis 530, 90 NW 1098.

8. Porter v Ritch, 70 Conn 235, 39 A 169; Shavers v Duvall County (Fla) 73 So 2d 684.

Orderly preservation of human life and safety is a primary purpose of constitutional government, in order that guaranteed human liberties may be fully enjoyed, and it is not contemplated by the constitution that the exercise of such guaranteed liberties shall jeopardize human life or safety. Stephens v Stickel, 146 Fla 104, 200 So 396.

9. Hyman v Boldrick, 153 Ky 77, 154 SW 369; Downs v Swann, 111 Md 53, 73 A 653; Commonwealth v Karvonen, 219 Mass 30, 106 NE 556; Butte v Paltrovich, 30 Mont 18, 75 P 521.

10. Shavers v Duvall County (Fla) 73 So 2d 684; Lindsay v Lindsay, 257 Ill 328, 100 NE 892; Bryant v Brown, 151 Miss 398, 118 So 184, 60 ALR 1325; Dennis v Moses, 18 Wash 537, 52 P 333.

11. National City Bank v Del Sordo, 16 NJ 530, 109 A2d 631.

in the interests of the community.[12] A statute does not deprive a citizen of his liberty in the constitutional sense simply because it imposes burdens, abridges freedom of action, regulates occupations, or subjects individuals to restraints in matters which affect public interests or the rights of others.[13]

Application of the broad restraints of due process compels inquiry into the nature of the demand being made upon individual freedom in a particular context and the justification of social need on which the demand rests.[14] When it is said that the liberty of the citizen includes freedom to use his faculties "in all lawful ways" and to earn his living by any "lawful" calling, the inquiry remains whether the particular calling or the particular way brought in question in a given case is lawful, that is, whether it is consistent with such rules of action as have been rightfully prescribed by the state.[15] Liberty does not imply the right of one man so to use his property as to endanger the property of others.[16]

5. Property

a. In General

§ 361. Generally.

The Fifth Amendment to the Federal Constitution prevents the federal government or its agencies from depriving any person of his property without due process of law. The Fourteenth Amendment to the Federal Constitution, and all the various state constitutions, prevent any action by a state which would accomplish such deprivation. As it is commonly stated, an

12. West Coast Hotel Co. v Parrish, 300 US 379, 81 L ed 703, 57 S Ct 578, 108 ALR 1330; Hardware Dealers Mut. F. Ins. Co. v Glidden Co. 284 US 151, 76 L ed 214, 52 S Ct 69; Chicago, B. & Q. R. Co. v McGuire, 219 US 549, 55 L ed 328, 31 S Ct 259; McLean v Arkansas, 211 US 539, 53 L ed 315, 29 S Ct 206; Halter v Nebraska, 205 US 34, 51 L ed 696, 27 S Ct 419; Frazer v Shelton, 320 Ill 253, 150 NE 696, 43 ALR 1086; Hyman v Boldrick, 153 Ky 77, 154 SW 369; State v Old Tavern Farm, 133 Me 468, 180 A 473, 101 ALR 810; State v Gurry, 121 Md 534, 88 A 546; Commonwealth v Karvonen, 219 Mass 30, 106 NE 556; Commonwealth v Libbey, 216 Mass 356, 103 NE 923; Bryant v Brown, 151 Miss 398, 118 So 184, 60 ALR 1325; Nelson v Tilley, 137 Neb 327, 289 NW 388, 126 ALR 729; State v Henry, 37 NM 536, 25 P2d 204, 90 ALR 805; Re People (Title & Mortg. Guarantee Co.) 264 NY 69, 190 NE 153, 96 ALR 297; State v Mountain Timber Co. 75 Wash 581, 135 P 645, affd 243 US 219, 61 L ed 685, 37 S Ct 260; State ex rel. Webster v Superior Ct. 67 Wash 37, 120 P 861; State ex rel. Davis-Smith Co. v Clausen, 65 Wash 156, 117 P 1101. See Moyer v Peabody, 212 US 78, 53 L ed 410, 29 S Ct 235.

"In every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great danger, be subject to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand."

Jacobson v Massachusetts, 197 US 11, 49 L ed 643, 25 S Ct 358.

As to liberty and the police power, see §§ 287 et seq., supra.

13. People v Budd, 117 NY 1, 22 NE 670, 682, affd 143 US 517, 36 L ed 247, 12 S Ct 468.

No constitutional right of liberty is infringed by forbidding the carrying of a red flag in a parade. Commonwealth v Karvonen, 219 Mass 30, 106 NE 556.

14. Frank v Maryland, 359 US 360, 3 L ed 2d 877, 79 S Ct 804.

15. Booth v Illinois, 184 US 425, 46 L ed 623, 22 S Ct 425.

16. Jamieson v Indiana Natural Gas & Oil Co. 128 Ind 555, 28 NE 76; Snyder v Warford, 11 Mo 513.

Under present methods of living, public necessity requires that the citizen be deprived of much of the freedom of use of his property that formerly seemed to inhere in its ownership. Cincinnati v Vester (CA6) 33 F2d 242, 68 ALR 831, affd 281 US 439, 74 L ed 950, 50 S Ct 360.

Freedom in the use of one's property cannot be employed to the injury of the other fellow. Setzer v Mayo, 150 Fla 734, 9 So 2d 280.

As to regulation of the use of property under the police power, see §§ 290 et seq., supra.

owner of property cannot be deprived thereof without due process.[17] Whether there has been due process in a proceeding affecting property interests must be determined by taking into account the purposes of the procedure and its effect upon the rights asserted, and all of the circumstances which may render the proceeding appropriate to the nature of the case.[18] The nature of the particular case must be considered:[19] if there has been such an exercise of power as the settled maxims of law permit and sanction and under such safeguards for the protection of individual rights as those maxims prescribe for the classes to which the one in question belongs, it is due process.[20]

In some jurisdictions, the courts have held that the clause in the Declaration of Rights which prohibits the taking of private property without just compensation applies only to a taking in the exercise of eminent domain. The general rule, however, gives the guaranty a much broader scope.[1]

There is an important distinction between liberty and property with respect to the protection included in the Fourteenth Amendment, as far as the persons who may invoke the constitutional guaranties of due process are concerned; for although corporations cannot invoke the "liberty" concept for their own protection, since they are not natural persons,[2] they are fully entitled to the protection of the due process clause in their property or their property rights.[3]

The guaranty of due process as it relates to property rights raises two questions: First, what is property,[4] and, second, what is a deprivation.[5] Abstractly, these questions are distinct. In the cases, however, it is very difficult to determine whether the decision turned upon the "property" question or upon the "deprivation" question. The questions arise in a variety of situations, many of which are treated in specific titles in this work. The reader should supple-

17. Buchanan v Warley, 245 US 60, 62 L ed 149, 38 S Ct 16; Ochoa v Hernandez y Morales, 230 US 139, 57 L ed 1427, 33 S Ct 1033; Western U. Teleg. Co. v Davenport, 97 US 369, 24 L ed 1047; Tippecanoe County v Lucas, 93 US 108, 23 L ed 822; Rees v Watertown, 19 Wall (US) 107, 22 L ed 72; Miller v Horton, 152 Mass 540, 26 NE 100; Rassner v Federal Collateral Soc. 299 Mich 206, 300 NW 45; Ives v Edison, 124 Mich 402, 83 NW 120; Hill v Woodward, 100 Miss 879, 57 So 294; Farnow v Department 1 of Eighth Judicial Dist. Court, 64 Nev 109, 178 P2d 371; Wicks v Monihan, 130 NY 232, 29 NE 139; Hutchinson v Hutchinson, 126 Or 519, 270 P 484, 62 ALR 660; McClain v Williams, 11 SD 227, 76 NW 930.

The taking of private property for private use by authority of the state is a violation of the due process clause of the Fourteenth Amendment. Riden v Philadelphia, B. & W. R. Co. 182 Md 336, 35 A2d 99.

Property cannot be taken for a debt unless the debt has been created with the knowledge and consent of the debtor. Anderson v Great Northern R. Co. 25 Idaho 433, 138 P 127.

18. Anderson Nat. Bank v Luckett, 321 US 233, 88 L ed 692, 64 S Ct 599, 151 ALR 824.

Generally, as to the procedural aspect of due process of law, see §§ 548 and 560 et seq., infra.

19. The question whether property is taken without due process of law largely depends upon the nature of the particular case. Leigh v Green, 193 US 79, 48 L ed 623, 24 S Ct 390.

And see § 572, infra.

20. Leigh v Green, supra.

As to fundamental principles of due process, see §§ 542 et seq., infra.

1. State ex rel. Davis v Stuart, 97 Fla 69, 120 So 335, 64 ALR 1307.

2. § 358, supra.

3. Pierce v Society of Sisters, 268 US 510, 69 L ed 1070, 45 S Ct 571, 39 ALR 468.

"Appellees are corporations, and therefore it is said they cannot claim for themselves the liberty which the Fourteenth Amendment guarantees. Accepted in the proper sense, this is true. . . . But they have business and property for which they claim protection. . . . And this court has gone very far to protect against loss [threatened by legislation which results in action destroying such rights]." Pierce v Society of Sisters, supra.

4. §§ 364, 365, infra.

5. § 367, infra.

ment the study of this article by the study of the specific article within which his question falls.[6]

§ 362. Nature of right guaranteed.

The right of property is a fundamental,[7] natural,[8] inherent,[9] and inalienable right.[10] It is not ex gratia from the legislature, but ex debito from the Constitution.[11] In fact, it does not owe its origin to the constitutions which protect it, for it existed before them.[12] It is sometimes characterized judicially as a sacred right,[13] the protection of which is one of the most important objects of government.[14]

§ 363. — Limitations.

The constitutionally protected right of property is not an absolute right.[15] The right is subject to such reasonable restraints and regulations established by law as the legislature, under governing and controlling power vested in it by the constitution, may think necessary and expedient.[16] Thus, it is subject

6. See such topics as HEALTH; LANDLORD AND TENANT; PUBLIC UTILITIES; SPECIAL OR LOCAL ASSESSMENTS; TAXATION; ZONING AND PLANNING.

7. Arkansas Stave Co. v State, 94 **Ark** 27, 125 SW 1001; State ex rel. Davis v Stuart, 97 **Fla** 69, 120 So 335, 64 ALR 1307; Schiller Piano Co. v Illinois Northern Utilities Co. 288 **Ill** 580, 123 NE 631, 11 ALR 454; Lawrence E. Tierney Coal Co. v Smith (Lawrence E. Tierney Coal Co. v Kash) 180 **Ky** 815, 203 SW 731, 4 ALR 1540; Stone v Jefferson, 317 **Mo** 1, 293 SW 780, 52 ALR 879; Herlihy v Donohue, 52 **Mont** 601, 161 P 164; Atchison & N. R. Co. v Baty, 6 **Neb** 37, ovrld on another point in Graham v Kibble, 9 **Neb** 182, 2 NW 455; Marymont v Nevada State Bkg. Bd. 33 **Nev** 333, 111 P 295; Ex parte Boyce, 27 **Nev** 299, 75 P 1; Re Jacobs, 98 **NY** 98; Stratton v Morris, 89 **Tenn** 497, 15 SW 87; Spann v Dallas, 111 **Tex** 350, 235 SW 513, 19 ALR 1387.

The right to own and enjoy property is an essential in our conception of freedom. Newland v Child, 73 **Idaho** 530, 254 P2d 1066.

8. Vanhorne v Dorrance (CC) 2 Dall 304, 1 L ed 391, F Cas No. 16,857; Spann v Dallas, 111 **Tex** 350, 235 SW 513, 19 ALR 1387.

Every person is guaranteed the right of acquiring and protecting property. Shavers v Duval County (**Fla**) 73 So 2d 684.

9. Vanhorne v Dorrance (CC) 2 Dall 304, 1 L ed 391, F Cas No. 16,857.

10. Vanhorne v Dorrance, supra; Cason v Florida Power Co. 74 **Fla** 1, 76 So 535; Newland v Child, 73 **Idaho** 530, 254 P2d 1066.

11. Vanhorne v Dorrance (CC) 2 Dall 304, 1 L ed 391, F Cas No. 16,857.

12. Newland v Child, 73 **Idaho** 530, 254 P2d 1066; Fitzhugh v Jackson, 132 **Miss** 585, 97 So 190, 33 ALR 279; Spann v Dallas, 111 **Tex** 350, 235 SW 513, 19 ALR 1387.

The right of acquiring, possessing, and protecting property is as old as Magna Charta, lies at the foundation of our constitutional government, and is necessary to the existence of civil liberty and free institutions. Miller v McKenna, 23 **Cal** 2d 774, 147 P2d 531.

"The ancient and established maxims of Anglo-Saxon law which protect the fundamental rights in the use, enjoyment, and disposal of private property are but the outgrowth of the long and arduous experience of mankind. They embody a painful, tragic history—the record of the struggle against tyranny, the overseership of prefects, and the overlordship of kings and nobles, when nothing so well bespoke the serfdom of the subject as his incapability to own property. They proclaim the freedom of men from those odious despotisms, their liberty to earn and possess their own, to deal with it, to use it and dispose of it, not at the behest of a master, but in the manner that befits free men." Spann v Dallas, 111 **Tex** 350, 235 SW 513, 19 ALR 1387.

13. Wilkinson v Leland, 2 Pet (US) 627, 7 L ed 542; Replogle v Little Rock, 166 **Ark** 617, 267 SW 353, 36 ALR 1333; State ex rel. Davis v Stuart, 97 **Fla** 69, 120 So 335, 64 ALR 1307; Moale v Baltimore, 5 **Md** 314; Fitzhugh v Jackson, 132 **Miss** 585, 97 So 190, 33 ALR 279; Taylor v Porter, 4 Hill (**NY**) 140.

All property is equally sacred in the view of the constitution. Eidge v Bessemer, 164 **Ala** 599, 51 So 246.

14. Schiller Piano Co. v Illinois Northern Utilities Co. 288 **Ill** 580, 123 NE 631, 11 ALR 454; Watson v Mississippi River Power Co. 174 **Iowa** 23, 156 NW 188; Third Nat. Bank v Divine Grocery Co. 97 **Tenn** 603, 37 SW 390.

15. Shavers v Duval County (**Fla**) 73 So 2d 684; State v Langley, 53 **Wyo** 332, 84 P2d 767.

16. Cady v Detroit, 289 **Mich** 499, 286 NW

to limitation by reason and by means of legitimate exercises of the state's police power.[17]

The right to own and enjoy property is no higher in the constitutional sense than the right of liberty.[18] And all property is held under the implied obligation that the use of it shall not be injurious to the community.[19]

§ 364. What is property, generally.

The word "property" in the Fourteenth Amendment embraces all valuable interests which a man may possess outside of himself—outside of his life and liberty.[20] It is more than the mere thing which a person owns; it includes the right to acquire, use, and dispose of it, and the Constitution, in the Fourteenth Amendment, protects these essential attributes.[1] The right of property has been also defined as the right to acquire, possess, and enjoy particular things and objects in any way consistent with the equal rights of others and the just exactions and demands of the state.[2]

The owner of property cannot be deprived of the increment of the property or the increment of proceeds into which the property has been converted.[3] The right protected is an attribute of property existing through the application of common-law principles.[4]

§ 365. — Types of property.

To constitute a violation of the provision against depriving any person of his property without due process of law, it should appear that such person has a property in the particular thing of which he is alleged to have been deprived.[5] The types of property rights which are protected by the guaranty of due process are varied.[6] The guaranty refers to the right to acquire and

805, app dismd 309 US 620, 84 L ed 984, 60 S Ct 470.

Curative statutes affecting rights in real property have been sustained. Downs v Blount (CA5) 170 F 15, cert den 226 US 609, 57 L ed 380, 33 S Ct 216; Eckles v Wood, 143 Ky 451, 136 SW 907.

And see § 367, infra.

As to when destruction of property is constitutionally permissible, see §§ 368 et seq., infra.

17. §§ 290 et seq., supra.

18. Shavers v Duval County (Fla) 73 So 2d 684.

19. Mugler v Kansas, 123 US 623, 31 L ed 205, 8 S Ct 273; Jordan v Gaines, 136 Me 291, 8 A2d 585.

20. Campbell v Holt, 115 US 620, 29 L ed 483, 6 S Ct 209 (per Bradley, J., dissenting).

1. Terrace v Thompson, 263 US 197, 68 L ed 255, 44 S Ct 15; Buchanan v Warley, 245 US 60, 62 L ed 149, 38 S Ct 16; Hall v Geiger-Jones Co. 242 US 539, 61 L ed 480, 37 S Ct 217; State Street Furniture Co. v Armour, 345 Ill 160, 177 NE 702, 76 ALR 1298; Bailey v People, 190 Ill 28, 60 NE 98; Fitzhugh v Jackson, 132 Miss 585, 97 So 190, 33 ALR 279; Heller v Lutz, 254 Mo 704, 164 SW 123; Spann v Dallas, 111 Tex 350, 235 SW 513, 19 ALR 1387.

And see § 366, infra.

2. Ives v South Buffalo R. Co. 201 NY 271, 94 NE 431; Bertholf v O'Reilly, 74 NY 509; Waters v Wolf, 162 Pa 153, 29 A 646.

Judicial interpretation has given the word "property," as used in the constitutions, its most comprehensive signification, so that it embraces every form and phase of individual right that is not necessarily taken away by some valid law for the public good. Wright v Hart, 182 NY 330, 75 NE 404.

3. Henkels v Sutherland, 271 US 298, 70 L ed 953, 46 S Ct 524, 51 ALR 229.

4. Ladner v Siegel, 298 Pa 487, 148 A 699, 68 ALR 1172.

5. New Orleans v New Orleans Water-Works Co. 142 US 79, 35 L ed 943, 12 S Ct 142.

The Constitution does not guarantee to any man the right of acquiring property in anything that is not the subject of private property by law or the right of disposing of property that has not been duly acquired under the law of the land. McCarter v Hudson County Water Co. 70 NJ Eq 695, 65 A 489.

6. The property of a private eleemosynary corporation, although charged with the main-

possess the absolute and unqualified title to every species of property recognized by law, with all the rights incidental thereto.[7] It relates not only to those tangible things of which one may be the owner, but to everything which he may have of an exchangeable value.[8] No question arises over the more common forms of real[9] and personal[10] property. It is when the question

tenance of a college or other "public charity," is private property, within the meaning and protection of that clause of Ohio Const Art 1, § 19, which declares that "private property shall ever be held inviolate." State ex rel. White v Neff, 52 Ohio St 375, 40 NE 720.

7. Ex parte Quarg, 149 Cal 79, 84 P 766; Herlihy v Donohue, 52 Mont 601, 161 P 164; Hall v State, 100 Neb 84, 158 NW 362.

§ 366, infra.

8. Board of Education v Blodgett, 155 Ill 441, 40 NE 1025; Harbison v Knoxville Iron Co. 103 Tenn 421, 53 SW 955, affd 183 US 13, 46 L ed 55, 22 S Ct 1.

9. One of the most common illustrations of the taking of property is an interference with rights in real property. Jacobsen v Superior Ct. 192 Cal 319, 219 P 986, 29 ALR 1399.

Enrollment for the purposes of Indian allotments of land concerns property rights and cannot be taken away without notice and an opportunity to be heard. Duncan Townsite Co. v Lane, 245 US 308, 62 L ed 309, 38 S Ct 99; United States ex rel. Turner v Fisher, 222 US 204, 56 L ed 165, 32 S Ct 37.

A fund arising from royalties under an oil and gas lease of lands of an Indian allottee is his individual property and as such within the protective guaranties of the Constitution. Mott v United States, 283 US 747, 75 L ed 1385, 51 S Ct 642.

A lessee's rights under a lease are property. Todd v Board of Educational Lands & Funds, 154 Neb 606, 48 NW2d 706.

A wharf built by riparian owners under the permission and license of the state is property which cannot be destroyed or its value impaired and the exclusive use of which the owner can only be deprived of in accordance with established law. Weems S. B. Co. v People's S. B. Co. 214 US 345, 53 L ed 1024, 29 S Ct 661; Lewis v Portland, 25 Or 133, 35 P 256.

Legislation which, directly or indirectly, without regard to his possession, divests of his land an owner holding a fee simple title of record by cutting down his ownership to a mere right of action which will be lost unless asserted by him in an action brought within a prescribed period of time, effects a deprivation of property without due process of law. Murrison v Fenstermacher, 166 Kan 568, 203 P2d 160, 7 ALR2d 1360, holding that a statute which provides that a deed executed by the person platting a town or addition, where both plat and deed have been on record for more than 25 years prior to the effective date of the act, shall be conclusively presumed to have conveyed perfect title, save in actions brought within a year of the effective date of the statute, the effect of which may be to divest the owner of a record fee simple title of such title and to transfer it to another without regard to the possession and occupancy of the owner unless within the time prescribed he brings action to assert his title, is unconstitutional as working a deprivation of property without due process of law.

Judicial authorization of the entry by a water company upon land in private ownership to test by borings and wells its availability for the purposes of the corporation, without making compensation to the owner, unconstitutionally deprives the owner of his property without due process of law. Jacobsen v Superior Ct. 192 Cal 319, 219 P 986, 29 ALR 1399. Annotation: 56 ALR 287.

A statute declaring waters flowing in a natural channel public and subject to appropriation, so far as they are not being applied to a useful or beneficial purpose, or reasonably needed for such purpose, unconstitutionally deprives riparian owners of their property without due process of law. Fall River Valley Irrig. Dist. v Mt. Shasta Power Corp. 202 Cal 56, 259 P 444, 56 ALR 264. Annotation: 56 ALR 287.

The right of mortgagee who has foreclosed his mortgage and purchased at the foreclosure sale, to an unlimited time for obtaining a sheriff's deed, cannot be taken away by fixing a limitation. Bradley v Lightcap, 195 US 1, 49 L ed 65, 24 S Ct 748.

10. Valid contracts are property and as such are protected from being taken without just compensation, whether the obligor is a private individual, a municipality, a state, or the United States. Lynch v United States, 292 US 571, 78 L ed 1434, 54 S Ct 840.

The rights acquired by a municipal water supply company under a contract for the exclusive right to supply the municipality with water for a specified time, and for the purchase by the municipality of the system at a specified price at the termination of the period specified, are property within the protection of the Federal Constitution. Superior Water, Light & P. Co. v Superior, 263 US 125, 68 L ed 204, 44 S Ct 82.

A franchise is property. Frost v Corporation Com. 278 US 515, 73 L ed 483, 49 S Ct 235 (holding that the right to operate a cotton gin and collect tolls therefor under a statute declaring such business to be a public utility, to be permitted only in case of public necessity, is not a mere license, but is a franchise granted in consideration of the performance of public service, and constitutes

arises with respect to the less tangible forms of property that an inquiry as to what is property must be made.[11] It is a vested right which cannot be taken away except by due process of law.[12]

Certain privileges as to which a qualified right of property may be recognized are inherently subject to legislative regulation and no such vested right in them exists as will prevent the legislature from withdrawing such privileges from those who previously enjoyed them.[13] Accordingly the revocation of such

property within the protection of the Fourteenth Amendment to the Federal Constitution); Kansas Gas & E. Co. v Independence (CA10) 79 F2d 32, 100 ALR 1479; Ingersoll v Nassau Electric R. Co. 157 NY 453, 52 NE 545.

The right to charge and collect tolls for transportation is property. Atchison, T. & S. F. R. Co. v Campbell, 61 Kan 439, 59 P 1051.

The right to retain a lien until the debt secured thereby is paid is property. Security-First Nat. Bank v Rindge Land & Nav. Co. (CA9 Cal) 85 F2d 557, reh den 86 F2d 3, 107 ALR 1256, cert den 299 US 613, 81 L ed 452, 57 S Ct 315, reh den 300 US 686, 81 L ed 888, 57 S Ct 430. See also Louisville Joint Stock Land Bank v Radford, 295 US 555, 79 L ed 1593, 55 S Ct 854, 97 ALR 1106.

A vested right of action is property. § 424, infra.

Judgments and rights acquired thereby are property. § 379, infra.

Hides of cattle are property. State v Park, 42 Nev 386, 178 P 389, 3 ALR 75.

Intoxicating liquor is property. Ex parte Francis (State ex rel. Frances v Moran) 76 Fla 304, 79 So 753, 2 ALR 1068; State v Williams, 146 NC 618, 61 NE 61.

11. For example, the right of custody of a child, aside from the child's ability or inability to perform services, has been held not to be a right of property. Kenner v Kenner, 139 Tenn 211, 201 SW 779, LRA1918E 587. And see Purinton v Jamrock, 195 Mass 187, 80 NE 802, holding that parents have no right of property in their minor children of which they cannot be deprived without their consent.

12. Merritt v Ash Grove Lime & Portland Cement Co. 136 Neb 52, 285 NW 97; Crump v Guyer, 60 Okla 222, 157 P 321, 2 ALR 331.

The word "property" as used in the due process clause refers to vested rights, and there is no reference to mere concessions or privileges which may be bestowed or withheld at will. Senior Citizens League v Department of Social Secur. 38 Wash 2d 142, 228 P2d 478.

A right of property may become vested by a decision of the Land Department, of which the applicant cannot be deprived except upon proceedings directly therefor, and of which he has notice. Love v Flahive, 205 US 195, 51 L ed 768, 27 S Ct 486; Noble v Union River Logging R. Co. 147 US 165, 37 L ed 123, 13 S Ct 271.

A statute suspending the execution of a law for the relief of certain individuals before any vested right accrues under the law, the whole matter still remaining executory, does not deprive such persons of their property, without due process. United States ex rel. Levey v Stockslager, 129 US 470, 32 L ed 785, 9 S Ct 382.

A contestant of a pre-emption entry who has neither made an entry on the land nor perfected a right to do so has no vested right or interest therein of which he is deprived without due process by an act of Congress confirming the title of the original entryman. Emblem v Lincoln Land Co. 184 US 660, 46 L ed 736, 22 S Ct 523.

The mere incorporation of a company for the development of a water power described in its certificate of incorporation does not, where no property has been acquired or work or construction commenced, create a property right of which it cannot be deprived without compensation by the appropriation, under authority from the state, of the waters of a river for the purpose of a municipal water supply (Sears v Akron, 246 US 242, 62 L ed 688, 38 S Ct 245) or of land which it intends to use. Cuyahoga River Power Co. v Northern Ohio Traction & Light Co. 252 US 388, 64 L ed 626, 40 S Ct 404.

A charter provision for the election of the trustees of a charitable corporation does not confer a property right which the corporation cannot be deprived of without its consent, under the due process clause of the Federal Constitution. Re Mt. Sinai Hospital, 250 NY 103, 164 NE 871, 62 ALR 564, holding that mere members of a charitable corporation have no beneficial interest of their own to protect in exercising their voting power for the benefit of the corporation and are deprived of no vested interest by a statutory amendment of the charter depriving them of such right to vote by transferring the right to vote for the trustees from the members to the board itself.

As to vested rights of litigation, see §§ 424, 425, infra.

13. District of Columbia v R. P. Andrews Paper Co. 256 US 582, 65 L ed 1103, 41 S Ct 545; Tracy v Ginzberg, 205 US 170, 51 L ed 755, 27 S Ct 461; Doyle v Kahl, 242 Iowa 153, 46 NW2d 52.

The holder of a patent has no exclusive right of property in his invention, except under and by virtue of the statutes securing it to him, and a modification of the regulations and restrictions of such statutes is therefore not necessarily an impairment of his rights.

qualified rights does not amount to a deprivation of property without due process of law.[14]

§ 366. — Rights in relation to property.

The term "property" in its strict legal sense means the right of dominion or indefinite right of user and disposition which one may lawfully exercise over particular things or subjects.[15] It has even been so defined in a state constitution.[16] The general meaning assigned to the term in cases involving constitutional questions is similar in import.[17]

The rule is that an owner cannot be deprived of any of the essential attributes which belong to the right of property,[18] and that included within the right of property which is constitutionally protected are the right to acquire,[19] hold, enjoy,[20] possess,[1] manage,[2] insure,[3] and improve property,[4] and the right to devote property to any legitimate use.[5]

Dable Grain Shovel Co. v Flint, 137 US 41, 34 L ed 618, 11 S Ct 8.

14. State v Durein, 70 Kan 1, 78 P 152, affd 208 US 613, 52 L ed 645, 28 S Ct 567.

For a case so holding with respect to rights acquired under a preliminary proceeding for allotment of public lands, see United States v Rowell, 243 US 464, 61 L ed 848, 37 S Ct 425 (Indian reserve). And see United States v Jackson, 280 US 183, 74 L ed 361, 50 S Ct 143, in which the court ruled that until such right has become vested, it may be changed. Such a change may be effected by substituting state laws of descent and distribution for Indian laws. Sizemore v Brady, 235 US 441, 59 L ed 308, 35 S Ct 135.

15. See PROPERTY (1st ed § 2).

16. Winchester v Ring, 312 Ill 544, 144 NE 333, 36 ALR 520; Chicago v Wells, 236 Ill 129, 86 NE 197.

17. The term "property" within the due process provision includes every interest one may have in any and every thing that is the subject of ownership by man, together with the right to freely possess, enjoy, and dispose of the same. O'Connor v Moscow, 69 Idaho 37, 202 P2d 401, 9 ALR2d 1031; Metropolitan Trust Co. v Jones, 384 Ill 248, 51 NE2d 256, 149 ALR 1416.

18. Coffeyville Vitrified Brick & Tile Co. v Perry, 69 Kan 297, 76 P 848; State v Goodwill, 33 W Va 179, 10 SE 285.

Practice Aids.—Allegation as to statute resulting in deprivation of property without due process of law. 6 AM JUR PL & PR FORMS 6:312, 6:313.

19. Cap F. Bourland Ice Co. v Franklin Utilities Co. 180 Ark 770, 22 SW2d 993, 68 ALR 1018; Ex parte Dickey, 144 Cal 234, 77 P 924; State ex rel. Davis v Stuart, 97 Fla 69, 120 So 335, 64 ALR 1307; Scottish American Mortg. Co. v Minidoka County, 47 Idaho 33, 272 P 498, 65 ALR 663; Woolf v Fuller, 87 NH 64, 174 A 193, 94 ALR 1067; Perrin's Appeal, 305 Pa 42, 156 A 305, 79 ALR 912; Adinolfi v Hazlett, 242 Pa 25, 88 A 869; Harbison v Knoxville Iron Co. 103 Tenn 421, 53 SW 955, affd 183 US 13, 46 L ed 55, 22 S Ct 1; Saville v Corless, 46 Utah 495, 151 P 51.

A state law undertaking to deprive any class of persons of the general power to acquire property would be invalid. Holden v Hardy, 169 US 366, 42 L ed 780, 18 S Ct 383.

The right of acquiring and protecting property is constitutionally protected. Kenton & Campbell Benev. Burial Asso. v Goodpaster, 304 Ky 233, 200 SW2d 120 (referring to a provision in the Kentucky Bill of Rights to the effect that such right is inherent and inalienable).

20. Sterling v Constantin, 287 US 378, 77 L ed 375, 53 S Ct 190; Watson v Mississippi River Power Co. 174 Iowa 23, 156 NW 188; Herlihy v Donohue, 52 Mont 601, 161 P 164; Park v State, 42 Nev 386, 178 P 389, 3 ALR 75; Ives v South Buffalo R. Co. 201 NY 271, 94 NE 431.

1. Watson v Mississippi River Power Co. 174 Iowa 23, 156 NW 188; Adinolfi v Hazlett, 242 Pa 25, 88 A 869; State v Gilman, 33 W Va 146, 10 SE 283.

2. State v Kreutzberg, 114 Wis 530, 90 NW 1098.

3. Kusnetsky v Security Ins. Co. 313 Mo 143, 281 SW 47, 45 ALR 189.

4. Sioux Falls v Kirby, 6 SD 62, 60 NW 156; White Bros. & Crum Co. v Watson, 64 Wash 666, 117 P 497.

No one has a right to compel another to have his property improved in a particular manner; it is as illegal to force him to receive a benefit as to submit to an injury. White Bros. & Crum Co. v Watson, supra.

5. Washington ex rel. Seattle Title Trust Co. v Roberge, 278 US 116, 73 L ed 210, 49 S Ct 50, 86 ALR 654; Terrace v Thompson, 263 US 197, 68 L ed 255, 44 S Ct 15; Wil-

A very important incident of the right of property is the right to dispose of it.[6] Thus, the right to buy, sell, barter, and exchange property is a necessary incident to its ownership and, subject to reasonable regulation, is as much protected by the constitution as is the ownership itself;[7] similarly protected is the right to enter into contracts in relation to property.[8] The right to fix the price at which property shall be sold is also, under ordinary circumstances, an attribute of the property.[9]

On the other hand, although it has been held in a few jurisdictions that the right to transmit property by inheritance to one's descendants or next of kin is "property," within the meaning of the constitutional provision that a person shall not be deprived of property except by judgment of his peers or by the law of the land, the view usually taken is that the right to give or take property is not one of those natural or inalienable rights which are supposed to precede all government and which no government can rightfully impair.[10]

§ 367. What is a deprivation.[11]

Although the Constitution does not contain any definition of the word "de-

lison v Cooke, 54 **Colo** 320, 130 P 828; People v Ericsson, 263 **Ill** 368, 105 NE 315; DeBlanc v New Iberia, 106 **La** 680, 31 So 311; Byrne v Maryland Realty Co. 129 **Md** 202, 98 A 547; State ex rel. Lachtman v Houghton, 134 **Minn** 226, 158 NW 1017; State v Park, 42 **Nev** 386, 178 P 389, 3 ALR 75; People v Hawkins, 157 **NY** 1, 51 NE 257.

Constitutionally prohibited taking is not restricted to a mere change of physical possession but includes the permanent or temporary deprivation of the owner of the use of the property. Southern Pac. Co. v Railroad Com. of California, 13 **Cal** 2d 89, 87 P2d 1055.

The right to use one's property in a lawful manner is within the protection of the due process clauses of the federal and state constitutions. O'Connor v Moscow, 69 **Idaho** 37, 202 P2d 401, 9 ALR2d 1031.

Property can be destroyed by legislation limiting or prohibiting its use. State v Park, 42 **Nev** 386, 178 P 389, 3 ALR 75.

6. Carey v Atlanta, 143 **Ga** 192, 84 SE 456; Holbrook v Morrison, 214 **Mass** 209, 100 NE 1111; National City Bank v Del Sordo, 16 **NJ** 530, 109 A2d 631; Harbison v Knoxville Iron Co. 103 **Tenn** 421, 53 SW 955, affd 183 **US** 13, 46 L ed 55, 22 S Ct 1; Stratton v Morris, 89 **Tenn** 497, 15 SW 87; Saville v Corless, 46 **Utah** 495, 151 P 51.

The property rights in land protected by the Constitution include the right to use, lease, and dispose of it for all lawful purposes. Terrace v Thompson, 263 **US** 197, 68 L ed 255, 44 S Ct 15.

The right of an owner to dispose of property is substantial and valuable, and is incident to and inheres in the constitutional right to acquire and own title to every species of property recognized by law. Pfeifer v Ableidinger, 166 **Neb** 464, 89 NW2d 568; Todd v Board of Educational Lands & Funds, 154 **Neb** 606, 48 NW2d 706.

The right to transfer property in payment of a debt when solvent is within the constitutional protection of property rights. Third Nat. Bank v Divine Grocery Co. 97 **Tenn** 603, 37 SW 390.

7. State ex rel. Corwin v Indiana & O. Oil, Gas & Min. Co. 120 **Ind** 575, 22 NE 778; People ex rel. Moskowitz v Jenkins, 202 **NY** 53, 94 NE 1065.

An owner is deprived of property, within the meaning of the constitution, by taking away one of the incidents of ownership, when he is deprived of the right to expose it for sale and sell it. Chicago v Netcher, 183 **Ill** 104, 55 NE 707.

The privilege of contracting to receive gains and profits for the right to use property granted to another is both a liberty and property right within the due process provision. Metropolitan Trust Co. v Jones, 384 **Ill** 248, 51 NE2d 256, 149 ALR 1416, holding that the right to make a reasonable contract with reference to the use of an article of property is an attribute of property, and a property right, protected by the due process provision.

To take from property one of its elements of value by denying the owner the right to sell or transfer in any legitimate manner is as much a deprivation of property as if the physical property itself were taken. Todd v Board of Educational Lands & Funds, 154 **Neb** 606, 48 NW2d 706.

8. § 373, infra.

9. Tyson & Brother-United Theatre Ticket Offices v Banton, 273 **US** 418, 71 L ed 718, 47 S Ct 426, 58 ALR 1236.

10. See WILLS (1st ed § 52).

11. As to destruction of property as a constitutionally prohibited deprivation, see §§ 368 et seq., infra.

On the closely related question of what amounts to a "taking" of property within the meaning of constitutional requirements that compensation be paid for a taking of property

prive" as used in the Fourteenth Amendment,[12] since the constitutionally protected right of property is not unlimited,[13] it follows as a matter of fundamental logic that not every regulation of the right,[14] and not every act affecting the right,[15] amounts to a deprivation.[16]

The determination whether there has been a deprivation of property for purposes of constitutional guaranties protecting against deprivation, is frequently difficult.[17] Burdens and expenses may within reasonable and constitutional limits be imposed on property,[18] and temporary and emergency invasions or limitations of the use of property have been sustained.[19] Moreover, an act, in order to violate the guaranty of due process, must have some actual operation, and a provision of a state constitution which is only declaratory of what is in fact the law cannot unlawfully deprive a person of his property.[1] But wherever the operation and effect of any general regulation is to extinguish or destroy that which by the law of the land is the property of any person, so far as it has that effect, it is unconstitutional and void.[2] Thus, a law is considered as being a deprivation of property within the meaning of this constitutional guaranty if it deprives an owner of one of its essential attributes,[3] destroys its value,[4] restricts or interrupts its common, necessary,

for public use, see EMINENT DOMAIN (1st ed §§ 131 et seq.).

12. Munn v Illinois, 94 US 113, 24 L ed 77.

13. § 363, supra.

14. The substitution of one public use to the exclusion of other public uses is not an invasion of a right of property within the meaning of the constitution. Park Comrs. v Diamond Ice Co. 130 Iowa 603, 105 NW 203.

15. It is not every interference with property rights that is within the Fifth Amendment. NLRB v Stowe Spinning Co. 336 US 226, 93 L ed 638, 69 S Ct 541; Riggins v District Ct. 89 Utah 183, 51 P2d 645.

Acts done in the proper exercise of governmental powers, and not directly encroaching upon private property, though their consequences may, in a measure, impair its use, do not constitute a "taking" in a constitutional sense. Chicago, B. & Q. R. Co. v Illinois, 200 US 561, 50 L ed 596, 26 S Ct 341; Taggart v Claypole, 145 Ind 590, 44 NE 18; Swift v Calnan, 102 Iowa 206, 71 NW 233; Callen v Junction City, 43 Kan 627, 23 P 652; Fellows v Charleston, 62 W Va 665, 59 SE 623.

The mere entry of a judgment for money which is void for want of proper service does not deprive the defendant of liberty or property. York v Texas, 137 US 15, 34 L ed 604, 11 S Ct 9.

The garnishment of assets of a defendant in the hands of a third party does not of itself operate to deprive the defendant of his property; there must be an adjudication of the rights of the parties before the property can be subjected to the plaintiff's claim. Byrd v Rector, 112 W Va 192, 163 SE 845, 81 ALR 1213.

16. In determining whether a state has imposed such unreasonable conditions upon the use or enjoyment of property as to violate the Fourteenth Amendment to the Federal Constitution, a court does not balance the conflicting interests at stake and substitute its own solution in place of the statute; it decides only whether the measure under review is within the zone of possible solutions which "reasonable" persons might think "reasonable." East Coast Lumber Terminal, Inc. v Babylon (CA2 NY) 174 F2d 106, 8 ALR2d 1219.

17. What amounts to deprivation of property without due process of law is often difficult to determine, especially where the question relates to the property of a quasi-public corporation and the extent to which it may be subjected to public control. Smyth v Ames, 169 US 466, 42 L ed 819, 18 S Ct 418.

18. §§ 294, 327, supra.

19. Block v Hirsh, 256 US 135, 65 L ed 865, 41 S Ct 458, 16 ALR 165; Montana Co. v St. Louis Min. & Mill. Co. 152 US 160, 38 L ed 398, 14 S Ct 506.

1. Brown v Grant, 116 US 207, 29 L ed 598, 6 S Ct 357.

2. Palairet's Appeal, 67 Pa 479.

3. Indian Ref. Co. v Ambraw River Drainage Dist. (DC) 1 F Supp 937; Capital Gas & E. Co. v Boynton, 137 Kan 717, 22 P2d 958; State v Julow, 129 Mo 163, 31 SW 781; Henderson v Greenwood, 172 SC 16, 172 SE 689; Gaertner v Stolle (Tex Civ App) 238 SW 252; Bountiful City v De Luca, 77 Utah 107, 292 P 194, 72 ALR 657; Inman v Sandvig, 170 Wash 112, 15 P2d 696.

4. Indian Ref. Co. v Ambraw River Drainage Dist. (DC) 1 F Supp 937; Capital Gas & E. Co. v Boynton, 137 Kan 717, 22 P2d 958; People v Hawkins, 157 NY 1, 51 NE

or profitable use,[5] hampers the owner in the application of it to the purposes of trade, or imposes conditions upon the right to hold or use it and thereby seriously impairs its value.[6]

b. Rights as Against Destruction of Property

§ 368. Generally.

The state, in a bona fide exercise of its police power, may interfere with private property and even order its destruction in the public interest.[7] A reasonable regulation under the police power is not a violation of the due process guaranty, even though property in whole or in part is taken or destroyed,[8] without compensation.[9] In cases of great emergency engendering overwhelming necessity, property may thus be taken or destroyed without compensation and without what is commonly called "due process of law."[10] But public necessity is the limit of the right to destroy property which is a menace to public safety or health and the property cannot be destroyed if the conditions which make it a menace can be abated in any other recognized way.[11] Similarly, it has been said that the right of either an individual or the com-

257; Re Jacobs, 98 **NY** 98; Henderson v Greenwood, 172 **SC** 16, 172 SE 689; Gaertner v Stolle (**Tex** Civ App) 238 SW 252; Bountiful City v De Luca, 77 **Utah** 107, 292 P 194, 72 ALR 657; Inman v Sandvig, 170 **Wash** 112, 15 P2d 696.

5. Indian Ref. Co. v Ambraw River Drainage Dist. (DC) 1 **F** Supp 937; Andrews v Heiney, 178 **Ind** 1, 98 NE 628; Capital Gas & E. Co. v Boynton, 137 **Kan** 717, 22 P2d 958; Young v Mall Invest. Co. 172 **Minn** 428, 215 NW 840, 55 ALR 461; Henderson v Greenwood, 172 **SC** 16, 172 SE 689; Gaertner v Stolle (**Tex** Civ App) 238 SW 252; Bountiful City v De Luca, 77 **Utah** 107, 292 P 194, 72 ALR 657; Inman v Sandvig, 170 **Wash** 112, 15 P2d 696; Janesville v Carpenter, 77 **Wis** 288, 46 NW 128.

As to lack of power under guise of police power to prohibit use of property, see § 293, supra.

6. Indian Ref. Co. v Ambraw River Drainage Dist. (DC) 1 **F** Supp 937; Chicago v Wells, 236 **Ill** 129, 86 NE 197; Capital Gas & E. Co. v Boynton, 137 **Kan** 717, 22 P2d 958; State v Union Oil Co. 151 **Me** 438, 120 A2d 708; St. Louis v Dorr, 145 **Mo** 466, 41 SW 976; People v Hawkins, 157 **NY** 1, 51 NE 257; Forster v Scott, 136 **NY** 577, 32 NE 976; Henderson v Greenwood, 172 SC 16, 172 SE 689; Gaertner v Stolle (**Tex** Civ App) 238 SW 252; Bountiful City v De Luca, 77 **Utah** 107, 292 P 194, 72 ALR 657; Inman v Sandvig, 170 **Wash** 112, 15 P2d 696.

Conditions so burdensome may be imposed that they constitute an outright "taking" of property, within the meaning of the Fourteenth Amendment to the Federal Constitution, although the title to the property and some vestiges of its uses remain in the owner. East Coast Lumber Terminal, Inc. v Babylon (CA2 NY) 174 F2d 106, 8 ALR2d 1219.

As to the constitutionality of statutes which, regardless of possession by the owner, reduce the title to realty to a mere right of action, to be asserted within a prescribed period of time, see Annotation: 7 ALR2d 1366.

7. Miller v Schoene, 276 **US** 272, 72 L ed 568, 48 S Ct 246; Sentell v New Orleans & C. R. Co. 166 **US** 698, 41 L ed 1169, 17 S Ct 693; Shreveport v Kansas City, S. & G. R. Co. 167 **La** 771, 120 So 290.

By due process of law specific forfeitures may be imposed for specific acts, including even total destruction of property per se innocent, where such fairly tends and is reasonably necessary to accomplish a legitimate purpose under the police power. State ex rel. Wilcox v Ryder, 126 **Minn** 95, 147 NW 953, 5 ALR 1449.

Annotation: 14 ALR2d 73.

Generally, as to interference with property rights by means of exercise of police power, see §§ 290 et seq., supra.

8. Terrace v Thompson, 263 **US** 197, 68 L ed 255, 44 S Ct 15; Windsor v Whitney, 95 **Conn** 357, 111 A 354, 12 ALR 669; Wilmot v Chicago, 328 **Ill** 552, 160 NE 206, 62 ALR 394; White's Appeal, 287 **Pa** 259, 134 A 409, 53 ALR 1215.

Annotation: 12 ALR 679.

9. Eldridge v Trezevant, 160 **US** 452, 40 L ed 490, 16 S Ct 345; Pennsylvania R. Co. v Ewing, 241 **Pa** 581, 88 A 775.

10. Sentell v New Orleans & C. R. Co. 166 **US** 698, 41 L ed 1169, 17 S Ct 693; Ross v Desha Levee Bd. 83 **Ark** 176, 103 SW 380; McGlone v Womack, 129 **Ky** 274, 111 SW 688; State v Clausen, 65 **Wash** 156, 117 P 1101.

Annotation: 14 ALR2d 78, § 5.

11. Houston v Lurie, 148 **Tex** 391, 224 SW 2d 871, 14 ALR2d 61.

exertion of power affecting private rights and exclude such as are forbidden.[16] That which may, in one setting, constitute a denial of fundamental fairness, shocking to the universal sense of justice, and thus violative of due process, may, in other circumstances and in the light of other considerations, fall short of such denial.[17]

The United States Supreme Court has never attempted to define with precision the words "due process of law,"[18] and in fact the phrase probably never can be defined so as to draw a clear and distinct line, applicable to all cases, between proceedings which constitute due process of law and those which do not,[19] because the definition in each case depends not so much upon the quality of the act as upon the relation of the particular law authorizing it to the fundamental law which limits the power of the legislature.[20]

It has been said that the term "due process of law" asserts a fundamental principle of justice, rather than a specific rule of law, and thus is not susceptible of more than a general statement of its intent and meaning, which are ascertained in the history of its specific applications to cases requiring judicial decision.[1] Representing as it does a living principle, due process is not confined within a permanent catalog of what may at a given time be deemed the limits or essentials of fundamental rights.[2]

As in the case of the police power,[3] the courts usually have contented themselves, in ascertaining the intent and application of this important phrase, with the process of judicial inclusion and exclusion as the cases presented for decision have arisen.[4] Due process is an elusive concept; its exact boundaries

745, 68 NW2d 508; Salt Creek Valley Turnp. Co. v Parks, 50 **Ohio** St 568, 35 NE 304; Ex parte Tindall, 102 **Okla** 192, 229 P 125; Anderson v State, 8 **Okla** Crim 90, 126 P 840; State v Strasburg, 60 **Wash** 106, 110 P 1020.

The due process clause is not susceptible of reduction to a mathematical formula. Gibbs v Burke, 337 **US** 773, 93 L ed 1686, 69 S Ct 1247.

To make scientific precision a criterion of constitutional power would be to subject the state to an intolerable supervision hostile to the basic principles of our government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to secure. Sproles v Binford, 286 **US** 374, 76 L ed 1167, 52 S Ct 581.

16. Dent v West Virginia, 129 **US** 114, 32 L ed 623, 9 S Ct 231; Chicago, B. & Q. R. Co. v State, 47 **Neb** 549, 66 NW 624; Stuart v Palmer, 74 **NY** 183.

17. Betts v Brady, 316 **US** 455, 86 L ed 1595, 62 S Ct 1252, ovrld on other grounds Gideon v Wainwright, 372 **US** 335, 9 L ed 2d 799, 83 S Ct 792, in which it was pointed out that in the application of the concept of due process there is always the danger of falling into the habit of formulating the guaranty into a set of hard and fast rules the application of which in a given case may be to ignore the qualifying factors therein disclosed.

18. Bute v Illinois, 333 **US** 640, 92 L ed 986, 68 S Ct 763.

19. Freeland v Williams, 131 **US** 405, 33 L ed 193, 9 S Ct 763; Southern Pac. Co. v Railroad Com. 13 **Cal** 2d 89, 87 P2d 1055; Lacey v Lemmons, 22 **NM** 54, 159 P 949.

20. Re Clark, 65 **Conn** 17, 31 A 522.

1. Territory v Craig Enterprises, Inc. (**Alaska**) 355 P2d 397, 84 ALR2d 1082.

2. Wolf v Colorado, 338 **US** 25, 93 L ed 1782, 69 S Ct 1359, ovrld on other grounds Mopp v Ohio, 367 **US** 643, 6 L ed 2d 1081, 81 S Ct 1684, 84 ALR2d 933, reh den 368 **US** 871, 7 L ed 2d 72, 82 S Ct 23.

3. §§ 261, 262, supra.

4. Green v Frazier, 253 **US** 233, 64 L ed 878, 40 S Ct 499; Orient Ins. Co. v Daggs, 172 **US** 557, 43 L ed 552, 19 S Ct 281; Hagar v Reclamation Dist. 111 **US** 701, 28 L ed 569, 4 S Ct 663; Davidson v New Orleans, 96 US 97, 24 L ed 616; Scott v Toledo (CC) 36 **F** 385; Farmers Independent Ditch Co. v Agricultural Ditch Co. 22 **Colo** 513, 45 P 444; Ferry v Campbell, 110 **Iowa** 290, 81 NW 604; Great Northern Utilities Co. v Public Serv. Com. 88 **Mont** 180, 293 P 294; Chauvin v Valiton, 8 **Mont** 451, 20 P 658; Stuart v Palmer, 74 **NY** 183; Alderman v Wells, 85 SC 507, 67 SE 781; Harbison v Knoxville Iron Co. 103 **Tenn** 421, 53 SW 955.

What is or is not due process is not determinable according to any hard and fast rule, the pattern of due process being picked out in the facts and circumstances of each

are undefinable, and its content varies according to specific factual contexts.[5] Thus, what is due process depends on circumstances varying with the subject matter and the necessities of the situation.[6] It also depends, to some extent, on the power of government which is being exercised and the purpose to be accomplished.[7] Respect must be had to the object of the proceeding and as to whether the right is exercised under the power of taxation, of eminent domain, or of making assessments for local improvements. If the proceeding is found to be suitable or admissible in the special case, it will be adjudged to be due process of law;[8] but if, on the other hand, it is found to be arbitrary, oppressive, and unjust, it may be declared to be not due process of law.[9]

The Constitution does not declare what principles are to be applied to ascertain whether there has been due process of law.[10] Due process is compounded of history, reason, and the past course of decisions, and is not an inflexible procedure universally applicable to every imaginable situation, nor a technical conception with a fixed content unrelated to time, place, and circumstances.[11]

§ 546. — Particular judicially stated definitions.

While it is true that no precise definition of the phrase "due process of law" can be given, the courts have frequently defined the phrase in general terms.[12] It has been said that due process of law must be understood to mean law in the regular course of administration through courts of justice[13] according to those rules and forms which have been established for the protection of private

case. Brock v North Carolina, 344 US 424, 97 L ed 456, 73 S Ct 349.

The real clue to the problem confronting the judiciary in the application of the due process clause is not to ask where the line is once and for all to be drawn but to recognize that it is for the court to draw it by the gradual and empiric process of inclusion and exclusion. Wolf v Colorado, 338 US 25, 93 L ed 1782, 69 S Ct 1359, ovrld on other grounds Mopp v Ohio, 367 US 643, 6 L ed 2d 1081, 81 S Ct 1684, 84 ALR2d 933, reh den 368 US 871, 7 L ed 2d 72, 82 S Ct 23.

Even though the concept of due process of law is not final and fixed, its limits are derived from considerations that are fused in the whole nature of the judicial process. Rochin v California, 342 US 165, 96 L ed 183, 72 S Ct 205, 25 [illegible]2d 1396.

5. Hannah v Larche, 363 US 420, 4 L ed 2d 1307, 80 S Ct 1502.

6. Moyer v Peabody, 212 US 78, 53 L ed 410, 29 S Ct 235; State v Sponaugle, 45 W Va 415, 32 SE 283.

7. Harmon v Bolley, 187 Ind 511, 120 NE 33, 2 ALR 609.

8. Cincinnati, N. O. & T. P. R. Co. v Kentucky, 115 US 321, 29 L ed 414, 6 S Ct 57; Davidson v New Orleans, 96 US 97, 24 L ed 616; Ft. Smith v Dodson, 46 Ark 296; Wulzen v San Francisco, 101 Cal 15, 35 P 353; Chauvin v Valiton, 8 Mont 451, 20 P 658; Alderman v Wells, 85 SC 507, 67 SE 781; State v Sponaugle, 45 W Va 415, 32 SE 283.

9. Wulzen v San Francisco, 101 Cal 15, 35 P 353.

As to the protection against arbitrary action which due process affords, see § 550, infra.

10. French v Barber Asphalt Paving Co. 181 US 324, 45 L ed 879, 21 S Ct 625.

11. Cafeteria & Restaurant Workers Union v McElroy, 367 US 886, 6 L ed 2d 1230, 81 S Ct 1743.

12. For definitions of due process in its substantive and procedural aspects respectively, see § 548, infra. For definitions of due process in terms of equality of operation of statutes, see § 551, infra.

13. Brown v New Jersey, 175 US 172, 44 L ed 119, 20 S Ct 77; Iowa C. R. Co. v Iowa, 160 US 389, 40 L ed 467, 16 S Ct 344; Hallinger v Davis, 146 US 314, 36 L ed 986, 13 S Ct 105; Leeper v Texas, 139 US 462, 35 L ed 225, 11 S Ct 577; Caldwell v Texas, 137 US 692, 34 L ed 816, 11 S Ct 224; Sexton v Barry (CA6 Ohio) 233 F2d 220, cert den 352 US 870, 1 L ed 2d 76, 77 S Ct 94; Ex parte Grace, 12 Iowa 208; State v Jack, 69 Kan 387, 76 P 911; Re Thompson, 116 Me 473, 102 A 303; Rosenbush v Bernheimer, 211 Mass 146, 97 NE 984; Blair v Ridgely, 41 Mo 63; Ives v South Buffalo R. Co. 201 NY 271, 94 NE 431; People v Dunn, 157 NY 528, 52 NE 572; Church v South Kingstown, 22 RI 381, 48 A 3; Tennessee C. R. Co. v Pharr, 183 Tenn 658, 194 SW2d 486.

rights.[14] Substantially the same idea is embodied in the statement that it means law according to the settled course of judicial proceedings[15] or in accordance with natural, inherent, and fundamental principles of justice,[16] enforceable in the usual modes established in the administration of government with respect to kindred matters.[17] A general law administered in its legal course according to the form of procedure suitable and proper to the nature of the case, conformable to the fundamental rules of right and affecting all persons alike, is due process of law.[18]

Due process has to do with the denial of fundamental fairness, shocking to the universal sense of justice; it deals neither with power nor with jurisdiction, but with their exercise.[19]

One of the most famous and perhaps the most often quoted definition of due process of law is that of Daniel Webster in his argument in the Dartmouth College Case,[20] in which he declared that by due process of law is meant "a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial."[1]

14. Endicott-Johnson Corp. v Smith, 266 US 291, 69 L ed 293, 45 S Ct 63; Turpin v Lemon, 187 US 51, 47 L ed 70, 23 S Ct 20; Scott v McNeal, 154 US 34, 38 L ed 896, 14 S Ct 1108; Marchant v Pennsylvania R. Co. 153 US 380, 38 L ed 751, 14 S Ct 894; Pennoyer v Neff, 95 US 714, 24 L ed 565; Ex parte Wilkey, 233 Ala 375, 172 So 111; State Sav. & Commercial Bank v Anderson, 165 Cal 437, 132 P 755, affd 238 US 611, 59 L ed 1488, 35 S Ct 792; Winter v Barrett, 352 Ill 441, 186 NE 113, 89 ALR 1398; Union Drainage Dist. v Smith, 233 Ill 417, 84 NE 376; Burdick v People, 149 Ill 600, 36 NE 948; Re Thompson, 116 Me 473, 102 A 303; People v Dickerson, 164 Mich 148, 129 NW 199; Ivie v Bailey, 319 Mo 474, 5 SW2d 50, 57 ALR 881; Chicago, B. & Q. R. Co. v State, 47 Neb 549, 66 NW 624, affd 170 US 57, 42 L ed 948, 18 S Ct 513; Re Davies, 168 NY 89, 61 NE 118; Ward v Boyce, 152 NY 191, 46 NE 180; Prescott v State, 56 Okla Crim 259, 37 P2d 830; Anderson v State, 8 Okla Crim 90, 126 P 840; Commonwealth v Gryctko, 22 Pa D & C 462; Church v South Kingstown, 22 RI 381, 48 A 3; Tennessee C. R. Co. v Pharr, 183 Tenn 658, 194 SW2d 486; Carnegie Natural Gas Co. v Swiger, 72 W Va 557, 79 SE 3.

Due process of law, in each particular case, means such an exercise of the powers of government as the settled maxims of law permit and sanction and under such safeguards for the protection of individual rights as those maxims prescribe for the classes of cases to which the one in question belongs. State ex rel. Yaple v Creamer, 85 Ohio St 349, 97 NE 602.

15. Minder v Georgia, 183 US 559, 46 L ed 328, 22 S Ct 224; French v Barber Asphalt Paving Co. 181 US 324, 45 L ed 879, 21 S Ct 625; Leeper v Texas, 139 US 462, 35 L ed 225, 11 S Ct 577; Hurtado v California, 110 US 516, 28 L ed 232, 4 S Ct 111, 292; Slaughter-House Cases, 16 Wall (US) 36, 21 L ed 394; Re Thompson, 116 Me 473, 102 A 303; St. Louis v Galt, 179 Mo 8, 77 SW 876; Ives v South B. R. Co. 201 NY 271, 94 NE 431; Harbison v Knoxville Iron Co. 103 Tenn 421, 53 SW 955; State v Stimpson, 78 Vt 124, 62 A 14; Rowan v State, 30 Wis 129.

Legislation is not open to the charge of depriving one of his rights without due process of law, if it is general in its operation upon the subjects to which it relates and is enforceable by usual methods adapted to the nature of the case. Dent v West Virginia, 129 US 114, 32 L ed 623, 9 S Ct 231.

16. Holden v Hardy, 169 US 366, 42 L ed 780, 18 S Ct 383; Pennoyer v Neff, 95 US 714, 24 L ed 565; Wilmot v Chicago, 328 Ill 552, 160 NE 206, 62 ALR 394; State v Height, 117 Iowa 650, 91 NW 935; Re Thompson, 116 Me 473, 102 A 303; Ives v South B. R. Co. 201 NY 271, 94 NE 431; Carr v Brown, 20 RI 215, 38 A 9.

Due process of law is a summarized constitutional guaranty of respect for those personal immunities which are so rooted in the traditions and conscience of our people as to be ranked as fundamental, or are implicit in the concept of ordered liberty. Rochin v California, 342 US 165, 96 L ed 183, 72 S Ct 205, 25 ALR2d 1396.

17. Dent v West Virginia, 129 US 114, 32 L ed 623, 9 S Ct 231; Harding v People, 160 Ill 459, 43 NE 624; Re Thompson, 116 Me 473, 102 A 303; State v Moore, 104 NC 714, 10 SE 143.

18. State v Gee, 73 Ariz 47, 236 P2d 1029; Winter v Barrett, 352 Ill 441, 186 NE 113, 89 ALR 1398.

19. Kinsella v United States, 361 US 234, 4 L ed 2d 268, 80 S Ct 297.

20. Dartmouth College v Woodward, 4 Wheat (US) 518, 4 L ed 629.

1. Ex parte Wall, 107 US 265, 27 L ed 552, 2 S Ct 569; Sexton v Barry (CA6 Ohio) 233 F2d 220, cert den 352 US 870, 1 L ed 2d 76, 77 S Ct 94; Frahn v Greyling Realization

The term "due process of law" includes all the steps essential to deprive a person of life, liberty, or property; it includes all the forms and acts essential to its application and to give effect to it. The means that may be employed to accomplish the purpose of the law is the process; in other words, "process" is the mode by which the purpose of the law may be effected.[2] The term "law" as used in this guaranty embraces all legal and equitable rules defining human rights and duties and providing for their enforcement, not only as between man and man, but also between the state and its citizens.[3]

§ 547. Synonymity of "due process" and "law of the land."

The term "due process of law" as used in the Federal Constitution has been repeatedly declared to be the exact equivalent of the phrase "law of the land"[4] as used in Magna Charta,[5] and some state constitutions.[6] It is a general public

Corp. 239 **Ala** 580, 195 So 758; McClatchy v Superior Ct. 119 **Cal** 413, 51 P 696; Pryor v Downey, 50 **Cal** 388; Jenks v Stump, 41 **Colo** 281, 93 P 17; State ex rel. Munch v Davis, 143 **Fla** 236, 196 So 491; Chicago v Cohn, 326 **Ill** 372, 158 NE 118, 55 ALR 196; People v Dickerson, 164 **Mich** 148, 129 NW 199; Bardwell v Collins, 44 **Minn** 97, 46 NW 315; Holmes v Murray, 207 **Mo** 413, 105 SW 1085; Ives v South Buffalo R. Co. 201 **NY** 271, 94 NE 431; Clapp v Hong, 12 **ND** 600, 98 NW 710; Anderson v State, 8 **Okla** Crim 90, 126 P 840; Bowers v Smith, 14 **Pa** D & C 220; Koester v Citizens' Pub. Co. 154 **SC** 154, 151 SE 452; Tennessee C. R. Co. v Pharr, 183 **Tenn** 658, 194 SW2d 486; Harbison v Knoxville Iron Co. 103 **Tenn** 421, 53 SW 955, affd 183 **US** 13, 46 L ed 55, 22 S Ct 1; Gulf, C. & S. F. R. Co. v Ellis (**Tex**) 18 SW 723; State v Stimpson, 78 **Vt** 124, 62 A 14; State v Strasburg, 60 **Wash** 106, 110 P 1020; Dennis v Moses, 18 **Wash** 537, 52 P 333; Simpson v Stanton, 119 **W Va** 235, 193 SE 64; Rowan v State, 30 **Wis** 129.

The definition stated in the Dartmouth College Case has reference to procedural due process, as to which see §§ 548 et seq., infra.

2. Commonwealth v Gryctko, 22 **Pa** D & C 462; Jenkins v Ballantyne, 8 **Utah** 245, 30 P 760.

3. Jenkins v Ballantyne, supra.

4. Klafter v State Examiners, 259 **Ill** 15, 102 NE 193; Belleville v St. Clair County Turnp. Co. 234 **Ill** 428, 84 NE 1049; McKinster v Sager, 163 **Ind** 671, 72 NE 854; Motor Equipment Co. v Winters, 146 **Kan** 127, 69 P2d 23; Jordan v Gaines, 136 **Me** 291, 8 A2d 585; Randall v Patch, 118 **Me** 303, 108 A 97, 8 ALR 65; State v Loomis, 115 **Mo** 307, 22 SW 350; State v Ballance, 229 **NC** 764, 51 SE2d 731, 7 ALR2d 407; Gunn v Union R. Co. 27 **RI** 320, 62 A 118; Harbison v Knoxville Iron Co. 103 **Tenn** 421, 53 SW 955, affd 183 **US** 13, 46 L ed 55, 22 S Ct 1; Knoxville & O. R. Co. v Harris, 99 **Tenn** 684, 43 SW 115; Ex parte Sizemore, 110 **Tex** Crim 232, 8 SW2d 134, 59 ALR 430; State v Bates, 14 **Utah** 293, 47 P 78.

The due process required by the Federal Constitution is the same as required by the due process clause of the state constitution. Walters v Blackledge, 220 **Miss** 485, 71 So 2d 433.

5. French v Barber Asphalt Paving Co. 181 **US** 324, 45 L ed 879, 21 S Ct 625; Dent v West Virginia, 129 **US** 114, 32 L ed 623, 9 S Ct 231; Missouri P. R. Co. v Humes, 115 **US** 512, 29 L ed 563, 6 S Ct 110; Davidson v New Orleans, 96 **US** 97, 24 L ed 616; Walker v Sauvinet, 92 **US** 90, 23 L ed 679; Jacobsen v Superior Ct. 192 **Cal** 319, 219 P 986, 29 ALR 1399; Pryor v Downey, 50 **Cal** 388; Water Comrs. v Johnson, 86 **Conn** 151, 84 A 727; Re Clark, 65 **Conn** 17, 31 A 522; Klafter v State Examiners, 259 **Ill** 15, 102 NE 193; Off v Morehead, 235 **Ill** 40, 85 **NE** 264; Union Drainage Dist. v Smith, 233 **Ill** 417, 84 NE 376; McKinster v Sager, 163 **Ind** 671, 72 NE 854; Wichita Council, S. B. A. v Security Ben. Asso. 138 **Kan** 841, 28 P2d 976, 94 ALR 629; Randall v Patch, 118 **Me** 303, 108 A 97, 8 ALR 65; Wright v Wright, 2 **Md** 429; University of Maryland v Williams, 9 Gill & J. (**Md**) 365; State v Julow, 129 **Mo** 163, 31 SW 781; State v Loomis, 115 **Mo** 307, 22 SW 350; Lowry v Rainwater, 70 **Mo** 152; Wenham v State, 65 **Neb** 421, 91 NW 421; People v Dunn, 157 **NY** 528, 52 NE 572; State v Cutshall, 110 **NC** 538, 15 SE 261; Ex parte Sullivan, 10 **Okla** Crim 465, 138 P 815; Anderson v State, 8 **Okla** Crim 90, 126 P 840; Paulson v Portland, 16 **Or** 450, 19 P 450; Craig v Kline, 65 **Pa** 399; Church v South Kingstown, 22 **RI** 381, 48 A 3; Harbison v Knoxville Iron Co. 103 **Tenn** 421, 53 SW 955, affd 183 **US** 13, 46 L ed 55, 22 S Ct 1; Ex parte Sizemore, 110 **Tex** Crim 232, 8 SW2d 134, 59 ALR 430; State v Bates, 14 **Utah** 293, 47 P 78, ovrld on another point Thompson v Utah, 170 **US** 343, 42 L ed 1061, 18 S Ct 620; Jensen v Union P. R. Co. 5 **Utah** 253, 21 P 994; State v Strasburg, 60 **Wash** 106, 110 P 1020; Ekern v McGovern, 154 **Wis** 157, 142 NW 595; Bowen v State, 30 **Wis** 129.

The words "law of the land" as used in Magna Charta implied a conformity with the ancient and customary laws of the English people or laws enacted by Parliament. Davidson v New Orleans, 96 US 97, 24 L ed 616.

law of the land.[7] It may be broadly stated that the words "per legem terrae," as expressed in Magna Charta, are the equivalent of such expressions as "according to the law of the land," "by due process of law," or "by due course of law," which are contained in the several constitutions of the American states.[8] Due process of law means something more, however, than the actual existing law of the land. If it were other wise, it is obvious that a guaranty as to due process of law would be no restraint upon legislative power.[9] Therefore, not everything which may pass under the form of statutory enactment can be considered the law of the land.[10] Nor does the phrase "law of the land" mean the general body of the law, common and statute, which was in existence at the time the Constitution took effect, for that would deny to the legislature the power to change or amend the law in any particular.[11] The law of the land means the law of the state in which the proceeding is brought; the prohibition of the Federal Constitution does not mean that a state must observe the due process of law of some other jurisdiction over which it has no control. For example, it has been decided that the guaranty of due process of law does not, of itself, require a trial by jury in states where the usage and statutes are otherwise.[12]

2. Procedural and Substantive Aspects

§ 548. Generally; procedural due process.

In its present stage of development, the concept of due process of law has a dual aspect, substantive and procedural.[13]

Procedural due process may be defined[14] as the aspect of due process which relates to the requisite characteristics of proceedings looking toward a deprivation of life, liberty, or property; procedural due process makes it necessary that one whom it is sought to deprive of such a right must be given

6. The term "due process of law" as used in the Federal Constitution is synonymous with the expression "law of the land" as used in the Maryland Declaration of Rights. County Comrs. of Anne Arundel County v English, 182 **Md** 514, 35 A2d 135, 150 ALR 842.

The "law of the land" guaranteed by the constitution in North Carolina is synonymous with due process of law. State v Hales, 256 **NC** 27, 122 SE2d 768, 90 ALR2d 804; Harriet Cotton Mills v Local Union, Textile Workers Union, 251 **NC** 218, 111 SE2d 457, 79 ALR2d 646, cert den 362 **US** 941, 4 L ed 2d 770, 80 S Ct 806.

7. Off v Morehead, 235 **Ill** 40, 85 NE 264; Booth v People, 186 **Ill** 43, 57 NE 798, affd 184 **US** 425, 46 L ed 623, 22 S Ct 425.

8. Hovey v Elliott, 167 **US** 409, 42 L ed 215, 17 S Ct 841; State v Rose, 33 **Del** 168, 132 A 864, 45 ALR 85; State v Guilbert, 56 **Ohio** St 575, 47 NE 551.

The phrase "conformably to the laws," in a constitutional provision that every person is entitled to a certain remedy for wrongs conformably to the laws, relates to a recognized long-established system of laws existing in states adopting constitutions as well as in the prior organizations from which the states were organized. McCoy v Kenosha County, 195 **Wis** 273, 218 NW 348, 57 ALR 412.

9. Hurtado v California, 110 **US** 516, 28 L ed 232, 4 S Ct 111, 292; Den ex dem. Murray v Hoboken Land & Improv. Co. 18 How (**US**) 272, 15 L ed 372; Re Clark, 65 **Conn** 17, 31 A 522; Union Drainage Dist. v Smith, 233 **Ill** 417, 84 NE 376; Salt Creek Valley Turnp. Co. v Parks, 50 **Ohio** St 568, 35 NE 304; Pinney v Providence Loan & Invest. Co. 106 **Wis** 396, 82 NW 308.

10. Martin v Dix, 52 **Miss** 53; State v Julow, 129 **Mo** 163, 31 SW 781; State v Loomis, 115 **Mo** 307, 22 SW 350.

11. Bardwell v Collins, 44 **Minn** 97, 46 NW 315.

12. See **Jury** (Rev ed § 10).

13. The phrase "due process of law" as used in the Constitution has been construed as protecting substantive as well as procedural rights. Albritton v Winona, 181 **Miss** 75, 178 So 799, 115 ALR 1436, app dismd 303 **US** 627, 82 L ed 1088, 58 S Ct 766.

As to substantive due process, see §§ 550 et seq., infra.

14. ***Annotation:*** 98 L ed 855. And see the definition stated in the Dartmouth College Case, referred to in § 546, supra.

notice of this fact (that is, he must be given notice of the proceedings against him),[15] he must be given an opportunity to defend himself (that is, a hearing),[16] and the problem of the propriety of the deprivation, under the circumstances presented, must be resolved in a manner consistent with essential fairness.[17] The idea of procedural due process is reflected in the statement that it is a rule as old as the law that no one shall be personally bound until he has had his day in court, by which is meant until he has been duly cited to appear and has been afforded an opportunity to be heard. Judgment without such citation and opportunity lacks all the attributes of a judicial determination; it is judicial usurpation and oppression and can never be upheld where justice is fairly administered.[18] Similarly couched in the language of procedural due process are statements that due process of law generally implies and includes actor, reus, judex, regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceedings,[19] that the fundamental requirement of due process is an opportunity to be heard upon such notice and in such proceedings as are adequate to safeguard the right for which the constitutional protection is invoked,[20] and that

15. §§ 560 et seq., infra.

16. §§ 569 et seq., infra.

17. Due process embodies the differing rules of fair play which, through the years, have become associated with differing types of proceedings. Hannah v Larche, 363 **US** 420, 4 L ed 2d 1307, 80 S Ct 1502.

Traditional forms of fair procedure will not be restricted by implication and without the most explicit action by Congress, even in areas where it is possible that the Constitution presents no inhibition. Greene v McElroy, 360 **US** 474, 3 L ed 2d 1377, 79 S Ct 1400.

Procedural due process contemplates the rudimentary requirements of fair play. Vernon v State, 245 **Ala** 633, 18 So 2d 388.

Note that an illuminating discussion of procedural due process appears in the dissenting opinion of Jackson, J., in Shaughnessy v United States, 345 **US** 206, 97 L ed 956, 73 S Ct 625.

18. Snyder v Massachusetts, 291 **US** 97, 78 L ed 674, 54 S Ct 330, 90 ALR 575; Powell v Alabama, 287 **US** 45, 77 L ed 158, 53 S Ct 55, 84 ALR 527; Blackmer v United States, 284 **US** 421, 76 L ed 375, 52 S Ct 252; Hardware Dealers Mut. F. Ins. Co. v Glidden Co. 284 **US** 151, 76 L ed 214, 52 S Ct 69; Brinkerhoff-Faris Trust & Sav. Co. v Hill, 281 **US** 673, 74 L ed 1107, 50 S Ct 451; Frahn v Greyling Realization Corp. 239 **Ala** 580, 195 So 758; Phoenix Metals Corp. v Roth, 79 **Ariz** 106, 284 P2d 645; Pierce v Superior Ct. 1 **Cal** 2d 759, 37 P2d 453, 460, 96 ALR 1020; Bicknell v Herbert, 20 **Hawaii** 132; Chicago v Cohn, 326 **Ill** 372, 158 NE 118, 55 ALR 196; Ferry v Campbell, 110 **Iowa** 290, 81 NW 604; Wichita Council, S. B. A. v Security Ben. Asso. 138 **Kan** 841, 28 P2d 976, 94 ALR 629; Randall v Patch, 118 **Me** 303, 108 A 97, 8 ALR 65; Ulman v Baltimore, 72 **Md** 587, 20 A 141, 21 A 709; People's Wayne County Bank v Wolverine Box Co. 250 **Mich** 273, 230 NW 170, 69 ALR 1024; Dunn v Love, 172 **Miss** 342, 155 So 331, 92 ALR 1323, affd Doty v Love, 295 **US** 64, 79 L ed 1303, 55 S Ct 558, 96 ALR 1438; Lacey v Lemmons, 22 **NM** 54, 159 P 949; Brewer v Valk, 204 **NC** 186, 167 SE 638, 87 ALR 237; Gallagher v National Nonpartisan League, 53 **ND** 238, 205 NW 674; Branson v Gee, 25 **Or** 462, 36 P 527; State v Sullivan, 127 **SC** 186, 121 SE 47; Ex parte Renfro, 115 **Tex** 82, 273 SW 813, 40 ALR 900; Dillon v Whitley (**Tex** Civ App) 210 SW 329; Buck v Bell, 143 **Va** 310, 130 SE 516, 51 ALR 855, affd 274 **US** 200, 71 L ed 1000, 47 S Ct 584; Simpson v Stanton, 119 **W Va** 235, 193 SE 64, Lacher v Venus, 177 **Wis** 558, 188 NW 613, 24 ALR 403.

19. King v Panther Lumber Co. 171 **US** 437, 43 L ed 227, 18 S Ct 573; King v Mullins, 171 **US** 404, 43 L ed 214, 18 S Ct 925; Den ex dem. Murray v Hoboken Land & Improv. Co. 18 How (**US**) 272, 15 L ed 372.

The words "law of the land" or "due process of law," when used in considering the property rights of individuals, mean summons or notice, such as is ordinarily given upon the institution of a suit, due appearance of the parties in interest, pleading of the facts in issue, and a determination thereof by a jury. State v Rose, 33 **Del** 168, 132 A 864, 45 ALR 85.

"Remedy by due course of law," as used in the Kansas Bill of Rights § 18, means the reparation for injury ordered by a tribunal having jurisdiction in due course of procedure after a fair hearing. Hanson v Krehbiel, 68 **Kan** 670, 75 P 1041.

20. Anderson Nat. Bank v Luckett, 321 **US** 233, 88 L ed 692, 64 S Ct 599, 151 ALR 824.

Many controversies have raged about the cryptic and abstract words of the due process clause, but there can be no doubt that "at a minimum they require that deprivation of

the words "law of the land" or "due process of law," when used in considering the property rights of individuals, mean summons or notice, such as is ordinarily given upon the institution of a suit, due appearance of the parties in interest, pleading of the facts in issue, and a determination thereof by a jury or by a court in accordance with settled practice.[1]

§ 549. — Procedural due process as requiring particular form of procedure; state power as to form.

The guaranty of due process, viewed in its procedural aspect, requires no particular form of procedure.[2] The due process clause of the Fourteenth Amendment to the Constitution of the United States does not control mere forms of procedure in state courts or regulate practice therein.[3] The procedure by which rights may be enforced and wrongs remedied is peculiarly a subject of state regulation and control.[4] A state may regulate the procedure of its courts in accordance with its own conception of policy and fairness

life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." Mullane v Central Hanover Bank & Trust Co. 339 US 306, 94 L ed 865, 70 S Ct 652. And see Frahn v Greyling Realization Corp. 239 Ala 580, 195 So 758; State ex rel. Sweezer v Green, 360 Mo 1249, 232 SW2d 897, disapproved on other grounds State ex rel. North v Kirtley (Mo) 327 SW2d 166; Re Lutker (Okla Crim) 274 P2d 786.

The rights of procedural due process are to notice and to appear and answer the charges made. Laisne v California State Board of Optometry, 19 Cal 2d 831, 123 P2d 457.

A statute which provides for notice and an opportunity to be heard before accrual of penalty or imposition of penalty is not wanting in the essentials of due process of law. Kennedy v Truss, 40 Del 424, 13 A2d 431.

Due process is founded upon the basic principle that every man shall have his day in court, and the benefit of the general law which proceeds only upon notice and which hears and considers before judgment is rendered and which renders judgment only after trial. State ex rel. Sweezer v Green, 360 Mo 1249, 232 SW2d 897, disapproved on other grounds State ex rel. North v Kirtley (Mo) 327 SW2d 166.

Rights acquired by an administrative or judicial proceeding cannot be taken away without notice and opportunity to be heard. Garfield v United States, 211 US 249, 53 L ed 168, 29 S Ct 62.

1. State v Rose, 33 Del 168, 132 A 864, 45 ALR 85.

2. Ballard v Hunter, 204 US 241, 51 L ed 461, 27 S Ct 261; Geo. S. Bush & Co. v United States (Cust Ct) 135 F Supp 696; Re Santillanes, 47 NM 140, 138 P2d 503.

Annotation: 33 ALR2d 1159, § 5.

The Fifth Amendment guarantees no particular form of procedure; it protects substantial rights. NLRB v Mackay Radio & Tel. Co. 304 US 333, 82 L ed 1381, 58 S Ct 904.

The concept of procedural due process has "far-flung and undefined range." Stefanelli v Minard, 342 US 117, 96 L ed 138, 72 S Ct 118.

Due process of law, in its procedural aspect, has never been a term of fixed and invariable content. Federal Communications Com. v WJR, The Goodwill Station, Inc. 337 US 265, 93 L ed 1353, 69 S Ct 1097.

3. Hardware Dealers Mut. F. Ins. Co. v Glidden Co. 284 US 151, 76 L ed 214, 52 S Ct 69; Dohany v Rogers, 281 US 362, 74 L ed 904, 50 S Ct 299, 68 ALR 434; Holmes v Conway, 241 US 624, 60 L ed 1211, 36 S Ct 681; McDonald v Oregon R. & Nav. Co. 233 US 665, 58 L ed 1145, 34 S Ct 772; Twining v New Jersey, 211 US 78, 53 L ed 97, 29 S Ct 14.

4. Brown v Mississippi, 297 US 278, 80 L ed 682, 56 S Ct 461; Hardware Dealers Mut. F. Ins. Co. v Glidden Co. 284 US 151, 76 L ed 214, 52 S Ct 69; Dohany v Rogers, 281 US 362, 74 L ed 904, 50 S Ct 299, 68 ALR 434; Banks v State, 207 Ala 179, 93 So 293, 24 ALR 1359, cert den 260 US 736, 67 L ed 488, 43 S Ct 96; Jardine v Superior Ct. 213 Cal 301, 2 P2d 756, 79 ALR 291, app dismd 284 US 592, 76 L ed 510, 52 S Ct 197; Ohio & M. R. Co. v Taber, 98 Ky 503, 32 SW 168, 36 SW 18; Winkler v State, 194 Md 1, 69 A2d 674, cert den 339 US 919, 94 L ed 1343, 70 S Ct 621; Cordrey v The Bee, 102 Or 636, 201 P 202, 20 ALR 1079.

The Fourteenth Amendment did not impair the authority of the states by their judicial tribunals and according to their settled usages and established modes of procedure to determine finally for the parties before them controverted questions as to the ownership of property which did not involve any rights secured by the Federal Constitution, by any valid act of Congress, or by any treaty. Tracy v Ginzberg, 205 US 170, 51 L ed 755, 27 S Ct 461.

unless it offends some principle of justice ranked as fundamental,[5] such as the requirements of hearing and notice,[6] or unless it is unreasonable or arbitrary.[7] Vindication of constitutional rights under the due process clause does not demand uniformity of procedure by the 48 states; each state is free to devise its own way of securing essential justice.[8] Where a regular course of justice by an efficacious remedy is secured by the law of the state, the constitutional requirement contained in the Fourteenth Amendment is satisfied.[9]

From the foregoing, it follows that due process does not necessarily require judicial process,[10] and there is nothing in the Federal Constitution or its

5. Bute v Illinois, 333 **US** 640, 92 L ed 986, 68 S Ct 763; Snyder v Massachusetts, 291 **US** 97, 78 L ed 674, 54 S Ct 330, 90 ALR 575; Hardware Dealers Mut. F. Ins. Co. v Glidden Co. 284 **US** 151, 76 L ed 214, 52 S Ct 69; Dohany v Rogers, 281 **US** 362, 74 L ed 904, 50 S Ct 299, 68 ALR 434; Frank v Mangum, 237 **US** 309, 59 L ed 969, 35 S Ct 582; Tyson v Washington County, 78 **Neb** 211, 110 NW 634; State v Henry, 37 **NM** 536, 25 P2d 204, 90 ALR 805; Cordrey v The Bee, 102 **Or** 636, 201 P 202, 20 ALR 1079; Apex Transp. Co. v Garbade, 32 **Or** 582, 52 P 573, 54 P 367, 882; Bettman v Cowley, 19 **Wash** 207, 53 P 53.

The United States Supreme Court has pointed out that the due process clause of the Fourteenth Amendment does not say that no state shall deprive any person of liberty without following the federal process of law as prescribed for the federal courts in comparable federal cases; the clause does not use the words "due process" as an equivalent for the process of the federal courts or for the process of any particular state, but has reference rather to a standard of process that may cover many varieties of processes that are expressive of different combinations of historical or modern, local or other, juridical standards, provided they do not conflict with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions. Bute v Illinois, 333 **US** 640, 92 L ed 986, 68 S Ct 763.

The procedure of a state does not violate the Fourteenth Amendment because another method may seem fairer or wiser or give a surer promise of protection to a prisoner. Snyder v Massachusetts, 291 **US** 97, 78 L ed 674, 54 S Ct 330, 90 ALR 575.

A state is free to regulate the procedure of its courts in accordance with its own conception of policy, but it does not follow that it may substitute trial by or deal. Rideau v Louisiana, 373 **US** 723, 10 L ed 2d 663, 83 S Ct 1417.

6. Hooker v Los Angeles, 188 **US** 314, 47 L ed 487, 23 S Ct 395.

The proceedings in a state court need not be by any particular mode if they constitute a regular course of proceedings in which notice is given of the claim asserted and an opportunity afforded to defend against it. Rogers v Peck, 199 **US** 425, 50 L ed 256, 26 S Ct 87 (criminal prosecution); Hooker v Los Angeles, 188 **US** 314, 47 L ed 487, 23 S Ct 395; Simon v Craft, 182 **US** 427, 45 L ed 1165, 21 S Ct 836.

The state must conform to the fundamental requirements of due process, giving reasonable notice, and must afford fair opportunity to be heard before the issues are decided. People's Wayne County Bank v Wolverine Box Co. 250 **Mich** 273, 230 NW 170, 69 ALR 1024.

7. Hardware Dealers Mut. F. Ins. Co. v Glidden Co. 284 **US** 151, 76 L ed 214, 52 S Ct 69; American Land Co. v Zeiss, 219 **US** 47, 55 L ed 82, 31 S Ct 200; Banks v State, 207 **Ala** 179, 93 So 293, 24 ALR 1359, cert den 260 **US** 736, 67 L ed 488, 43 S Ct 96; Cordrey v The Bee, 102 **Or** 636, 201 P 202, 20 ALR 1079.

Whether the Constitution requires that a particular right obtain in a specific proceeding depends upon a complexity of factors; the nature of the alleged right involved, the nature of the proceeding, and the possible burden on that proceeding are all considerations which must be taken into account. Hannah v Larche, 363 **US** 420, 4 L ed 2d 1307, 80 S Ct 1502.

A state cannot make due process of law anything which by its own legislation it chooses to declare such. Davidson v New Orleans, 96 **US** 97, 24 L ed 616; Daniel Loughran Co. v Lord Baltimore Candy & Tobacco Co. 178 **Md** 38, 12 A2d 201.

8. Hysler v Florida, 315 **US** 411, 86 L ed 932, 62 S Ct 688.

9. New York, N. H. & H. R. Co. v New York, 165 **US** 628, 41 L ed 853, 17 S Ct 418; Leeper v Texas, 139 **US** 462, 35 L ed 225, 11 S Ct 577; Schuster v Weiss, 114 **Mo** 158, 21 SW 438.

That kind of procedure is due process of law which is suitable and proper to the nature of the case and sanctioned by established customs and usage of the courts. Vogel v Corporation Com. of Oklahoma, 190 **Okla** 156, 121 P2d 586.

10. Ex parte Williams, 345 **Mo** 1121, 139 SW2d 485, cert den 311 **US** 675, 85 L ed 434, 61 S Ct 42.

And see § 581, infra.

amendments that requires a state to maintain the familiar line between the functions of the jury and those of the court.[11]

It has sometimes been broadly stated that the adjudication of a person's claims by the courts of his own state is due process of law,[12] that what is due process of law in a state is regulated by the law of the state,[13] that the requirements of the Fourteenth Amendment are satisfied if trial is had according to the settled course of judicial procedure obtaining in the particular state and the laws operate on all persons alike and do not subject the individual to the arbitrary exercise of the powers of government,[14] or that the law of the state is the law of the land.[15] It is certainly true that if the state courts have acted in consonance with the constitutional laws of the state and its own procedure, it is only in very exceptional cases that a federal court will interfere on the ground that there has been a failure of due process.[16] But the due process clause in the Fourteenth Amendment does not make the statutes of the several states the test of what it requires.[17]

It is important to note that although due process has its roots in the traditions of the common law,[18] it is not to be inferred that all modes of procedure which do not have the sanction of this early law are to be condemned.[19] Nor can it be said that every form of procedure settled in English law at the time of the emigration to America and brought to this country and practiced by the early colonists is an essential element of due process of law. It has been pertinently remarked that if this were so, the procedure of the first half of the seventeenth century would be fastened upon American jurisprudence like a straitjacket, only to be unloosened by constitutional amendment, and that it would be to deny every quality of the law but its age and to render it incapable of progress or improvement.[20] A procedure is not shown to be unconstitutional because it was never heard of before.[1] However,

11. Chicago, R. I. & P. R. Co. v Cole, 251 US 54, 64 L ed 133, 40 S Ct 68.

12. Hallinger v Davis, 146 US 314, 36 L ed 986, 13 S Ct 105; Morley v Lake Shore & M. S. R. Co. 146 US 162, 36 L ed 925, 13 S Ct 54.

13. Arrowsmith v Harmoning, 118 US 194, 30 L ed 243, 6 S Ct 1023; Walker v Sauvinet, 92 US 90, 23 L ed 678; White v White, 108 Tex 570, 196 SW 508.

14. Mountain Timber Co. v Washington, 243 US 219, 61 L ed 685, 37 S Ct 260; Minder v Georgia, 183 US 559, 46 L ed 328, 22 S Ct 224; Tinsley v Anderson, 171 US 101, 43 L ed 91, 18 S Ct 805; Jones v Brim, 165 US 180, 41 L ed 677, 17 S Ct 282; Murray v Louisiana, 163 US 101, 41 L ed 87, 16 S Ct 990; Re Rameriz, 193 Cal 633, 226 P 914, 34 ALR 51.

15. Bittenhaus v Johnston, 92 Wis 588, 66 NW 805.

16. Jordan v Massachusetts, 225 US 167, 56 L ed 1038, 32 S Ct 651; Wilson v North Carolina, 169 US 586, 42 L ed 865, 18 S Ct 435; Hovey v Elliott, 167 US 409, 42 L ed 215, 17 S Ct 841; Allen v Georgia, 166 US 138, 41 L ed 949, 17 S Ct 525.

The Supreme Court has stated that it is justified in saying that there has been a failure of due process only in those cases where it cannot be said that the procedure adopted fairly insure the protection of the interest of absent parties who are to be bound by it. Hansberry v Lee, 311 US 32, 85 L ed 22, 61 S Ct 115, 132 ALR 741.

17. Hebert v Louisiana, 272 US 312, 71 L ed 270, 47 S Ct 103, 48 ALR 1102; Burdick v People, 149 Ill 600, 36 NE 948; Daniel Loughran Co. v Lord Baltimore Candy & Tobacco Co. 178 Md 38, 12 A2d 201.

18. § 542, supra.

19. Hurtado v California, 110 US 516, 28 L ed 232, 4 S Ct 111, 292; Den ex dem. Murray v Hoboken Land & Improv. Co. 18 How (US) 272, 15 L ed 372.

Due process does not require a proceeding according to the common law or any particular form, matters of procedure being subject to legislative regulation provided the essential elements of due process are preserved. Kessler v Thompson (ND) 75 NW2d 172.

20. Twining v New Jersey, 211 US 78, 53 L ed 97, 29 S Ct 14.

1. Tyler v Judges of Ct. of Registration, 175 Mass 71, 55 NE 812, error dismd 179 US 405, 45 L ed 252, 21 S Ct 206.

Inspections such as are authorized in equity proceedings may be authorized by statute.

while change is thus permissible, neither Congress[2] nor the states have power to make any process "due process of law" by their mere will. No change in procedure can be made which disregards those fundamental principles, to be ascertained from time to time by judicial action, which relate to process of law, protect the citizen in his private right, and guard him against the arbitrary action of government.[3] What state procedures are fair, what state process is constitutionally due, what distinctions are consistent with the right to equal protection, all depend upon the particular situation presented, and history is relevant to these inquiries.[4] The requirements of due process frequently vary with the type of proceeding involved.[5] Consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action.[6]

§ 550. Substantive due process; protection from arbitrary action.

Due process is not merely a procedural safeguard; it reaches those situations where the deprivation of life, liberty, or property is accomplished by legislation which, by operating in the future, can, given even the fairest procedure in application to individuals, destroy the enjoyment of all three.[7] Substantive due process may be roughly defined as the constitutional guaranty that no person shall be deprived of his life, liberty, or property for arbitrary reasons, such a deprivation being constitutionally supportable only if the conduct from which the deprivation flows is proscribed by reasonable legislation (that is, legislation the enactment of which is within the scope of legislative authority) reasonably applied (that is, for a purpose consonant with the purpose of the legislation itself).[8] The protection afforded to life, liberty, and property by the due process clause in its substantive aspect has already been discussed.[9] To be noted at this point are the general principles that substantive due process assures by requiring, that laws will operate equally,[10] and it affords freedom from arbitrary action.[11] It has been said that protection from arbitrary

Montane Co. v St. Louis Min. & Mill. Co. 152 US 160, 38 L ed 398, 14 S Ct 506.

2. Pinney v Providence Loan & Invest. Co. 106 Wis 396, 82 NW 308.

Congress cannot bring under the judicial power a matter which from its nature is not a subject for judicial determination; nor is it within the power of Congress to withdraw from judicial cognizance any matter which from its nature is the subject of a suit at the common law, in equity, or in admiralty. Fong Yue Ting v United States, 149 US 698, 37 L ed 905, 13 S Ct 1016; Den ex dem. Murray v Hoboken Land & Improv. Co. 18 How (US) 272, 15 L ed 372.

3. Twining v New Jersey, 211 US 78, 53 L ed 97, 29 S Ct 14.

4. Cohen v Hurley, 366 US 117, 6 L ed 2d 156, 81 S Ct 954.

5. Hannah v Larche, 363 US 420, 4 L ed 2d 1307, 80 S Ct 1502.

6. Cafeteria & Restaurant Workers Union v McElroy, 367 US 886, 6 L ed 2d 1230, 81 S Ct 1743.

7. Poe v Ullman, 367 US 497, 6 L ed 2d 989, 81 S Ct 1752 (opinion of Harlan, J.), reh den 368 US 869, 7 L ed 2d 69, 82 S Ct 21, 22.

8. ***Annotation:*** 98 L ed 852.

9. See the discussions of vested rights (§§ 419 et seq., supra), and the discussion of fundamental rights (§§ 356 et seq., supra).

Substantive due process is an expanded concept which is a limitation upon all powers of Congress, even the war power. Galvan v Press, 347 US 522, 98 L ed 911, 74 S Ct 737, reh den 348 US 852, 99 L ed 671, 75 S Ct 17.

10. § 551, infra.

11. To the extent that arbitrary action involves procedural arbitrariness, such action is, of course, barred by the principle of procedural due process. As to the essential elements of due process, in the absence of any of which a procedure may properly be deemed arbitrary, see § 548, supra, and §§ 560 et seq., infra.

action is the essence of substantive due process,[12] and similarly, that, in substantive law, due process may be characterized as a standard of reasonableness.[13]

The principle of due process of law had its origin in England as a protection to individuals from arbitrary action on the part of the Crown.[14] It has been said that in this country the requirement is intended to have a similar effect against legislative power, that is, to secure the citizen against any arbitrary deprivation of his rights, whether relating to his life, his liberty, or his property.[15] It is a limitation upon arbitrary power and a guaranty against arbitrary legislation,[16] demanding that the law shall not be unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained.[17] The primary purpose

12. See Jack Lincoln Shops, Inc. v State Dry Cleaners' Board, 192 **Okla** 251, 135 P2d 332.

13. Re Lutker (Okla Crim) 274 P2d 786.

The criterion of due process in a state statute is not the possibility of conceivable injury, but the just and reasonable character of the requirements having reference to the subject with which the statute deals. American Land Co. v Zeiss, 219 **US** 47, 55 L ed 82, 31 S Ct 200.

14. § 543, supra.

15. Jones v Brim, 165 **US** 180, 41 L ed 677, 17 S Ct 282; Scott v McNeal, 154 **US** 34, 38 L ed 896, 14 S Ct 1108; Dent v West Virginia, 129 **US** 114, 32 L ed 623, 9 S Ct 231; Missouri P. R. Co. v Humes, 115 **US** 512, 29 L ed 463, 6 S Ct 110; Barbier v Connolly, 113 **US** 27, 28 L ed 923, 5 S Ct 357; Vernon v State, 245 **Ala** 633, 18 So 2d 388; Packard v O'Neil, 45 **Idaho** 427, 262 P 881, 56 ALR 317; People v Belcastro, 356 **Ill** 144, 190 NE 301, 92 ALR 1223; Ashland Transfer Co. v State Tax Com. 247 **Ky** 144, 56 SW2d 691, 87 ALR 534; Leavitt v Canadian P. R. Co. 90 **Me** 153, 37 A 886; Templar v State Examiners, 131 **Mich** 254, 90 NW 1058; State v Cudahy Packing Co. 33 **Mont** 179, 82 P 833; State v Moore, 104 **NC** 714, 10 SE 143; First Nat. Bank v Bovey, Shute & Jackson, 49 **ND** 450, 191 NW 765; Ex parte Sizemore, 110 **Tex** Crim 232, 8 SW2d 134, 59 ALR 430; State v Shedroi, 75 **Vt** 277, 54 A 1081; State v Wetzel, 208 **Wis** 603, 243 NW 768, 86 ALR 274; Uram v Roach, 47 **Wyo** 335, 37 P2d 793, 95 ALR 1448.

In dealing with the constitutionality of the statutory withholding of a noncontractual benefit under such a social welfare program as the Social Security Act, the courts must recognize that the due process clause can be thought to interpose a bar only if the statute manifests a patently arbitrary classification, utterly lacking in rational justification. Flemming v Nestor, 363 **US** 603, 4 L ed 2d 1435, 80 S Ct 1367.

16. Nebbia v New York, 291 **US** 502, 78 L ed 940, 54 S Ct 505, 89 ALR 1469; Heiner v Donnan, 285 **US** 312, 76 L ed 772, 52 S Ct 358; Davis v Florida Power Co. 64 **Fla** 246, 60 So 759; Seaboard Air Line R. Co. v Simon, 56 **Fla** 545, 47 So 1001; Mt. Carmel Public Utility & Serv. Co. v Public Utilities Com. 297 **Ill** 303, 130 NE 693, 21 ALR 571; Walgreen Co. v Gross Income Tax Division, 225 **Ind** 418, 75 NE2d 784, 1 ALR2d 1014; Ulman v Baltimore, 72 **Md** 587, 20 A 141, 21 A 709; Thurman v Chicago, M. & St. P. R. Co. 254 **Mass** 569, 151 NE 63, 46 ALR 563; Albritton v Winona, 181 **Miss** 75, 178 So 799, 115 ALR 1436; Bryant v Brown, 151 **Miss** 398, 118 So 184, 60 ALR 1325; Hanson v Union Pacific R. Co. 160 **Neb** 669, 71 NW2d 526, revd on other grounds Railway Employes' Dept., A. F. L. v Hanson, 351 **US** 225, 100 L ed 1112, 76 S Ct 714, motion den 351 **US** 979, 100 L ed 1494, 76 S Ct 1044, reh den 352 **US** 859, 1 L ed 2d 69, 77 S Ct 22; First Nat. Bank v Bovey, Shute & Jackson, 49 **ND** 450, 191 NW 765; Re Lutker (Okla Crim) 274 P2d 786; Sandel v State, 115 **SC** 168, 104 SE 567, 13 ALR 1268; Kelleher v Minshull, 11 **Wash** 2d 380, 119 P2d 302.

The due process of law clauses of state and federal constitutions are standing guaranties of substantial justice and prevent such caprice or arbitrary action as would deny a litigant a substantially fair trial. Juster Bros. v Christgau, 214 **Minn** 108, 7 NW2d 501.

17. West Coast Hotel Co. v Parrish, 300 **US** 379, 81 L ed 703, 57 S Ct 578, 108 ALR 1330; Nebbia v New York, 291 **US** 502, 78 L ed 940, 54 S Ct 505, 89 ALR 1469; Burnet v Wells, 289 **US** 670, 77 L ed 1439, 53 S Ct 761; Sproles v Binford, 286 **US** 374, 76 L ed 1167, 52 S Ct 581; Northern P. R. Co. v Puget Sound & W. H. R. Co. 250 **US** 332, 63 L ed 1013, 39 S Ct 474; Miami Laundry Co. v Florida Dry Cleaning & Laundry Bd. 134 **Fla** 1, 183 So 759, 119 ALR 956; Daniel Loughran Co. v Lord Baltimore Candy & Tobacco Co. 178 **Md** 38, 12 A2d 201; State v Henry, 37 **NM** 536, 25 P2d 204, 90 ALR 805.

Due process demands that a law be not unreasonable or arbitrary, and that it be reasonably related and applied to an actual and manifest evil. Defiance Milk Products Co. v Du Mond, 309 **NY** 537, 132 NE2d 829.

As related to legislation, due process is

of the guaranty is the security of the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice.[18] Substantially the same idea is embraced in the statement that the great purpose of the requirement is to exclude everything that is arbitrary and capricious in legislation affecting the rights of the citizen.[19] Accordingly, in general terms it has been stated that the requirements of due process of law may be satisfied if there is no unauthorized and merely arbitrary exercise of the powers of government to the detriment of the people or of some of them.[20] The line of division between the rational and the arbitrary in legislation is not to be drawn with an eye to remote possibilities. What the law looks for in establishing its standards is a probability or tendency of general validity. If this is attained, the formula will serve, although there are imperfections here and there.[1] The due process of law

satisfied if the legislature had the power to act on the subject matter, if that power was not exercised in an arbitrary, capricious, or unreasonably discriminatory manner, and if the act, being definite, had a reasonable relationship to a proper legislative purpose. Lincoln Federal Labor Union v Northwestern Iron & Metal Co. 149 **Neb** 507, 31 NW2d 477; Rein v Johnson, 149 **Neb** 67, 30 NW2d 548, cert den 335 **US** 814, 93 L ed 369, 69 S Ct 31.

18. Twining v New Jersey, 211 **US** 78, 53 L ed 97, 29 S Ct 14; Minder v Georgia, 183 **US** 559, 46 L ed 328, 22 S Ct 224; Maxwell v Dow, 176 **US** 581, 44 L ed 597, 20 S Ct 448, 494; Jones v Brim, 165 **US** 180, 41 L ed 677, 17 S Ct 282, affg 11 **Utah** 200, 39 P 825; Giozza v Tiernan, 148 **US** 657, 37 L ed 599, 13 S Ct 721; Sexton v Barry (CA6 Ohio) 233 **F**2d 220, cert den 352 **US** 870, 1 L ed 2d 76, 77 S Ct 94; McDaniel v McElvy, 91 **Fla** 770, 108 So 820, 51 ALR 731; Seaboard Air Line R. Co. v Simon, 56 **Fla** 545, 47 So 1001; Blackman Health Resort v Atlanta, 151 **Ga** 507, 107 SE 525, 17 ALR 516; People v Belcastro, 356 **Ill** 144, 190 NE 301, 92 ALR 1223; Klafter v State Examiners, 259 **Ill** 15, 102 NE 193; McKinster v Sager, 163 **Ind** 671, 72 NE 854; Cleveland, C. C. & St. L. R. Co. v Backus, 133 **Ind** 513, 33 NE 421; State v Height, 117 **Iowa** 650, 91 NW 935; Eames v Savage, 77 **Me** 212; Commonwealth v Gallo, 275 **Mass** 320, 175 NE 718, 79 ALR 1380; Rosenbush v Bernheimer, 211 **Mass** 146, 97 NE 984; Daugherty v Thomas, 174 **Mich** 371, 140 NW 615; State v Loomis, 115 **Mo** 307, 22 SW 350; Rein v Johnson, 149 **Neb** 67, 30 NW2d 548, cert den 335 **US** 814, 93 L ed 369, 69 S Ct 31; First Nat. Bank v Bovey, Shute & Jackson, 49 **ND** 450, 191 NW 765; Harbison v Knoxville Iron Co. 103 **Tenn** 421, 53 SW 955; Gulf, C. & S. F. R. Co. v Ellis (**Tex**) 18 SW 723; Pinney v Providence Loan & Invest. Co. 106 **Wis** 396, 82 NW 308.

The guaranty is always and everywhere present to protect the citizen against arbitrary interference with his rights. Re Buchman's Estate, 123 **Cal** App 2d 546, 267 P2d 73, 47 ALR2d 291; Ulman v Baltimore, 72 **Md** 587, 20 A 141, 21 A 709.

19. Nebbia v New York, 291 **US** 502, 78 L ed 940, 54 S Ct 505, 89 ALR 1469; Dent v West Virginia, 129 **US** 114, 32 L ed 623, 9 S Ct 231; Beveridge v Lewis, 137 **Cal** 619, 67 P 1040, 70 P 1083; Parks v State, 159 **Ind** 211, 64 NE 862; Scholle v State, 90 **Md** 729, 46 A 326.

20. Davis v Florida Power Co. 64 **Fla** 246, 60 So 759.

Orders of the President under authority of Congress fixing the price of coal as a war measure, the effect of which is merely to prevent the owner from obtaining more than the coal is worth, are not so clearly unreasonable and arbitrary as to render them repugnant to the due process clause of the Federal Constitution. Highland v Russell Car & Snow Plow Co. 279 **US** 253, 73 L ed 688, 49 S Ct 314.

So far as due process is concerned, it suffices that the law shall not be unreasonable, arbitrary, or capricious. State v Vachon, 140 **Conn** 478, 101 A2d 509.

1. Burnet v Wells, 289 **US** 670, 77 L ed 1439, 53 S Ct 761.

The cost of complying with state laws enacted to promote safety is an element properly to be taken into account in determining whether such laws are arbitrary and repugnant to the due process clause of the Fourteenth Amendment. Missouri P. R. Co. v Norwood, 283 **US** 249, 75 L ed 1010, 51 S Ct 458.

Although the due process clause of the Fourteenth Amendment places a limitation upon the power of the states to prescribe penalties for violations of their laws, it is always placed with the express or tacit qualification that the states still possess a wide latitude of discretion in the matter and that their enactments transcend a limitation only where the penalty prescribed is so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable. St. Louis, I. M. & S. R. Co. v Williams, 251 **US** 63, 64 L ed 139, 40 S Ct 71.

clause does not impose an unobtainable standard of accuracy.[2] A mere error in judgment on the part of the legislature as to measures best calculated to promote public safety is not enough to condemn a law as arbitrary.[3] The fact that a rule of law may, in certain instances, work a hardship does not violate the due process clause of the Constitution, provided it operates without any discrimination and in like manner against all persons of a class.[4]

It has been authoritatively stated that the right of a citizen to due process of law must rest upon a basis more substantial than favor or discretion,[5] and in many instances statutes have been held unconstitutional on the ground that they operated to vest in the courts[6] or in other officials an arbitrary power over matters protected by the Constitution.[7] It is not in every case, however, in which a discretion has been conferred that due process of law is absent.[8] Where a reasonable discretion has been vested, it cannot be presumed that official action will be arbitrary in its nature, and such statutes have frequently been upheld.[9]

§ 551. — Necessity that laws operate equally.

Although the Fifth Amendment contains no equal protection clause and restrains only such discriminatory legislation by Congress as amounts to a denial of due process,[10] due process of law and the equivalent phrase "law of

2. Grannis v Ordean, 234 US 385, 58 L ed 1363, 34 S Ct 779.

3. State v Wetzel, 208 Wis 603, 243 NW 768, 86 ALR 274.

4. People's Wayne County Bank v Wolverine Box Co. 250 Mich 273, 230 NW 170, 69 ALR 1024, holding that the fact that rules of evidence and procedure may work a hardship under certain circumstances does not render them unconstitutional if they further justice in the general course of their operation.

A statute is not to be refused application by the courts as arbitrary and capricious and forbidden by the due process clause merely because it is deemed in a particular case to work an inequitable result. Wickard v Filburn, 317 US 111, 87 L ed 122, 63 S Ct 82.

Harshness, injustice, and oppressiveness will not of themselves invalidate state laws as contrary to due process of law. Missouri P. R. Co. v Humes, 115 US 512, 29 L ed 463, 6 S Ct 110.

As to fairness and equality of operation of laws, see also § 160, supra, and § 551, infra.

5. Roller v Holly, 176 US 398, 44 L ed 520, 20 S Ct 410; Pulaski County v Commercial Nat. Bank, 210 Ark 124, 194 SW2d 883; Commonwealth v O'Keefe, 298 Pa 169, 148 A 73.

6. The legislature cannot invest a court with power to divest an owner of his property, without compensation, whenever in the exercise of its discretion it sees fit to do so, and this has been held to be the effect of a statute authorizing a court, in its discretion, to empower a married woman to transfer realty without the joinder of her husband who has vested interest therein. Hubbard v Hubbard, 77 Vt 73, 58 A 969.

7. Bradley v Richmond, 227 US 477, 57 L ed 603, 33 S Ct 318; State v Sherow, 87 Kan 235, 123 P 866.

It is not consonant with due process to require a person to swear to a fact that he cannot be expected to know, or alternatively to refrain from a wholly lawful activity. Louisiana ex rel. Gremillion v National Asso. for Advancement of Colored People, 366 US 293, 6 L ed 2d 301, 81 S Ct 1333.

8. Jones v Union Guano Co. 264 US 171, 68 L ed 623, 44 S Ct 280; Winter v Barrett, 352 Ill 441, 186 NE 113, 89 ALR 1398; Turner v Children's Home Soc. 158 Va 406, 163 SE 399, 80 ALR 1125.

Merely prohibiting actions for damages for the sale of deficient fertilizer except after chemical analysis showing the deficiency does not substitute the determination of the official for a trial in court, so as to constitute a deprivation of due process of law. Jones v Union Guano Co. 264 US 171, 68 L ed 623, 44 S Ct 280.

9. Gundling v Chicago, 177 US 183, 44 L ed 725, 20 S Ct 633; State v Sherow, 87 Kan 235, 123 P 866; Louisville & N. R. Co. v Commonwealth, 106 Ky 633, 51 SW 164, 1012, affd 183 US 503, 46 L ed 298, 22 S Ct 95.

As to the application of this principle to discretion vested in administrative authorities, see 1 Am Jur 2d, ADMINISTRATIVE LAW §§ 110 et seq.

10. Hirabayashi v United States, 320 US 81, 87 L ed 1774, 63 S Ct 1375.

the land" have frequently been defined to mean a general[11] and public law operating equally on all persons in like circumstances,[12] and not a partial or private law affecting the rights of a particular individual or class of individuals[13] in a way in which the same rights of other persons are not affected.[14] Under this guaranty not only must a statute embrace all persons in like situation, but the classification must be natural and reasonable, not arbitrary and capricious.[15] Due process of law is denied when any particular person of a class or of the community is singled out for the imposition of restraint or burdens not imposed upon, and to be borne by, all of the class or of the community at large, unless the imposition or restraint is based upon existing distinctions that differentiate the particular individuals of the class to be affected from the body of the community.[16] An act which affects only, and

11. Dartmouth College v Woodward, 4 Wheat (US) 518, 4 L ed 629; Metropolitan Trust Co. v Jones, 384 Ill 248, 51 NE2d 256, 149 ALR 1416; Hirth-Krause Co. v Cohen, 177 Ind 1, 97 NE 1; University of Maryland v Williams, 9 Gill & J (Md) 365; Atty. Gen. v Jochim, 99 Mich 358, 58 NW 611; J. O. Plott Co. v H. K. Ferguson Co. 202 NC 446, 163 SE 688; State v Strasburg, 60 Wash 106, 110 P 1020; Moore v Strickling, 46 W Va 515, 33 SE 274.

12. Maxwell v Dow, 176 US 581, 44 L ed 597, 20 S Ct 448, 494; Jones v Brim, 165 US 180, 41 L ed 677, 17 S Ct 282, affg 11 Utah 200, 39 P 825; Giozza v Tiernan, 148 US 657, 37 L ed 599, 13 S Ct 721; Vernon v State, 245 Ala 633, 18 So 2d 388; Frank v State, 142 Ga 741, 83 SE 645, error den 235 US 694, 59 L ed 429, 35 S Ct 208; Metropolitan Trust Co. v Jones, 384 Ill 248, 51 NE2d 256, 149 ALR 1416; Off v Morehead, 235 Ill 40, 85 NE 264; Eden v People, 161 Ill 296, 43 NE 1108; Cleveland, C. C. & St. L. R. Co. v Backus, 133 Ind 513, 33 NE 421; Eames v Savage, 77 Me 212; State v Loomis, 115 Mo 307, 22 SW 350; State v Creamer, 85 Ohio St 349, 97 NE 602; Harbison v Knoxville Iron Co. 103 Tenn 421, 53 SW 955; Henley v State, 98 Tenn 665, 41 SW 352, 1104; Stratton v Morris, 89 Tenn 497, 15 SW 87; Ex parte Sizemore, 110 Tex Crim 232, 8 SW2d 134, 59 ALR 430.

A state can, consistently with the Fourteenth Amendment, provide for differences so long as the result does not amount to a denial of due process or an invidious discrimination. Douglas v California, 372 US 353, 9 L ed 2d 811, 83 S Ct 814, reh den 373 US 905, 10 L ed 2d 200, 83 S Ct 1288.

Due process is secured by laws operating on all alike. Sexton v Barry (CA6 Ohio) 233 F2d 220, cert den 352 US 870, 1 L ed 2d 76, 77 S Ct 94.

Due process of law secures equal and impartial justice. Re Lutker (Okla Crim) 274 P2d 786.

13. Metropolitan Trust Co. v Jones, 384 Ill 248, 51 NE2d 256, 149 ALR 1416; Off v Morehead, 235 Ill 40, 85 NE 264; Bailey v People, 190 Ill 28, 60 NE 98.

Due process of law as guaranteed by the Fourteenth Amendment has frequently been defined in terms of equal protection of the laws, that is, as being secured by laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice. § 490, supra.

14. Atty. Gen. v Jochim, 99 Mich 358, 58 NW 611.

Due process implies and comprehends the administration of laws equally applicable to all under established rules which do not violate fundamental principles of private rights, and in a competent tribunal possessing jurisdiction of the cause and proceeding upon notice. State ex rel. Sweezer v Green, 360 Mo 1249, 232 SW2d 897, 24 ALR2d 340, disapproved on other grounds State ex rel. North v Kirtley (Mo) 327 SW2d 166.

15. People ex rel. Doty v Connell, 9 Ill 2d 390, 137 NE2d 849, 62 ALR2d 1255; State v Garford Trucking, Inc. 4 NJ 346, 72 A2d 851, 16 ALR2d 1407; Harbison v Knoxville Iron Co. 103 Tenn 421, 53 SW 955.

The due process clause bars federal legislation embodying a baseless classification. Galvan v Press, 347 US 522, 98 L ed 911, 74 S Ct 737, reh den 348 US 852, 99 L ed 671, 75 S Ct 17.

Legislation embodying an arbitrary classification is violative of both the equal protection and due process guaranties. Heimgaertner v Benjamin Electric Mfg. Co. 6 Ill 2d 152, 128 NE2d 691.

As to the relationship between due process of law and equal protection of the laws, see § 490, supra.

16. State ex rel. Wyatt v Ashbrook, 154 Mo 375, 55 SW 627; Anderson v State, 8 Okla Crim 90, 126 P 840.

Legislation, even though it is within the police power, may violate due process if it is discriminatory in that it deals differently with different classes of persons without the existence of some natural and substantial difference, germane to the substantive purposes of the legislation, between those within the class included and those whom it leaves untouched. State v Hurliman, 143 Conn 502, 123 A2d 767.

exhausts itself upon, a particular person or his rights and privileges, and has no relation to the community in general, is rather a sentence than a law and one which condemns without a hearing.[17] It would seem that it may safely be stated as a general rule that whatever, in the matter of classification, complies with the requirements as to the equal protection of the laws will, so far as such an objection is concerned, be likewise upheld as amounting to due process of law. In fact, the courts frequently refer to both clauses at once in discussing the constitutionality of statutes.[18]

§ 552. — Definiteness of statutes and orders.

It is a general principle of statutory law that a statute must be definite to be valid.[19] A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.[20] On the other hand, where the words assailed, taken in connection with the context, are commonly understood, their use does not render a statute invalid.[1] The same is true as to an order of court.[2]

Without denying due process, Congress may hit at a particular danger where it is seen, not providing for others which are not so evident or so urgent. Hirabayashi v United States, 320 US 81, 87 L ed 1774, 63 S Ct 1375.

A law which deprives one class of persons of the right to acquire and enjoy property, or to contract with relation thereto, in the same manner as others under like conditions and circumstances are permitted to do, is not comprehended within the true meaning of the words "due process of law." Metropolitan Trust Co. v Jones, 384 Ill 248, 51 NE2d 256, 149 ALR 1416, also holding that laws may be enacted properly and without infringing the due process provision, which, by reason of peculiar circumstances, may affect some persons or classes of persons only, who were not before affected by such restrictions; but the circumstances must be so exceptional as to leave no others affected in precisely the same way upon whom a general law could have effect.

17. University of Maryland v Williams, 9 Gill & J (Md) 365.

18. See, for example, Barbier v Connolly, 113 US 27, 28 L ed 923, 5 S Ct 357; State v Garford Trucking, Inc. 4 NJ 346, 72 A2d 851, 16 ALR2d 1407.

19. As to the definiteness of statutes generally, see STATUTES (1st ed §§ 472–474).

20. Cramp v Board of Public Instruction, 368 US 278, 7 L ed 2d 285, 82 S Ct 275; United States v Spector, 343 US 169, 96 L ed 863, 72 S Ct 591, reh den 343 US 951, 96 L ed 1353, 72 S Ct 1040; United States v Petrillo, 332 US 1, 91 L ed 1877, 67 S Ct 1538; United States v Darby, 312 US 100, 85 L ed 609, 61 S Ct 451, 132 ALR 1430; Minnesota ex rel. Pearson v Probate Ct. 309 US 270, 84 L ed 744, 60 S Ct 523, 126 ALR 530; Kay v United States, 303 US 1, 82 L ed 607, 58 S Ct 468; Locklin v Pridgeon, 158 Fla 737, 30 So 2d 102; State v Groseclose, 67 Idaho 71, 171 P2d 863; Joseph Triner Corp. v McNeil, 363 Ill 559, 2 NE2d 929, 104 ALR 1435; Vallat v Radium Dial Co. 360 Ill 407, 196 NE 485, 99 ALR 607; State v Coppes, 247 Iowa 1057, 78 NW2d 10; People v Chapman, 301 Mich 584, 4 NW2d 18; Patterson v Stanolind Oil & Gas Co. 182 Okla 155, 77 P2d 83, app dismd 305 US 376, 83 L ed 231, 59 S Ct 259; State v Dove, 75 SD 460, 67 NW2d 917; State v Packard, 122 Utah 369, 250 P2d 561.

Statutes using the terms "reasonable," "approved," etc., in defining the measure of duty, have been disapproved. Vallat v Radium Dial Co. 360 Ill 407, 196 NE 485, 99 ALR 607. Annotation: 99 ALR 613.

1. Joseph Triner Corp. v McNeil, 363 Ill 559, 2 NE2d 929, 104 ALR 1435.

For example, no constitutional defect, from the viewpoint of definiteness, is inherent in—

— the absence of any definite rules as to what is a "long and short haul" in the clause in a federal statute relating to the Interstate Commerce Commission. United States v Union P. R. Co. 234 US 495, 58 L ed 1426, 34 S Ct 995; Intermountain Rate Cases (United States v Atchison, T. & S. F. R. Co.) 234 US 476, 58 L ed 1408, 34 S Ct 986.

— a statute which speaks of rent as "unjust and unreasonable." Edgar A. Levy Leasing Co. v Siegel, 258 US 242, 66 L ed 595, 42 S Ct 289.

— a statute which prohibits the "unreasonable waste" of natural gas. Bandini Petroleum Co. v Superior Ct. 284 US 8, 76 L ed 136, 52 S Ct 103, 78 ALR 826.

— a statute which provides, in stating a penalty for misstatement, in the required marking on a package containing an article of food, of the quantity of its contents, that "reasonable variation shall be permitted and tolerances and also exemptions as to small packages shall be established by rules and regulations by administrative officers." Unit-

An executive order must, in order to satisfy the constitutional requirement of due process, show the existence of the particular circumstances and conditions under which the making of such an order has been authorized by Congress.[3]

A statute is not unconstitutionally vague merely because clearer and more precise language might have been used; the Constitution does not require impossible standards of statutory clarity,[4] and does not require more than that the language convey sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices.[5] If a statute is so designed that persons of ordinary intelligence who would be law abiding can tell what conduct must be to conform to its requirements and it is susceptible of uniform interpretation and application by those charged with the responsibility of enforcing it, it is invulnerable to an attack for vagueness.[6] Obviously, a statute is not unconstitutionally vague merely because it is stringent and harsh.[7]

The due process requirement of definiteness is especially important in its application to penal and criminal statutes. The legislature, in the exercise of its power to declare what shall constitute a crime or punishable offense, must inform the citizen with reasonable precision what acts it intends to prohibit, so that he may have a certain, understandable rule of conduct[8] and know what

ed States v Shreveport Grain & Elevator Co. 287 US 77, 77 L ed 175, 53 S Ct 42.

— a statute which permits the state board of dental examiners to revoke the license of any dentist for gross violation of professional duties or for incompetency. State Dental Examiners v Savelle, 90 Colo 177, 8 P2d 693, 82 ALR 1176, app dismd 287 US 562, 77 L ed 496, 53 S Ct 5.

— the failure to describe an "isolated sale" of a security in a securities act. Kneeland v Emerton, 280 Mass 371, 183 NE 155, 87 ALR 1.

— a provision in a statute for the fixing of a barrier pillar between adjoining coal properties that it shall be determined "by the engineers of the adjoining property owners, together with the inspector of the district in which the mine is situated." Plymouth Coal Co. v Pennsylvania, 232 US 531, 58 L ed 713, 34 S Ct 359.

— a provision in a statute relating to innkeepers that in case of fire they shall "do all in their power" to save guests and inmates. Miller v Strahl, 239 US 426, 60 L ed 364, 36 S Ct 147.

A provision for a license or excise tax upon the gross income of the business in a stated city of a telephone company which does both an interstate and an intrastate business and carries on its operations within and outside the city cannot be held invalid on the ground of indefiniteness before administrative action by the officer whose duty it is to interpret the ordinance, since before such action the ordinance cannot be said to fall short of the requirements of due process. Seattle Gas Co. v Seattle, 291 US 638, 78 L ed 1037, 54 S Ct 550; Puget Sound Power & Light Co. v Seattle, 291 US 619, 78 L ed 1025, 54 S Ct 542, reh den 292 US 603, 78 L ed 1466, 54 S Ct 712.

2. McCreery v Libby-Owens-Ford Glass Co. 363 Ill 321, 2 NE2d 290, 105 ALR 75.

3. Panama Ref. Co. v Ryan, 293 US 388, 79 L ed 446, 55 S Ct 241.

4. United States v Petrillo, 332 US 1, 91 L ed 1877, 67 S Ct 1538, holding that the due process requirement is complied with by a statute whose language provides an adequate warning as to what conduct falls under its ban, and marks boundaries sufficiently distinct for judges and juries to administer the law in accordance with the legislative will.

5. Roth v United States, 354 US 476, 1 L ed 2d 1498, 77 S Ct 1304, reh den 355 US 852, 2 L ed 2d 60, 78 S Ct 8.

6. Kent Club v Toronto, 6 Utah 2d 67, 305 P2d 870.

7. Barsky v Board of Regents of University of New York, 347 US 442, 98 L ed 829, 74 S Ct 650.

8. Champlin Ref. Co. v Corporation Com. 286 US 210, 76 L ed 1062, 52 S Ct 559, 86 ALR 403; Connally v General Constr. Co. 269 US 385, 70 L ed 322, 46 S Ct 126; United States v L. Cohen Grocery Co. 255 US 81, 65 L ed 516, 41 S Ct 298, 14 ALR 1045; James v Bowman, 190 US 127, 47 L ed 979, 23 S Ct 678; Northern P. R. Co. v United States (CA8) 213 F 162, affd 242 US 190, 61 L ed 240, 37 S Ct 22; Re Alpine, 203 Cal 731, 265 P 947, 58 ALR 1500; State Dental Examiners v Savelle, 90 Colo 177, 8 P2d 693, 82 ALR 1176; United States v Capital Traction Co. 34 App DC 592; Gallaher v State, 193 Ind 629, 141 NE 347, 29 ALR 1059; Smith v State, 186 Ind 252, 115 NE 943; Sullivan v Brawner, 237 Ky 730, 36 SW2d 364; Katzman v Common-

acts it is his duty to avoid.[9] The constitutional vice in a vague or indefinite

wealth, 140 Ky 124, 130 SW 990; Louisville & N. R. Co. v Commonwealth, 99 Ky 132, 35 SW 129; People v Goulding, 275 Mich 353, 266 NW 378; People v Maki, 245 Mich 455, 223 NW 70; State v Evans, 154 Minn 95, 191 NW 425, 27 ALR 1165; People v O'Gorman, 274 NY 284, 8 NE2d 862, 110 ALR 1231; People v Grogan, 260 NY 138, 183 NE 273, 86 ALR 1266; Ratcliff v State, 106 Tex Crim 37, 289 SW 1072; State v Lantz, 90 W Va 738, 111 SE 766, 26 ALR 894; State ex rel. Hickey v Levitan, 190 Wis 646, 210 NW 111, 48 ALR 434.

Annotation: 26 ALR 897, s. 29 ALR 1066 (rule applied to automobile speed regulations); 70 L ed 322.

Due process requires a penal statute to be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. Kay v United States, 303 US 1, 82 L ed 607, 58 S Ct 468; State v Hurliman, 143 Conn 502, 123 A2d 767.

In determining whether a penal statute is sufficiently explicit to inform those who are subject to it what is required by them, the court should view the statute from the standpoint of the reasonable man who might be subject to its terms. Pacific Coast Dairy v Police Ct. 214 Cal 668, 8 P2d 140, 80 ALR 1217.

The Fifth and Sixth Amendments to the United States Constitution require an ascertainable standard of guilt, fixed by Congress rather than by courts and juries, and secure to accused persons the right to be informed of the nature and cause of accusations against them. Accordingly, a criminal statute passed by Congress must define with reasonable precision the act to be punished. United States v L. Cohen Grocery Co. 255 US 81, 65 L ed 516, 41 S Ct 298, 14 ALR 1045.

A statute so vague and indefinite, in form and as interpreted, as to permit within the scope of its language the punishment of incidents fairly within the protection of the guaranty of free speech is void, on its face, as contrary to the Fourteenth Amendment. Winters v New York, 333 US 507, 92 L ed 840, 68 S Ct 665.

A provision of an act of Congress applicable to the District of Columbia, declaring that "all suspicious persons" may be prosecuted as criminals, but not defining the "suspicion" of which an accused may be the object, is unconstitutional. Stoutenburgh v Frazier, 16 App DC 229.

The making of an unreasonable charge for services cannot be made criminal under a statute creating no test of reasonableness in this respect. Louisville & N. R. Co. v Commonwealth, 99 Ky 132, 35 SW 129; People v Maki, 245 Mich 455, 223 NW 70.

The Lever Act, by which Congress undertook to punish criminally any person who wilfully makes "any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries," violates the Fifth and Sixth Amendments to the United States Constitution in that it does not fix an ascertainable standard of guilt and is not adequate to inform persons accused of its violation of the nature and cause of the accusation against them. United States v L. Cohen Grocery Co. 255 US 81, 65 L ed 516, 41 S Ct 298, 14 ALR 1045; Standard Chemicals & Metals Corp. v Waugh Chemical Corp. 231 NY 51, 131 NE 566, 14 ALR 1054. Annotation: 14 ALR 1059.

The proclamation by the President of the United States of a scale of prices to be observed in dealings affected by the Lever Act did not save that act from invalidity for indefiniteness. Standard Chemicals & Metals Corp. v Waugh Chemical Corp., supra. Annotation: 14 ALR 1059.

A statute penalizing disloyal, scurrilous, or abusive matter concerning the form of government of the United States, its military forces, flag, or uniform, is not invalid because it fixes no ascertainable standard of guilt or because it requires no showing of harmful consequences. State v Sinchuk, 96 Conn 605, 115 A 33, 20 ALR 1515.

A statute declaring that the penalty for murder shall be death inflicted by the administration of lethal gas and that the authorities shall provide a suitable inclosure and proper means for its infliction is not void for indefiniteness. State v Gee Jon, 46 Nev 418, 211 P 676, 30 ALR 1443, reh den 46 Nev 438, 217 P 587, 30 ALR 1451.

Under the penal codes of some states it is provided that "whenever it appears that a provision of the penal law is so indefinitely framed or of such doubtful construction that it cannot be understood, either from the language in which it is expressed, or from some other written law of the state, such penal law shall be regarded as wholly inoperative." Ex parte Slaughter, 92 Tex Crim 212, 243 SW 478, 26 ALR 891.

9. United States v Brewer, 139 US 278, 35 L ed 190, 11 S Ct 538.

A statute punishing verbal acts, carefully drawn so as not to unduly impair liberty of expression, is not so vague as to violate the due process guaranty. Chaplinsky v New Hampshire, 315 US 568, 86 L ed 1031, 62 S Ct 766.

The failure of a statute limiting freedom of expression to give fair notice of what acts will be punished and such a statute's inclusion of prohibitions against expressions protected by the principles of the First Amendment violates an accused's rights under procedural due process. Winters v New York, 333 US 507, 92 L ed 840, 68 S Ct 665.

A citizen cannot be punished as a criminal unless his offense is clearly defined by statute and an appropriate penalty provided. Ex parte Roquemore, 60 Tex Crim 282, 131 SW 1101.

statute is the injustice to the accused in placing him on trial for an offense of whose nature he was given no fair warning.[10]

The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute.[11] But in view of the strong presumptive validity of an act of Congress, statutes are not automatically invalidated as vague simply because difficulty is found in determining whether certain marginal offenses fall within their language.[12] The uncertainty in a statute which will amount to a denial of due process of law is not the difficulty of ascertaining whether close cases fall within or without the prohibition of the statute, but whether the standard established by the statute is so uncertain that it cannot be determined with reasonable definiteness that any particular act is disapproved; and a criminal statute is sufficiently definite if its terms furnish a test based on knowable criteria which men of common intelligence who come in contact with the statute may use with reasonable safety in determining its command.[13]

If the meaning of a criminal statute cannot be judicially ascertained or if, in defining a criminal offense, it omits certain necessary and essential provisions which go to impress the acts committed as being wrongful and criminal, the courts are not at liberty to supply the deficiency or undertake to make the statute definite and certain.[14] But if the general class of offenses to which a statute is directed can be made constitutionally definite by reasonable construction of the statute, the court is under a duty to give the statute that construction.[15]

The vice of unconstitutional vagueness is aggravated where the statute in question operates to inhibit the exercise of individual freedoms affirmatively guaranteed by the Federal Constitution.[16] A generally worded statute which

The use of the words "similarly" and "formerly" in a statute making it an offense for an employee of both male and female employees in the manufacture or production of any article to discriminate in the payment of wages as between sexes, or to pay any female "engaged in the manufacture or production of any article of like value, workmanship, and production a less wage . . . than is being paid to males similarly employed in such manufacture, production, or in any employment formerly performed by males," does not render the statute so uncertain and ambiguous that its attempted enforcement would be a denial of due process of law. General Motors Corp. v Read, 294 **Mich** 558, 293 NW 751, 130 ALR 429.

10. American Communications Asso. CIO v Douds, 339 US 382, 94 L ed 925, 70 S Ct 674, reh den 339 US 990, 94 L ed 1391, 70 S Ct 1017.

11. United States v Harriss, 347 US 612, 98 L ed 989, 74 S Ct 808.

12. United States v National Dairy Products Corp. 372 US 29, 9 L ed 2d 561, 83 S Ct 594, reh den 372 US 961, 10 L ed 2d 13, 83 S Ct 1011.

13. State v Lanesboro Product & Hatchery Co. 221 **Minn** 246, 21 NW2d 792, 163 ALR 1108.

If the general class of offenses to which the statute is directed is plainly within its terms, the statute will not be struck down as vague, even though marginal cases could be put where doubts might arise. United States v Harriss, 347 US 612, 98 L ed 989, 74 S Ct 808.

14. Harisiades v Shaughnessy, 342 US 580, 96 L ed 586, 72 S Ct 512, reh den 343 US 936, 96 L ed 1344, 72 S Ct 767, 768; State v Excelsior Springs Light, Power H. & W. Co. 212 **Mo** 101, 110 SW 1079.

15. United States v Harriss, 347 US 612, 98 L ed 989, 74 S Ct 808.

The United States Supreme Court goes far to uphold state and federal statutes that deal with offenses difficult to define, "when they are not entwined with limitations on free expression." Winters v New York, 333 US 507, 92 L ed 840, 68 S Ct 665.

The Wisconsin statute (§ 348.412, Stat 1945) penalizing newspaper, magazine, periodical, or other circular publication of the identity of a female subjected to rape or similar criminal assault, is not so vague, uncertain, and indefinite as to constitute a denial of due process of law. State v Evjue, 253 **Wis** 146, 33 NW2d 305, 13 ALR2d 1201.

16. Cramp v Board of Public Instruction, 368 US 278, 7 L ed 2d 285, 82 S Ct 275.

is construed to punish conduct which cannot constitutionally be punished is unconstitutionally vague to the extent that it fails to give adequate warning of the boundary between the constitutionally permissible and the constitutionally impermissible applications of the statute.[17]

§ 553. Effect of party being unsuccessful before tribunal; errors of tribunal.

The mere fact that a person is unsuccessful in a court in a matter involving life, liberty, or property does not show that there has been a violation of the due process of law guaranty.[18] The Fourteenth Amendment does not raise a federal question in every case to test the justice of a decision.[19] The reversal of a former decision to the prejudice of one of the parties[1] or a departure by the courts of the state from a rule of property established by prior decisions[2] does not violate the guaranty. If there has been a full hearing or opportunity for hearing, there is no necessary violation of the guaranty.[3] The highest court of a state, in overruling an earlier decision, may make a choice for itself whether the new rule declared by it shall operate prospectively only or apply also to past transactions, and the alternative is the same whether the subject of the new decision is common law or the construction of a statute.[4] A court may give its overruling of an earlier decision a retroactive bearing, thereby making invalid that which was valid in the doing.[5]

17. Wright v Georgia, 373 US 284, 10 L ed 2d 349, 83 S Ct 1240.

18. Worcester County Trust Co. v Riley, 302 US 292, 82 L ed 268, 58 S Ct 185; Goltra v Weeks, 271 US 536, 70 L ed 1074, 46 S Ct 613; Palmer v Ohio, 248 US 32, 63 L ed 108, 39 S Ct 16; Tracy v Ginzberg, 205 US 170, 51 L ed 755, 27 S Ct 461; Sexton v Barry (CA6 Ohio) 233 F2d 220, cert den 352 US 870, 1 L ed 2d 76, 77 S Ct 94; Melville v Weybrew, 108 Colo 520, 120 P2d 189, cert den 315 US 811, 86 L ed 1210, 62 S Ct 795, reh den 315 US 830, 86 L ed 1224, 62 S Ct 913; Re Hull, 163 Minn 439, 204 NW 534, 205 NW 613, 49 ALR 320, error dismd Breen v Hull, 275 US 491, 72 L ed 390, 48 S Ct 33.

Persons suing a state for damages are not deprived of their property without compensation, in violation of the Fifth Amendment of the Federal Constitution, by a decision of the court that the state had not consented to be sued. Palmer v Ohio, 248 US 32, 63 L ed 108, 39 S Ct 16.

Legitimate judicial discretion is due process of law. Hubbard v Hubbard, 77 Vt 73, 58 A 969.

A misapprehension by a litigant of the steps which its best interests require during a trial may be appealing grounds for a plea to the discretion of the hearing tribunal for another chance, but not grounds for interference as a denial of constitutional rights. Market Street R. Co. v Railroad Com. 324 US 548, 89 L ed 1171, 65 S Ct 770, reh den 324 US 890, 89 L ed 1438, 65 S Ct 1020.

No denial of the due process of law guaranteed by the Fourteenth Amendment is involved in refusing to permit one sued on a judgment to set up as a defense thereto want of jurisdiction of his person, on which ground he had unsuccessfully sought dismissal of the action in which judgment was rendered, as the doctrine of due process does not involve the right to litigate the same question twice. Baldwin v Iowa State Traveling Men's Asso. 283 US 522, 75 L ed 1244, 51 S Ct 517; Sexton v Barry (CA6 Ohio) 233 F2d 220, cert den 352 US 870, 1 L ed 2d 76, 77 S Ct 94.

19. New York & N. E. R. Co. v Bristol, 151 US 556, 38 L ed 269, 14 S Ct 437; Missouri P. R. Co. v Humes, 115 US 512, 29 L ed 463, 6 S Ct 110; Davidson v New Orleans, 96 US 97, 24 L ed 616.

The Fourteenth Amendment does not draw to itself the provisions of state constitutions or state laws, and does not permit a party to bring to the test of a decision in the United States Supreme Court every ruling made in the course of a trial in a state court. Buchalter v New York, 319 US 427, 87 L ed 1492, 63 S Ct 1129.

1. Tidal Oil Co. v Flanagan, 263 US 444, 68 L ed 382, 44 S Ct 197.

2. O'Neil v Northern Colorado Irrig. Co. 242 US 20, 61 L ed 123, 37 S Ct 7.

Due process is not denied by a state supreme court's reversal of a previous decision and the application of such reversal to pre-existing situations. Re Allis' Will, 6 Wis 2d 1, 94 NW2d 226, 69 ALR2d 1128.

3. Goltra v Weeks, 271 US 536, 70 L ed 1074, 46 S Ct 613; Holmes v Conway, 241 US 624, 60 L ed 1211, 36 S Ct 681.

4. Great Northern R. Co. v Sunburst Oil & Ref. Co. 287 US 358, 77 L ed 360, 53 S Ct 145, 85 ALR 254.

Annotation: 85 ALR 262.

5. Great Northern R. Co. v Sunburst Oil & Ref. Co., supra.

Even an erroneous decision of a court on matters within its jurisdiction does not deprive the unsuccessful party of his rights under this guaranty where the parties have been fully heard in the regular course of judicial proceedings.[6] The same rule applies to the errors of other tribunals or officers.[7] So far as this guaranty is concerned, the extent to which a decision is erroneous or the fact that it is contrary to previous decisions has been said to be immaterial.[8]

6. Beck v Washington, 369 US 541, 8 L ed 2d 98, 82 S Ct 955, reh den 370 US 965, 8 L ed 2d 834, 82 S Ct 1575; American R. Exp. Co. v Kentucky, 273 US 269, 71 L ed 639, 47 S Ct 353; Corrigan v Buckley, 271 US 323, 70 L ed 969, 46 S Ct 521; Milwaukee Electric R. & Light Co. v Wisconsin, 252 US 100, 64 L ed 476, 40 S Ct 306, 10 ALR 892; McDonald v Oregon R. & Nav. Co. 233 US 665, 58 L ed 1145, 34 S Ct 772; Chicago Land Clearance Com. v Darrow, 12 Ill 2d 365, 146 NE2d 1, 68 ALR2d 532; Rothschild & Co. v Steger & Sons Piano Mfg. Co. 256 Ill 196, 99 NE 920; Cramer v Farmers State Bank, 98 Kan 641, 158 P 1111; Griggs v Hanson, 86 Kan 632, 121 P 1094; Campbell v St. Louis Union Trust Co. 346 Mo 200, 139 SW2d 935, 129 ALR 316; Hall v Wilder Mfg. Co. 316 Mo 812, 293 SW 760, 52 ALR 723; State v Orfanakis, 22 NM 107, 159 P 674; Apex Transp. Co. v Garbade, 32 Or 582, 52 P 573, 54 P 367, 882, 62 LRA 513; Ladner v Siegel, 298 Pa 487, 148 A 699, 68 ALR 1172; Tennessee C. R. Co. v Pharr, 183 Tenn 658, 194 SW2d 486; Roller v Murray, 71 W Va 161, 76 SE 172, error dismd 234 US 738, 58 L ed 1570, 34 S Ct 902.

It cannot be said that a state court denies due process when on appropriate hearing it determines that there is evidence to sustain a finding of a violation of state law with respect to the conduct of local affairs, and the contention that such a decision is erroneous does not present a federal question. Bell Tel. Co. v Pennsylvania Public Utility Com. 309 US 30, 84 L ed 563, 60 S Ct 411.

A state cannot be deemed guilty of violating the constitutional provision against depriving a person of liberty "without due process of law" because of a decision, even if erroneous, of its highest court while acting within its jurisdiction, as, for example, in a conviction and judgment for embezzlement. Re Converse, 137 US 624, 34 L ed 796, 11 S Ct 191.

The rendition of a judgment in favor of the plaintiff in an action upon a judgment of a court of another state over the defendants' objection that the judgment sued upon was void for lack of valid service of process does not take the property of the defendants without due process of law where the second judgment rests upon the view, right or wrong, that since the issue of jurisdiction over the parties was raised and adjudicated after full hearing in the former case, it could not be reopened in the present suit. Chicago L. Ins. v Cherry, 244 US 25, 61 L ed 966, 37 S Ct 492.

By way of illustration, it may be noted that the rule that an erroneous decision does not necessarily deny due process has been applied to—

— errors in a charge to the jury in a criminal case. Davis v Texas, 139 US 651, 35 L ed 300, 11 S Ct 675.

— an erroneous judgment as to what costs the law allows in a suit to enforce the payment of levee taxes. Ballard v Hunter, 204 US 241, 51 L ed 461, 27 S Ct 261.

— an erroneous interpretation by a state court of the decision of the Supreme Court of the United States as to punishment for contempt. Rothschild v Steger, 256 Ill 196, 99 NE 920.

— an erroneous decision that the issue of jurisdiction had been judicially heard and determined in prior proceedings. Chicago L. Ins. Co. v Cherry, 244 US 25, 61 L ed 966, 37 S Ct 492.

— an error of a trial judge in admitting evidence or entering judgment after full hearing. Jones v Buffalo Creek Coal & Coke Co. 245 US 328, 62 L ed 325, 38 S Ct 121.

— a mistake as to the law of another state. Chicago L. Ins. Co. v Cherry, 244 US 25, 61 L ed 966, 37 S Ct 492 (holding that since a mere mistake as to the law of another state is a question of fact, it is not a denial of due process of law); Pennsylvania F. Ins. Co. v Gold Issue Min. & Mill. Co. 243 US 93, 61 L ed 610, 37 S Ct 344; Porter v Wilson, 239 US 170, 60 L ed 204, 36 S Ct 91; Hall v Wilder Mfg. Co. 316 Mo 812, 293 SW 760, 52 ALR 723.

— errors of a state court in interpreting and applying the laws of that state. Howard v Kentucky, 200 US 164, 50 L ed 421, 26 S Ct 189.

— an error in ordering a guardian's sale without first requiring a bond to be filed and approved as a statute of the state required. Arrowsmith v Harmoning, 118 US 194, 30 L ed 243, 6 S Ct 1023.

7. Doty v Love, 295 US 64, 79 L ed 1303, 55 S Ct 558, 96 ALR 1438 (liquidating agency of a bank).

Due process is not denied by errors in the mere administration of a statute not involving jurisdiction of the subject matter or of the parties. Chicago, B. & Q. R. Co. v Chicago, 166 US 226, 41 L ed 979, 17 S Ct 581; Lent v Tillson, 140 US 316, 35 L ed 419, 11 S Ct 825; Griggs v Hanson, 86 Kan 632, 121 P 1094.

Due process is not denied by an error of judgment on the part of the liquidating agency of a closed bank in the compromise of liabilities. Doty v Love, 295 US 64, 79 L ed 1303, 55 S Ct 558, 96 ALR 1438.

8. Patterson v Colorado, 205 US 454, 51

It has been intimated, however, that if the error is gross and obvious, coming close to the boundary of arbitrary action, there may be a violation of the guaranty.[9] It has been stated that whenever a wrong judgment is entered against a defendant, his property is taken when it should not have been; but whatever the ground may be, if the mistake is not so gross as to be impossible in a rational administration of justice, it is no more than the imperfection of man, not a denial of constitutional rights.[10] It seems clear that a violation of the due process clause may be committed by the state judiciary, at least in construing a state statute. But the Federal Supreme Court cannot interfere unless the judgment amounts to mere arbitrary or capricious exercise of power or is in clear conflict with those fundamental principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights.[11]

3. Persons and Agencies Affected

a. Persons and Agencies Bound

§ 554. State and federal governments, generally.

The guaranty of due process of law which is stated in the Fifth Amendment binds the federal government, while that stated in the Fourteenth Amendment binds the states.[12] Thus, the limitations inherent in the requirements as to due process of law are binding equally on the United States[13] and on the sev-

L ed 879, 27 S Ct 556; Tennessee C. R. Co. v Pharr, 183 **Tenn** 658, 194 SW2d 486.

9. Roberts v New York, 295 **US** 264, 79 L ed 1429, 55 S Ct 689, holding that in condemnation proceedings, as in lawsuits generally, the Fourteenth Amendment is not a guaranty that a trial shall be free from error. To constitute a taking of property without due process of law by force of a judgment in such proceedings, such error must be gross and obvious, coming close to the boundary of arbitrary action.

10. Brinkerhoff-Faris Trust & Sav. Co. v Hill, 281 **US** 673, 74 L ed 1107, 50 S Ct 451; Chicago L. Ins. Co. v Cherry, 244 **US** 25, 61 L ed 966, 37 S Ct 492.

11. American R. Exp. Co. v Kentucky, 273 **US** 269, 71 L ed 639, 47 S Ct 353; Corrigan v Buckley, 271 **US** 323, 70 L ed 969, 46 S Ct 521; West v Louisiana, 194 **US** 258, 48 L ed 965, 24 S Ct 650; Ladner v Siegel, 298 **Pa** 487, 148 A 699, 68 ALR 1172.

The Fourteenth Amendment does not enable the Supreme Court of the United States to revise decisions of the state courts on questions of state law. Hebert v Louisiana, 272 **US** 312, 71 L ed 270, 47 S Ct 103, 48 ALR 1102.

The due process clause of the Fourteenth Amendment does not enable the United States Supreme Court to review errors of state law, however material under that law. Buchalter v New York, 139 **US** 427, 87 L ed 1492, 63 S Ct 1129.

12. Betts v Brady, 316 **US** 455, 86 L ed 1595, 62 S Ct 1252, ovrld on other grounds Gideon v Wainwright, 372 **US** 335, 9 L ed 2d 799, 83 S Ct 792, 93 ALR2d 733; Georgia Power Co. v Decatur, 281 **US** 505, 74 L ed 999, 50 S Ct 369; Green v Frazier, 253 **US** 233, 64 L ed 878, 40 S Ct 499; Jones v Buffalo Creek Coal & Coke Co. 245 **US** 328, 62 L ed 325, 38 S Ct 121; Brushaber v Union P. R. Co. 240 **US** 1, 60 L ed 493, 36 S Ct 236; Alabama Pub. Serv. Com. v Mobile Gas Co. 213 **Ala** 50, 104 So 538, 41 ALR 872; Moses v United States, 16 App **DC** 428; Griffin v State, 142 **Ga** 636, 83 SE 540; Windfall City v Somerville, 181 **Ind** 463, 104 NE 859; Cory v Carter, 48 **Ind** 327; Jacobs v Chariton, 245 **Iowa** 1378, 65 NW2d 561; Wichita Council, S. B. A. v Security Ben. Asso. 138 **Kan** 841, 28 P2d 976, 94 ALR 629; Sinclair v State, 161 **Miss** 142, 132 So 581, 74 ALR 241; State v Buente, 256 **Mo** 227, 165 SW 340; State v Gardner, 77 **Mont** 8, 249 P 574, 52 ALR 454; State ex rel. Cleveringa v Klein, 63 **ND** 514, 249 NW 118, 86 ALR 1523; Rich v Commonwealth, 198 **Va** 445, 94 SE2d 549; Heavner v Elkins, 69 **W Va** 255, 71 SE 184, affd 231 **US** 743, 58 L ed 463, 34 S Ct 318.

13. Union P. R. Co. v United States, 99 **US** 700, 25 L ed 496; Hines v Dahn (CA8 Iowa) 267 **F** 105, affd Dahn v Davis, 258 **US** 421, 66 L ed 696, 42 S Ct 320; Vaughn v State, 17 **Ala** App 35, 81 So 417, cert den 203 **Ala** 700, 82 So 894.

Congress does not have the final say as to what constitutes due process under the Fourteenth Amendment. State Board of Ins. v Todd Shipyards Corp. 370 **US** 451, 8 L ed 2d 620, 82 S Ct 1380.

eral states.[14] It follows that the requirements of due process of law extend to every case of the exercise of governmental power.[15] Where rights are acquired by a citizen under the existing law, there is no power in any branch of the government to take them away except by due process of law.[16] The purpose of this clause is to exclude arbitrary power from every branch of the government.[17]

The object of the constitutional guaranty of due process of law is to preserve personal and property rights against the arbitrary action of public officials.[18] It has been asserted that the guaranty should be enforced even against persons assuming to act under the authority of the government.[19] The guaranty is violated whenever any person, by virtue of public position under the federal or state government, deprives another of any right protected by that amendment.[20] The guaranty may be violated by unfairness or corruption of officers.[1] Hence, it is recognized that administrative officers, when executing the provisions of a statute involving the liberty of persons, have no right to disregard the fundamental principles that inhere in due process of law.[2]

§ 555. State agencies.

A state may not by any of its agencies, legislative, judicial, or executive, disregard the constitutional prohibition.[3] Every state official, high and low, is bound by the Fourteenth Amendment.[4] The inhibition includes all functionaries of state government, judicial as well as political.[5] Indeed, the Four-

14. Brown v New Jersey, 175 US 172, 44 L ed 119, 20 S Ct 77.

15. Union Bridge Co. v United States, 204 US 364, 51 L ed 523, 27 S Ct 367; Chicago, B. & Q. R. Co. v Illinois, 200 US 561, 50 L ed 596, 26 S Ct 341; Seaboard Air Line R. Co. v Simon, 56 Fla 545, 47 So 1001.

The powers of Congress to conduct war and to regulate the nation's foreign relations are subject to the constitutional requirements of due process. Kennedy v Mendoza-Martinez, 372 US 144, 9 L ed 2d 644, 83 S Ct 554.

16. Rowan v State, 30 Wis 129.

17. Charles Tolmas, Inc. v Police Jury of Jefferson Parish, 231 La 1, 90 So 2d 65; State v Guilbert, 56 Ohio St 575, 47 NE 551; Craig v Kline, 65 Pa 399; Norman v Heist (Pa) 5 Watts & S 171.

The constitutional guaranties of due process, whether under the federal or state constitutions, are a restraint not only upon persons holding positions specifically classed as executive, legislative, or judicial, but upon all administrative and ministerial officials who act under governmental authority. Betts v Easley, 161 Kan 459, 169 P2d 831, 166 ALR 342.

18. § 550, supra.

19. United States v Lee, 106 US 196, 27 L ed 171, 1 S Ct 240.

20. Chicago, B. & Q. R. Co. v Chicago, 166 US 226, 41 L ed 979, 17 S Ct 581; Indiana Natural & Illuminating Gas Co. v State, 158 Ind 516, 63 NE 220.

1. ***Annotation:*** 98 ALR 411.

2. Japanese Immigrant Case (Yamataya v Fisher) 189 US 86, 47 L ed 721, 23 S Ct 611; People v Belcastro, 356 Ill 144, 190 NE 301, 92 ALR 1223.

3. Buchalter v New York, 319 US 427, 87 L ed 1492, 63 S Ct 1129; Brinkerhoff-Faris Trust & Sav. Co. v Hill, 281 US 673, 74 L ed 1107, 50 S Ct 451; Georgia Power Co. v Decatur, 281 US 505, 74 L ed 999, 50 S Ct 369; Phillip Wagner v Leser, 239 US 207, 60 L ed 230, 36 S Ct 66; Home Tel. & Tel. Co. v Los Angeles, 227 US 278, 57 L ed 510, 33 S Ct 312; Cincinnati v Vester (CA6 Ohio) 33 F2d 242, 68 ALR 831, affd 281 US 439, 74 L ed 950, 50 S Ct 360; Ulman v Baltimore, 72 Md 587, 20 A 141, 21 A 709; Branson v Gee, 25 Or 462, 36 P 527; Pinney v Providence Loan & Invest. Co. 106 Wis 396, 82 NW 308.

Annotation: 98 ALR 411.

Rights under the Fourteenth Amendment turn on the power of the state, no matter by what organ it acts. Hughes v Superior Court of California, 339 US 460, 94 L ed 985, 70 S Ct 718.

The denial of rights given by the Fourteenth Amendment need not be by legislation. Saunders v Shaw, 244 US 317, 61 L ed 1163, 37 S Ct 638.

4. United States v Raines, 362 US 17, 4 L ed 2d 524, 80 S Ct 519.

5. Ladner v Siegel Co. 298 Pa 487, 148 A 699, 68 ALR 1172.

In determining whether state action is violative of the due process clause, it is im-

teenth Amendment is a restraint on the legislative,[6] executive,[7] and judicial departments[8] of the state. The act of a public official of a state is the act of the state in depriving an individual of property, life, or liberty without due process of law.[9] The action of prosecuting officers on behalf of the state may constitute state action within the purview of the due process clause of the Fourteenth Amendment.[10]

Whether, in carrying on the function of censor, a state administrative agency exceeds its statutory authority, is immaterial in determining whether its acts constitute state action.[11]

The acts of a municipal corporation cannot be said to be wanting in the due process of law guaranteed by the Fourteenth Amendment to the United States Constitution, if such acts, when done or ratified by the state, would not be inconsistent with that amendment.[12]

§ 556. Federal agencies.

It is recognized that the United States cannot interfere with private rights, except for legitimate governmental purposes. Nor can the federal government,[13] or any agencies set up by Congress for the government of its territory,[14] violate the guaranty of due process. The great substantive powers of Congress are all subject in their operation to the guaranties of due process contained in the Fifth Amendment.[15] The amendment has been applied to restrict the powers of Congress within the limitations of due process in the exercise of

material whether the state has acted solely through its judicial branch, since, whether legislative or judicial, it is still the application of state power which must be scrutinized. Kreshik v St. Nicholas Cathedral of Russian Orthodox Church, 363 US 190, 4 L ed 2d 1140, 80 S Ct 1037, reh den 364 US 855, 5 L ed 2d 79, 81 S Ct 35; NAACP v Alabama, 357 US 449, 2 L ed 2d 1488, 78 S Ct 1163.

6. Ex parte Rhodes, 202 Ala 68, 79 So 462, 1 ALR 568; State v Rose, 33 Del 168, 132 A 864, 45 ALR 85; State v Guilbert, 56 Ohio St 575, 47 NE 551; Ladner v Siegel Co. 298 Pa 487, 148 A 699, 68 ALR 1172; Simmons v Western U. Tel. Co. 63 SC 425, 41 SE 521.

The requirement of due process of law cannot be waived or dispensed with by the legislature. Juster Bros. v Christgau, 214 Minn 108, 7 NW2d 501.

Acts and practices of a commission created by a state legislature for the purpose of combating juvenile delinquency, which directly and designedly stop the circulation of publications found objectionable by the commissioner, are performed under color of state law and so constitute acts of the state within the meaning of the Fourteenth Amendment. Bantam Books, Inc. v Sullivan, 372 US 58, 9 L ed 2d 584, 83 S Ct 631.

7. Ulman v Baltimore, 72 Md 587, 20 A 141, 21 A 709.

8. Barrows v Jackson, 346 US 249, 97 L ed 1586, 73 S Ct 1031, reh den 346 US 841, 98 L ed 361, 74 S Ct 19; Hansberry v Lee, 311 US 32, 85 L ed 22, 61 S Ct 115, 132 ALR 741; Brinkerhoff-Faris Trust & Sav. Co. v Hill, 281 US 673, 74 L ed 1107, 50 S Ct 451; Hovey v Elliott, 167 US 409, 42 L ed 215, 17 S Ct 841; Chicago, B. & Q. R. Co. v Chicago, 166 US 226, 41 L ed 979, 17 S Ct 581; People v Belcastro, 356 Ill 144, 190 NE 301, 92 ALR 1223; Ulman v Baltimore, 72 Md 587, 20 A 141, 21 A 709; Re Cosgrave, 225 Minn 443, 31 NW2d 20, 1 ALR2d 175; State v Guilbert, 56 Ohio St 575, 47 NE 551; Commissioners of Sinking Fund v Philadelphia, 324 Pa 129, 188 A 314, 113 ALR 202; Ladner v Siegel Co. 298 Pa 487, 148 A 699, 68 ALR 1172.

9. Neal v Delaware, 103 US 370, 26 L ed 567.

10. Mooney v Holohan, 294 US 103, 79 L ed 791, 55 S Ct 340, 98 ALR 406, reh den 294 US 732, 79 L ed 1261, 55 S Ct 511.

Annotation: 98 ALR 411.

11. Bantam Books, Inc. v Sullivan, 372 US 58, 9 L ed 2d 584, 83 S Ct 631.

12. Owensboro Waterworks Co. v Owensboro, 200 US 38, 50 L ed 361, 26 S Ct 249.

13. Sinking Fund Cases, 99 US 700, 25 L ed 496.

14. Farrington v Tokushige, 273 US 284, 71 L ed 646, 47 S Ct 406.

15. Louisville Joint Stock Land Bank v Radford, 295 US 555, 79 L ed 1593, 55 S Ct 854, 97 ALR 1106, reh den 296 US 661, 80 L ed 471, 56 S Ct 82.

the war power,[16] the taxing power,[17] the bankruptcy power,[18] and the power to regulate commerce.[19] The Supreme Court has held, however, that although rights in contracts are property within the purview of the due process clause of the Fifth Amendment, of which parties cannot be despoiled by congressional action, contracts involving payment in gold include a congenital infirmity when they are made, in that they affect a matter over which congressional control may be exercised at any time in the future, and therefore an act of Congress which has the effect of nullifying contractual provisions as to payment in gold, passed by Congress under its constitutional power to regulate money, does not violate the Fifth Amendment.[1]

It seems that the due process guaranty does not circumscribe the activities of a federal agency that is lacking in power to affect those rights which due process protects.[2]

§ 557. Private persons.

It is the established general rule that the provisions of the due process clause in a state constitution and in the Federal Constitution are inhibitions upon the power of government and its agencies, not upon freedom of action of private persons.[3] However, a violation of the due process guaranty may result from the interplay of governmental and private action where it appears that it is only after the initial exertion of state power that private action takes hold.[4]

16. Hamilton v Kentucky Distilleries & Warehouse Co. 251 US 146, 64 L ed 194, 40 S Ct 106; Ochoa v Hernandez y Morales, 230 US 139, 57 L ed 1427, 33 S Ct 1033; Ex parte Milligan (US) 4 Wall 2, 18 L ed 281.

17. Heiner v Donnan, 285 US 312, 76 L ed 772, 52 S Ct 358; Blodgett v Holden, 275 US 142, 72 L ed 206, 48 S Ct 105; Nichols v Coolidge, 274 US 531, 71 L ed 1184, 47 S Ct 710, 52 ALR 1081; Barclay & Co. v Edwards, 267 US 442, 69 L ed 703, 45 S Ct 135, 348; Boyd v United States, 116 US 616, 29 L ed 746, 6 S Ct 524; United States v Baltimore & O. R. Co. (US) 17 Wall 322, 21 L ed 597.

18. Louisville Joint Stock Land Bank v Radford, 295 US 555, 79 L ed 1593, 55 S Ct 854, 97 ALR 1106, reh den 296 US 661, 80 L ed 471, 56 S Ct 82; Re Chicago, R. I. & P. R. Co. (CA7 Ill) 90 F2d 312, 113 ALR 487, cert den 302 US 717, 82 L ed 554, 58 S Ct 37.

19. United States v Cress, 243 US 316, 61 L ed 746, 37 S Ct 380; Carroll v Greenwich Ins. Co. 199 US 401, 50 L ed 246, 26 S Ct 66; United States v Lynah, 188 US 445, 47 L ed 539, 23 S Ct 349; United States v Joint Traffic Asso. 171 US 505, 43 L ed 259, 19 S Ct 25; Monongahela Nav. Co. v United States, 148 US 312, 37 L ed 463, 13 S Ct 622.

1. Norman v Baltimore & O. R. Co. 294 US 240, 79 L ed 885, 55 S Ct 407, 95 ALR 1352.

2. The due process clause of the Fifth Amendment does not entitle witnesses before the Commission on Civil Rights, established by the provisions of the Civil Rights Act of 1957 (42 USC §§ 1975–1975e), to know the specific charges that are being investigated and the identity of the complainants, and to have the right to cross-examine those complainants and other witnesses, in view of the fact that the function of the Commission is purely investigative and fact-finding; that it does not adjudicate; that it does not hold trials or determine anyone's civil or criminal liabilities; that it does not issue orders; that it does not indict, punish, or impose any legal sanctions; that it does not make determinations depriving anyone of his life, liberty, or property; and that the only purpose of its existence is to find facts which may subsequently be used as the basis for legislative or executive actions. Hannah v Larche, 363 US 420, 4 L ed 2d 1307, 80 S Ct 1502, reh den 364 US 855, 5 L ed 2d 79, 81 S Ct 33.

3. United States v Classic, 313 US 299, 85 L ed 1368, 61 S Ct 1031, reh den 314 US 707, 86 L ed 565, 62 S Ct 51.

State and federal constitutional requirements of due process of law do not preclude a testator from providing that any contestant of his will shall be deprived of any share in his estate. Re Chambers, 322 Mo 1086, 18 SW2d 30, 67 ALR 41. Annotation: 67 ALR 52.

4. NAACP v Alabama, 357 US 449, 2 L ed 2d 1488, 78 S Ct 1163, holding that an order of a state court requiring the National Association for the Advancement of Colored People to produce a list of its members within the state is not immunized from constitutional defect under the due process clause of the Fourteenth Amendment by the fact that whatever repressive effect compulsory disclosure of

Moreover, it seems undoubted that the people of a sovereign state in drafting and adopting a state constitution are bound to respect due process limitations equally with the legislative and other departments of government acting under such constitution.[5]

b. Persons Protected

§ 558. Generally.

It is obvious that the guaranty of due process of law inures to the benefit of persons who are citizens of the United States or of the state in which the question arises. It is not, however, limited to such citizens. The guaranty is universal in its application to all persons within the territorial jurisdiction, without regard to any differences of race, color, or nationality.[6] However, the guaranty does not extend to persons in governmental capacity who are claiming injury only in such capacity.[7]

The guaranty applies in Puerto Rico.[8]

§ 559. Public bodies.

Although there are decisions referring to the rights of a state under the due process clause,[9] it seems clear that so far as the state and its instrumentalities are concerned, there is no scope for invoking the due process guaranty as against the action of the state itself.[10] The power of the state to control its

the names of membership may have upon participation by state citizens in the association's activities follows not from state action, but from private community pressures.

5. State ex rel. Wausau Street R. Co. v Bancroft, 148 Wis 124, 134 NW 330.

6. Kwong Hai Chew v Colding, 344 US 590, 97 L ed 576, 73 S Ct 472; Truax v Raich, 239 US 33, 60 L ed 131, 36 S Ct 7.

The due process clauses of both the Fifth and Fourteenth Amendments are directed at the protection of the individual, and he is entitled to the immunity that these clauses give as much against the state as against the national government. Curry v McCanless, 307 US 357, 83 L ed 1339, 59 S Ct 900, 123 ALR 162.

But it has been held that persons yet unascertained and unborn are not deprived of their rights without due process of law by making them defendants in a bill to remove a cloud upon title and having them represented by a guardian ad litem. Loring v Hildreth, 170 Mass 328, 49 NE 652.

As to the applicability of the due process guaranty to aliens, see 3 Am Jur 2d, Aliens and Citizens § 8. As to the applicability of the guaranty to corporations, see Corporations (1st ed § 10). As to the due process protection afforded infants with respect to juvenile court statutes, see Juvenile Courts and Delinquent and Dependent Children (Rev ed §§ 13 et seq.).

7. § 559, infra.

8. Balzac v Porto Rico, 258 US 298, 66 L ed 627, 42 S Ct 343.

9. State by Peterson v Anderson, 220 Minn 139, 19 NW2d 70, due process right of state to interpose and file answers alleging that there was no taking of or damage to land of persons permitted to intervene in condemnation proceeding instituted by state.

10. Bibb County v Hancock, 211 Ga 429, 86 SE2d 511.

Annotation: 116 ALR 1039.

Sandel v State, 115 SC 168, 104 SE 567, 13 ALR 1268, holding that a statute authorizing suit against the state for death of a child killed by impure vaccine furnished by the state does not violate the constitutional provision against depriving one of life, liberty, or property without due process of law.

A governmental agency which is not authorized to hold property in a private sense is not deprived of property without due process of law by a statute providing for the extinguishment of its title to land. Essex Public Road Bd. v Skinkle, 140 US 334, 35 L ed 446, 11 S Ct 790 (holding that New Jersey Law, March 31, 1882, providing a mode by which an assessment may be compromised and discharged where the real estate has been sold to the public road board, which is an involuntary quasi corporation created to construct a public work, does not impair a contract or deprive the board of property without due process of law. Such a public agency cannot own property in a proprietary or private sense); Fahey v O'Melveny & Myers (CA9 Cal) 200 F2d 420, cert den 345 US 952, 97 L ed 1374, 73 S Ct 863, reh den 345 US 978, 97 L ed 1393, 73 S Ct 1120.

own governmental agencies in their governmental capacities is not ordinarily restrained by the requirement of due process.[11] In the application of this rule to municipalities, the question depends upon the view taken in the particular jurisdiction as to the rights of a municipal government. In a majority of states the right of the people of a municipality to control its affairs is not considered as an inherent right residing in the people, but as dependent for its existence on the legislative will.[12] In such jurisdictions the state has a power over the rights and properties of municipalities which is unrestricted by the due process guaranty.[13] The same rule applies to townships[14] and to counties,[15] although there has been some variance in this respect.[16]

In jurisdictions in which the right to local self-government is treated as a right inherent in cities and towns, and one which, if not surrendered on the adoption of the state constitution, cannot be taken away by the legislature, the due process guaranty applies to municipal corporations,[17] at least as to its proprietary functions.[18]

11. Rein v Johnson, 149 **Neb** 67, 30 NW2d 548, cert den 335 **US** 814, 93 L ed 369, 69 S Ct 31.

12. See **MUNICIPAL CORPORATIONS** (1st ed § 77).

13. Trenton v New Jersey, 262 **US** 182, 67 L ed 937, 43 S Ct 534, 29 ALR 1471, holding that the state may, without violating the due process guaranty, interfere with the right of a municipality to take water from a public stream, although such municipality acquired the right from a private grantee of the state, and that the state may impose a license fee or charge for the diversion of water from the stream.

For example, without denying due process the state may—

— abrogate a right of setoff previously given to a municipal corporation. New Orleans v New Orleans Waterworks Co. 142 **US** 79, 35 L ed 943, 12 S Ct 142.

— charge a municipal corporation with public obligations. State ex rel. Bulkeley v Williams, 68 **Conn** 131, 35 A 24, 421, affd 120 **US** 304, 42 L ed 1047, 18 S Ct 617.

— make a municipality liable for damages by a mob or riot. Chicago v Sturges, 222 **US** 313, 56 L ed 215, 32 S Ct 92.

— create a new district to which is given property within its limits which had belonged to the district from which it was created. Atty. Gen. ex rel. Kies v Lowrey, 199 **US** 233, 50 L ed 167, 26 S Ct 27; Pass School Dist. v Hollywood City School Dist. 156 **Cal** 416, 105 P 122.

— charge a school corporation with special assessments. Windfall City v Somerville, 181 **Ind** 463, 104 NE 859.

14. Soliah v Heskin, 222 **US** 522, 56 L ed 294, 32 S Ct 103.

The state may compel a township, as one of its political subdivisions, to levy and collect taxes for the purpose of paying the amount assessed against such township for the public benefits accruing from the construction of a drain, or determine what duties may be performed by local officers and whether they shall be appointed or elected by the people. Soliah v Heskin, supra.

A state law directing that five towns shall maintain a bridge and highway, each bearing a share in the expense thereof, and creating them a body corporate under a particular name for the care and maintenance of the bridge and highway, does not deprive of property without due process of law. Williams v Eggleston, 170 **US** 304, 42 L ed 1047, 18 S Ct 617.

15. State v Pierce County, 132 **Wash** 155, 231 P 801, 46 ALR 594.

Neither counties nor municipal corporations are persons as against the state within the meaning of the constitutional provision guaranteeing due process to all persons. Bibb County v Hancock, 211 **Ga** 429, 86 SE2d 511.

The state may impose upon a county the cost of maintaining its harmless insane when the insane persons themselves or their relatives are not able to do so, even though the county is not made party to the proceedings in which the necessary facts are determined. See Brighton v Charleston, 114 **Vt** 316, 44 A2d 628.

16. Johnston County v Lacy, 174 **NC** 141, 93 SE 482, 2 ALR 726, holding that the state cannot, in view of the constitutional provisions that no one shall be deprived of his property except by the law of the land, require a county to give bond for payment of interest on money loaned a township for improving a highway of an exclusively local nature.

17. People ex rel. Rodgers v Coler, 166 **NY** 1, 59 NE 716.

18. State ex rel. Kern v Arnold, 100 **Mont** 346, 49 P2d 976, 100 ALR 1071, holding that an act of the legislature requiring a city which is empowered but not compelled to maintain a paid fire department, to set up a three-platoon system and to pay a stated minimum salary to firemen, is unconstitutional as depriving the city of its property without due process of law.

or default taken, or the court in its discretion will probably set aside a default judgment and permit a defense.[1] While the authority of the legislature to prescribe the length of notice is not absolute and beyond review, it is certain that only in a clear case will a notice authorized by the legislature be set aside as wholly ineffectual on account of the shortness of the time.[2]

The very nature of the principle that notice must be given sufficiently in advance of the hearing to afford an opportunity to be present makes it clear that the question whether, from the viewpoint of time, there has been a sufficient compliance with the notice requirement which the due process guaranty imposes is determinable according to the facts and circumstances of particular cases.[3] And it is important to observe that due process does not require, as to all proceedings, that notice be given prior to the initiation of the proceedings.[4]

§ 565. Persons entitled.

Persons entitled to notice are, speaking generally, those who are to be affected by a judgment or order.[5] However, the notice need not be given to

1. Roller v Holly, 176 US 398, 44 L ed 520, 20 S Ct 410.

2. McDaniel v McElvy, 91 Fla 770, 108 So 820, 51 ALR 731.

3. Service of process made upon a defendant residing in Virginia, requiring him to appear and answer a suit in Texas within 5 days, was not a reasonable notice, and therefore not due process of law. Roller v Holly, 176 US 398, 44 L ed 520, 20 S Ct 410.

Notice to the attorney for those whose names were duly entered as freedmen by blood on the rolls made and approved by the Secretary of the Interior, given a few hours before the hearing of a motion to strike their names from the roll on the ground that their enrollment had been secured by perjury, was not such notice as afforded due process of law. United States ex rel. Turner v Fisher, 222 US 204, 56 L ed 165, 32 S Ct 37.

Due process is not denied by a state statute providing for the giving of notice by publication to nonresident owners of the institution of condemnation proceedings, where, as construed by the state courts, service was complete upon its first publication, 18 days before return day. Wick v Chelan Electric Co. 280 US 108, 74 L ed 212, 50 S Ct 41.

Twenty days' written notice of a proceeding to revoke the license of a physician is reasonable within the due process clause of the Federal Constitution. Missouri ex rel. Hurwitz v North, 271 US 40, 70 L ed 818, 46 S Ct 384.

4. The failure of the Bankruptcy Act to provide for notice to creditors of the filing of a petition in voluntary proceedings does not deprive such creditors of their property without due process of law, in view of the provisions of the act for 10 days' notice of the first meeting of creditors and of each of the subsequent steps in administration, and of the various provisions relative to the granting of a discharge and for revocation of the same when procured by fraud or not warranted by the facts. Hanover Nat. Bank v Moyses, 186 US 181, 46 L ed 1113, 22 S Ct 857.

A decree of a bankruptcy court enjoining, pending disposition of a petition seeking composition with creditors or an extension of time, a sale under execution of the property of the petitioner, is not invalid as wanting in due process because made without actual notice to the execution creditor, he being entitled to move to set the order aside. Collins v Welsh (CA9) 75 F2d 894, 99 ALR 1319, cert den 295 US 762, 79 L ed 1704, 55 S Ct 921.

Annotation: 99 ALR 1331.

A statutory provision that any vehicle used in violation of the Motor Vehicle Law, and thereby causing damage to any public highway, shall be subject to a lien for the full amount of all damages, is not lacking in due process in that it does not provide notice and an opportunity to be heard to the owner of such vehicle, since the foreclosure of such lien, not being provided for therein, must be by a bill in equity, of which the owner will have notice. Mammina v Alexander Auto Serv. Co. 333 Ill 158, 164 NE 173, 61 ALR 649.

Annotation: 61 ALR 655.

5. State ex rel. Sweezer v Green, 360 Mo 1249, 232 SW2d 897, 24 ALR2d 340, disapproved on other grounds State ex rel. North v Kirtley (Mo) 327 SW2d 166.

Judicial action enforcing a judgment against the person or property of one who was not a party to the proceeding in which the judgment was rendered, and was not made a party by service of process, is not that due process which the Fifth and Fourteenth Amendments require. Hansberry v Lee, 311 US 32, 85 L ed 22, 61 S Ct 115, 132 ALR 741.

Due process of law in proceedings for the

every party for every new step or in every supplementary proceeding in litigation.[6]

§ 566. — In representative actions.

In certain cases, notice to one party may by reason of representation be notice to another, at least so far as the representative relation is concerned.[7] A statute which provides that jurisdiction to render judgment against an association which will bind the joint property of the associates may be acquired by service on one or more of its members is consistent with due process.[8] It has been said that so far as constitutionality is concerned, there is no distinction between such a statute applied to partnerships and one applied to other unincorporated associations.[9] When, however, it comes to actually reaching individual property of a person, such as a stockholder in a corporation or a person in an association, notice is required.[10]

adoption of a child requires, as to the parent, some notice and opportunity to be heard. Schiltz v Roenitz, 86 **Wis** 31, 56 NW 194.

Notice is required to a mental defective before he can be sterilized under a statute providing for such sterilization upon the petition of the next of kin or legal guardian if approved by certain state officers. Smith v Wayne Probate Judge (Smith v Command) 231 **Mich** 409, 204 NW 140, 40 ALR 515; Brewer v Valk, 204 **NC** 186, 167 SE 638, 87 ALR 237. Annotation: 40 ALR 535, s. 51 ALR 862, 87 ALR 242.

Notice to a person of proceedings to have him declared insane is essential to due process of law. Re Lambert, 134 **Cal** 626, 66 P 851; Re Moynihan, 332 **Mo** 1022, 62 SW2d 410, 91 ALR 74; Re Allen, 82 **Vt** 365, 73 A 1078. But see Chavannes v Priestley, 80 **Iowa** 316, 45 NW 766, holding that adjudging a person insane without notice to him, when the commissioners think it would be injurious to him to hold the examination in his presence, does not deprive him of his liberty without due process of law, where a regular practicing physician visits and personally examines him, and any relative or any citizen of the county may appear and resist the application, and the parties may appear by counsel if they like.

Before the right of suffrage may be denied to an individual, he must have notice and an opportunity to be heard in the manner provided by law. Pierce v Superior Ct. 1 **Cal** 2d 759, 37 P2d 460, 96 ALR 1020.

Construing a statute to mean that the heirs are not necessary parties to a suit against the administratrix to foreclose a mortgage executed by the decedent does not deprive such heirs, without due process of law, of the title which is cast upon them upon the death of their ancestor. McCaughey v Lyall, 224 US 558, 56 L ed 883, 32 S Ct 602.

6. § 561, supra.

The giving of proper notice for the appointment of an administrator has been deemed to bring into court all persons having an interest in the estate, for all purposes necessary for the settlement of the estate, including its distribution among the heirs of the decedent. Ro Bards v Lamb, 127 US 58, 32 L ed 60, 8 S Ct 1031; Barrette v Whitney, 36 **Utah** 574, 106 P 522.

7. Members of a class not present as parties to the litigation may be bound by the judgment where they are in fact adequately represented by parties who are present, or where they actually participate in the conduct of the litigation in which members of the class are present as parties, or where the interest of the members of the class, some of whom are present as parties, is joint, or where for any other reason the relationship between the parties present and those who are absent is such as legally to entitle the former to stand in judgment for the latter. Hansberry v Lee, 311 US 32, 85 L ed 22, 61 S Ct 115, 132 ALR 741.

8. Jardine v Superior Ct. 213 **Cal** 301, 2 P2d 756, 79 ALR 291, app dismd 284 US 592, 76 L ed 510, 52 S Ct 197.

Annotation: 79 ALR 305.

9. Jardine v Superior Ct., supra.

10. Coe v Armour Fertilizer Works, 237 US 413, 59 L ed 1027, 35 S Ct 625, holding that the failure to afford notice, hearing, or opportunity to be heard renders invalid a statute under which, upon the return nulla bona of an execution against a corporation, an execution may issue against a stockholder for the amount of the unpaid subscription to the stock he holds, without notice to him or other preliminary steps, he having the right, in case he is not in fact the holder of stock upon which there is an unpaid subscription, or in case the amount of the execution is in excess of the unpaid subscription, to appropriate relief by testing the legality of the execution after issuance, and the execution, in the absence of such objections, being enforceable, although there may have been only a formal levy, without even such notice as might be implied from a forceable seizure or interference with the possession.

Due process requires notice to nonassenting bondholders of an application to the court, in pursuance of statute, by a bondholders' committee, for leave to the mortgage trustee

destruction is claimed.[2] The usual course of proceedings in such case is either to seize the property, libel it in a court of competent jurisdiction, and have it condemned by that court,[3] or, as in criminal matters, to arrest the offender and to provide that on his conviction the forfeiture of the property to which the offender's guilt has been imputed, and to which the penalty attaches, should take place.[4] A proceeding in the nature of a libel against the property seized may be maintained and the legal status of the articles finally determined in a proceeding separate and distinct from a prosecution against the owner.[5]

§ 51. Contraband Articles.—An owner of property has no vested or constitutional right to use or allow the use of such property for purposes injurious to the public health or morals.[6] The state has the right in the exercise of its police power to provide for the seizure and destruction of property so used, or intended to be so used, without giving the custodian thereof notice or an opportunity to be heard.[7] This rule has been applied to such articles as gambling instruments in their nature incapable of use for any other purpose,[8] intoxicating liquors held contrary to law,[9] instrumentalities used in the unlawful taking of fish and game,[10] and unfit food exposed for sale contrary to law.[11] In some jurisdictions, however, it is provided by statute that when articles primarily intended for an unlawful use are seized under a warrant from a justice, they can be destroyed only on the conviction of their owner, on the charge of keeping them, in a criminal court, and under its order.[12]

In fixing the time within which such property must be brought before a court for condemnation, the legislature is subject only to the limitation that the delay allowed is not so unreasonable as to amount to a deprivation of property without due process of law. Where the statute fixes no time, the common law will supply the requirement that the officer act within a reasonable time. What is a "reasonable time" in any case depends upon the circumstances of that case and on the consequences of the lapse of time complained of.[13]

IV. WRONGFUL AND UNREASONABLE SEARCHES AND SEIZURES

A. What Constitutes

1. In General

§ 52. Generally.—The immunity provided by the constitutional guaranties

2 State v. Derry, 171 Ind 18, 85 NE 765, 131 Am St Rep 237; Lowry v. Rainwater, 70 Mo 152, 35 Am Rep 420; McConnell v. McKillip, 71 Neb 712, 99 NW 505, 65 LRA 610, 115 Am St Rep 614, 8 Ann Cas 898.

3 See 23 Am Jur 611, Forfeitures and Penalties, §§ 14 et seq.

4 McConnell v. McKillip, 71 Neb 712, 99 NW 505, 65 LRA 610, 115 Am St Rep 614, 8 Ann Cas 898.

5 State v. Derry, 171 Ind 18, 85 NE 765, 131 Am St Rep 237.

Forfeiture proceedings as proceedings in rem, see 23 Am Jur 603, Forfeitures and Penalties, § 6.

6 See 11 Am Jur, Constitutional Law, p 1009, § 268; p 1020, §§ 271, 272.

7 See 12 Am Jur, Constitutional Law, p 299, § 604; p 310, § 618; p 358, § 678.

8 See 24 Am Jur 436, Gaming and Prize Contests, § 57.

As to money seized in gambling houses or devices, see 24 Am Jur 438, Gaming and Prize Contests, § 59.

9 See 30 Am Jur 511, Intoxicating Liquors, § 492.

10 See 22 Am Jur 708, Fish and Fisheries, § 55; 24 Am Jur 393, Game and Game Laws, § 29.

11 See 22 Am Jur 866, Food, § 80.

12 Woods v. Cottrell, 55 W Va 476, 47 SE 275, 65 LRA 616, 104 Am St Rep 1004, 2 Ann Cas 933.

13 Ely v. Bugbee, 90 Conn 584, 98 A 121, LRA1916F 910.

is not from all searches and seizures, but from unreasonable searches and seizures only.[14] The term "unreasonable" has allusion to what had been practiced before the Revolution, and especially to general search warrants, in which the person, place, or thing was not described.[15] No search warrant is unreasonable, in the legal sense, when it is for a thing obnoxious to the law,[16] and of a person or place particularly described,[17] and is issued on oath on probable cause.[18] An unreasonable search has therefore been defined as an examination or inspection without authority of law of one's premises or person, with a view to the discovery of stolen, contraband, or illicit property, or for some evidence of guilt, to be used in the prosecution of a criminal action.[19] It is not the breaking of a man's doors and the rummaging of his drawers that constitute the essence of the offense; it is the invasion of his indefeasible rights of personal security, personal liberty, and private property, where those rights have never been forfeited by his conviction of a public offense.[20]

The principle has been laid down that a dwelling house or a building cannot be searched without a warrant therefor.[1] Whether a search is legal or illegal, however, is not always determined by the presence or absence of a search warrant. A search may be unreasonable when made by an officer with a valid search warrant in his hands,[2] as, for example, when he conducts a search in an unreasonable manner;[3] or a search may be reasonable and entire-

[14] Carroll v. United States, 267 US 132, 69 L ed 543, 45 S Ct 280, 39 ALR 790; People v. Preston, 341 Ill 407, 173 NE 383, 77 ALR 631; People v. Chiagles, 237 NY 193, 142 NE 583, 32 ALR 676.

"The wording of the Fourth Amendment implies that search warrants were in familiar use when the Constitution was adopted, and plainly, that when issued 'upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized,' searches and seizures made under them are to be regarded as not unreasonable, and therefore not prohibited by the amendment. Searches and seizures are as constitutional under the amendment when made under valid search warrants as they are unconstitutional, because unreasonable, when made without them,—the permission of the amendment has the same constitutional warrant as the prohibition has, and the definition of the former restrains the scope of the latter." Gouled v. United States, 255 US 298, 65 L ed 647, 41 S Ct 261.

[15] Carroll v. United States, 267 US 132, 69 L ed 543, 45 S Ct 280, 39 ALR 790; Boyd v. United States, 116 US 616, 29 L ed 746, 6 S Ct 524; Santo v. State, 2 Iowa 165, 63 Am Dec 487; Youman v. Com. 189 Ky 152, 224 SW 860, 13 ALR 1303.

Anno: 3 ALR 1515.

The Fourth Amendment to the Federal Constitution is to be construed in the light of what was deemed to be an unreasonable search and seizure when it was adopted. Carroll v. United States, 267 US 132, 69 L ed 543, 45 S Ct 280, 39 ALR 790.

Statutory immunity from unreasonable searches and seizures relates only to such as are unreasonable in the light of common-law traditions. People v. Chaigles, 237 NY 193, 142 NE 583, 32 ALR 676.

As to the origin and history of search warrants, see supra, § 2.

[16] Santo v. State, 2 Iowa 165, 63 Am Dec 487.

See supra, § 15.

[17] Santo v. State, 2 Iowa 165, 63 Am Dec 487.

As to description required in search warrant, see supra, §§ 34 et seq.

[18] Santo v. State, 2 Iowa 165, 63 Am Dec 487.

As to probable cause and oath, see supra, §§ 21 et seq.

[19] People v. De Cesare, 220 Mich 417, 190 NW 302, citing RCL; State v. Coburn, 68 Okla Crim Rep 67, 95 P(2d) 670, citing RCL; Bush v. State, 64 Okla Crim Rep 161, 77 P(2d) 1184, citing RCL; Graham v. State, 31 Okla Crim Rep 125, 237 P 462, citing RCL; Blackburg v. Beam, 104 SC 146, 88 SE 441, LRA1916E 714; Jokosh v. State, 181 Wis 160, 193 NW 976, citing RCL.

Anno: 101 Am St Rep 328; 24 Eng Rul Cas 9.

An unreasonable search is one which trenches upon the peaceful enjoyment of the house in which one lives, or in which he works and does business, and those things connected therewith, such as gardens, outhouses, and appurtenances necessary for the domestic comfort of the dwelling house or that in which the business is conducted. **Anno:** 74 ALR 1456.

[20] Weeks v. United States, 232 US 383, 58 L ed 652, 34 S Ct 341, LRA1915B 834, Ann Cas 1915C 1177; Boyd v. United States, 116 US 616, 29 L ed 746, 6 S Ct 524; Youman v. Com. 189 Ky 152, 224 SW 860, 13 ALR 1303; People v. De Cesare, 220 Mich 417, 190 NW 302, citing RCL; State v. Peterson, 27 Wyo 185, 194 P 342, 13 ALR 1284.

[1] See supra, § 16.

As to whether inspection of premises under order of court constitutes unreasonable search, see 17 Am Jur 7, DISCOVERY, INSPECTION, MENTAL AND PHYSICAL EXAMINATION, § 7.

[2] State v. Owens, 302 Mo 348, 259 SW 100, 32 ALR 383.

[3] **Anno:** 3 ALR 1515.

ly within the rights of an officer when he has no search warrant,[4] as, for example, a search incident to a lawful arrest,[5] a search in an open field or wood,[6] or, in some cases, a search of a vehicle or other means of transportation.[7] Again, a literal "search" and "seizure" is not required to constitute an unreasonable search and seizure. Thus, the surreptitious removal from his office of incriminating documents belonging to the accused by an officer making a supposedly friendly visit has been held to constitute an unreasonable search and seizure.[8]

The decisions appear to warrant the generalizations that every unlawful search and seizure is unreasonable,[9] and that a search and seizure is unreasonable where it is not authorized by statute;[10] or where the statute under which the warrant is issued does not conform to the conditions under which the constitutional guaranties permit such warrants to issue;[11] or where the conditions prescribed by the statute have not been met;[12] or where the seizure of property is other than that connected with the offense charged.[13]

Whether or not a search is reasonable is a judicial question.[14] There is no formula for the determination of the reasonableness of a search and seizure, but each case is to be decided on its own facts and circumstances.[15]

§ 53. Security of Person.—The constitutional guaranties against all unreasonable searches or seizures secures every citizen against a search of his person not plainly authorized by some law.[16] A search of the person, however, without a warrant, in connection with a lawful arrest, and the taking from the arrested person the instruments found in his possession which were used in connection with the crime is not an unreasonable search or an illegal seizure.[17] No search of the person or seizure of any article found thereon can be made on mere suspicion that the person searched is violating the law, or without a search warrant, unless and until the alleged offender is in custody under a warrant of arrest or shall be lawfully arrested without a warrant as authorized by law.[18] So also, it has been held that the search of a person

As to the conduct of a search, see supra, § 41.

[4] State v. Owens, 302 Mo 348, 259 SW 100, 32 ALR 383.

[5] See supra, § 19.

[6] See supra, § 17.

[7] see supra, § 18.

[8] Gouled v. United States, 255 US 298, 65 L ed 647, 41 S Ct 261.

But see Olmstead v. United States, 277 US 438, 72 L ed 944, 48 S Ct 564, 66 ALR 376, to the effect that the decision of the Gouled Case carried the inhibition against unreasonable searches and seizures to the extreme limit.

[9] State v. Wills, 91 W Va 659, 114 SE 261, 24 ALR 1398.

[10] State v. Marxhausen, 204 Mich 559, 171 NW 557, 3 ALR 1505.

Anno: 3 ALR 1515.

A search prosecuted in violation of the Federal Constitution is not made lawful by what it brings to light. Byars v. United States, 273 US 28, 71 L ed 520, 47 S Ct 248.

As to grounds for issuance of search warrants generally, see supra, §§ 14 et seq.

[11] Anno: 3 ALR 1515.

It is not within the power of a legislature to enact a statute which will permit an unreasonable search. People v. Case, 220 Mich 379, 190 NW 289, 27 ALR 686; State v. Owens, 302 Mo 348, 250 SW 100, 32 ALR 383; Lowry v. Rainwater, 70 Mo 152, 35 Am Rep 420.

[12] Anno: 3 ALR 1515.

As to conditions requisite to issuance of search warrants generally, see §§ 21 et seq.

[13] Anno: 3 ALR 1515.

See supra, § 42.

[14] State v. Owens, 302 Mo 348, 250 SW 100, 32 ALR 383.

[15] Go-Bart Importing Co. v. United States, 282 US 344, 75 L ed 374, 51 S Ct 153; United States v. Thomson (CCA 7th) 113 F(2d) 643, 129 ALR 1291.

[16] Austin & N. W. R. Co. v. Cluck, 97 Tex 172, 77 SW 403, 64 LRA 494, 104 Am St Rep 863, 1 Ann Cas 261.

[17] See supra, § 19.

[18] Youman v. Com. 189 Ky 152, 224 SW 860, 13 ALR 1303; Hebrew v. Pulis, 73 NJL 621, 64 A 121, 7 LRA(NS) 580, 118 Am St Rep 716; Miles v. State, 30 Okla Crim Rep 302, 236 P 57, 44 ALR 129; State v. Wills, 91 W Va 659, 114 SE 261, 24 ALR 1398.

A person cannot be convicted and sentenced on a charge of being a suspicious person when the suspicion of which the accused is the object is wholly undefined and in no manner connected with any criminal act or conduct either past or which might

merely present on premises for which a search warrant has been issued, but not connected in any way therewith and not mentioned or described in the affidavit of probable cause, is an invasion of his constitutional rights.[19]

Requiring a physical examination of a public employee in order to ascertain his fitness to continue in his position is not an unreasonable search.[20] And a statute providing for the appointment of disinterested, qualified experts by the court whenever, in any criminal case, expert opinion evidence becomes necessary or desirable, to make an impartial examination and report, and for the commitment of the defendant to a hospital for observation, does not violate the provisions against unreasonable search, where it may permissibly be construed as authorizing the experts appointed by the court to make only such examination as is consistent with the constitutional rights of the accused.[1] Again, an order of a school board excluding from the public schools all unvaccinated children is not a violation of a constitutional provision against unreasonable searches and seizures.[2] And it has been held that a compulsory examination of a person accused of rape for the purpose of showing that at the time of the crime he was suffering from a venereal disease is an unreasonable search.[3]

Questions addressed to a witness in the course of a legislative investigation as to a subject matter within the jurisdiction of the legislature which do not constitute an intrusion into the life of the witness as a citizen do not amount to an unreasonable search into his private affairs simply because he may have been connected with the transactions under investigation.[4]

§ 54. Seizure of Evidentiary Articles.—Assuming the otherwise lawful character of a search and seizure, a question may still exist as to its permissible scope as to personal property sought out and taken. In this connection, authorities usually indicate that any property may be seized which will furnish proof of the crime.[5] Some authorities, however, employ more restricted language, declaring that property the possession, ownership, and use of which is not prohibited by law cannot be seized merely for use as evidence.[6] The Supreme Court of the United States has led in circumscribing the objects of lawful search and seizure, at least in so far as the seizure of evidentiary articles is concerned,[7] declaring that search warrants may not be used as a means of gaining access to a man's house or office and papers solely for the purpose

occur in the future. Such a proceeding is clearly violative of the constitutional guaranty against unreasonable searches and seizures. Stoutenburgh v. Frazier, 16 App DC 229, 48 LRA 220.

As to searching and taking from arrested person dangerous weapons, evidence of crime, etc., see 4 Am Jur 48, ARREST, § 68.

Authority of officer as to arrest and search of person without warrant on suspicion of unlawful possession of concealed weapons, see 4 Am Jur 28, ARREST, § 42.

As to arrest without warrant for offense against liquor laws, see 30 Am Jur 524. INTOXICATING LIQUORS, § 521.

[19] Purkey v. Maby, 33 Idaho 281, 193 P 79, citing RCL.

[20] People ex rel. Wayman v. Steward, 249 Ill 311, 94 NE 511, 33 LRA(NS) 259, Ann Cas 1912A 135.
Anno: 33 LRA(NS) 259.

[1] Jessner v. State, 202 Wis 184, 231 NW 634, 71 ALR 1005.

[2] Anno: 93 ALR 1431.

[3] State v. Height, 117 Iowa 650, 91 NW 935, 59 LRA 437, 94 Am St Rep 323.
Anno: 2 ALR 1333.
Generally as to the power of the court to compel a defendant in a criminal case to submit to physical examination, see 14 Am Jur 879, CRIMINAL LAW, § 160.

[4] Re Chapman, 166 US 661, 41 L ed 1154, 17 S Ct 677 (where broker engaged in buying and selling stocks was asked in course of investigation by United States Senate committee whether his firm was employed by any senator to buy or sell stock whose market price might be affected by the Senate's action).

[5] Anno: 129 ALR 1296; 18 LRA(NS) 253; LRA1916C 1017.

[6] United States v. Thomson (CCA 7th) 113 F(2d) 643, 129 ALR 1291; Newberry v. Carpenter, 107 Mich 567, 65 NW 530, 31 LRA 163, 61 Am St Rep 346.

[7] United States v. Lefkowitz, 285 US 452, 76 L ed 877, 52 S Ct 420, 82 ALR 775; Gouled v. United States, 255 US 298, 65 L ed 647, 41 S Ct 261.

of searching to secure evidence to be used against him in a criminal or penal proceeding.[8]

It has been held that searches are always treated as unreasonable when proceeding on the assumption that courts possess the power to authorize an entry on private premises, and the seizure of any property which may, in the prosecutor's judgment, have a bearing on a crime with which another person is charged.[9] Thus, the entry by officers of a private inclosure and the taking by them from the owner's possession of a wrecked boiler and its appurtenances for use as exhibits on the trial of another person for manslaughter because of the latter's negligent operation of the boiler was held to be unwarranted and unreasonable.[10] Indeed, it has been declared that only that can be taken which has been directly used in perpetrating the crime,[11] and this principle has been enunciated by a Federal statute forbidding the seizure of papers and documents affording evidence of the commission of a crime but not the means of committing it.[12]

While officers in making a lawful arrest may, as an incident thereof, without a search warrant, search the place where the arrest is made in order to find and seize articles connected with the crime as its fruits, or the means by which it was committed, as well as weapons and other things to effect an escape,[13] the right to search without a search warrant in connection with an arrest is no greater than when the search is made pursuant to a search warrant.[14] In a number of cases, therefore, searches and seizures have been held to be unlawful with respect to property which was of evidentiary value, but was not the means of effecting the crime charged.[15] A fortiori, officers may

[8] Gouled v. United States, 255 US 298, 65 L ed 674, 41 S Ct 261.

In United States v. Lefkowitz, 285 US 452, 76 L ed 877, 52 S Ct 420, 82 ALR 775, it was observed: "The decisions of this court distinguish searches of one's house, office, papers, or effects merely to get evidence to convict him of crime from searches such as those made to find stolen goods for return to the owner, to take property that has been forfeited to the government, to discover property concealed to avoid payment of duties for which it is liable, and from searches such as those made for the seizure of counterfeit coins, burglars' tools, gambling paraphernalia, and illicit liquor in order to prevent the commission of crime."

[9] Owens v. Way, 141 Ga 796, 82 SE 132, LRA1915E 399, Ann Cas 1915C 963; Newberry v. Carpenter, 107 Mich 567, 65 NW 530, 31 LRA 163, 61 Am St Rep 346; Welch v. State, 154 Tenn 60, 289 SW 510, citing RCL.

Anno: 24 Eng Rul Cas 10.

But property seized under a valid search warrant may be used in the prosecution of a suspected person for a crime other than that which may have been described in the affidavit for the warrant as having been committed by him. Gouled v. United States, 255 US 298, 65 L ed 647, 41 S Ct 261.

[10] Newberry v. Carpenter, 107 Mich 567, 65 NW 530, 31 LRA 163, 61 Am St Rep 346; Welch v. State, 154 Tenn 60, 289 SW 510, citing RCL.

[11] United States v. Poller (CCA 2d) 43 F (2d) 911, 74 ALR 1382.

Contracts may be so used as instruments or agencies for perpetrating frauds upon the government as to give the public an interest in them which would justify the search for and seizure of them under a properly issued search warrant for the purpose of preventing further frauds. Gouled v. United States, 65 L ed 647, 255 US 298, 41 S Ct 261.

[12] **Anno:** 129 ALR 1297.

[13] See supra, § 19.

[14] United States v. Thomson (CCA 7th) 113 F(2d) 643, 129 ALR 1291.

As to the seizure of evidentiary articles, there is authority for the view that there may be a right to seize articles found on the person of the party arrested, as an incident of the arrest, where no such right would exist if the articles were found on the premises of the one arrested. United States v. Kirschenblatt (CCA 2d) 16 F(2d) 202, 51 ALR 416. **Anno:** 51 ALR 435.

[15] United States v. Lefkowitz, 285 US 452, 76 L ed 877, 52 S Ct 420, 82 ALR 775; Gouled v. United States, 255 US 298, 65 L ed 647, 41 S Ct 261; United States v. Thomson (CCA 7th) 113 F(2d) 643, 129 ALR 1291; United States v. Poller (CCA 2d) 43 F(2d) 911, 74 ALR 1382; United States v. Kirschenblatt (CCA 2d) 16 F(2d) 202, 51 ALR 416.

In United States v. Poller (CCA 2d) 43 F(2d) 911, 74 ALR 1382, officers, on the arrest of one at his place of business for allegedly trying to smuggle a case of watch movements into the United States by means of documents falsely representing them, seized invoices and "in transit" entries in his name for earlier cases of chocolate, a time book, memorandum book, checkbook, notebook bearing another's name, and some correspondence, none of which contained entries regarding the transaction in question or was used to carry on the crime in question. **Anno:** 129 ALR 1300.

not make a general exploratory search as an incident of an arrest and seize private papers which are of value only as evidence of the crime.[16]

The warrant on which a person is arrested does not in itself justify the arresting officers in seizing the property of a third person, even though such property will be important evidence against the person arrested; and the person whose property is thus seized is entitled to the remedy of injunction to restrain the officers who have taken into their possession his property from forcibly or otherwise effecting a threatened injury to the same, or interfering with his possession.[17]

§ 55. Refusal to Return Evidence Obtained Illegally.—As heretofore stated,[18] upon reasonable application therefor, and after the making of a proper showing, it is the duty of the court to return illegally seized books and papers to their owner.[19] The refusal of the court to do so on reasonable application by the accused and the permitting of the use of such books and papers in evidence amounts to a denial of the immunity from unreasonable searches and seizures afforded by the Fourth Amendment to the Federal Constitution.[20] However, the mere statement of a conclusion by a defendant that papers taken from him are in no way connected with the crime with which he is charged is not sufficient, when contradicted by the prosecution, to require their return before trial.[1]

The inhibition against unreasonable searches and seizures is not aimed at the use of papers and documents voluntarily turned over by a subsequently indicted person to the prosecuting attorney although done on his promise to return them. The breach of the agreement to return does not amount to an unreasonable search and seizure when the court sanctions the use of the papers on the trial only.[2]

§ 56. Search for Individual Benefit.—Search warrants were never recognized by the common law as processes which might be availed of by individuals

A seizure, in the course of a search incident to an arrest, of business records, in themselves inoffending, of one charged with the crime of using the mails in furtherance of a scheme to defraud soliciting agents employed by him to sell merchandise, is illegal. United States v. Thomson (CCA 7th) 113 F(2d) 643, 129 ALR 1291. **Anno:** 129 ALR 1301.

[16] United States v. Lefkowitz, 285 US 452, 76 L ed 877, 52 S Ct 420, 82 ALR 775; Go-Bart Importing Co. v. United States, 282 US 344, 75 L ed 374, 51 S Ct 153; Marron v. United States, 275 US 192, 72 L ed 231, 48 S Ct 74; United States v. Kirschenblatt (CCA 2d) 16 F(2d) 202, 51 ALR 416.

The right to search the premises of one lawfully arrested thereon does not extend to the indiscriminate seizure of incriminatory documents beyond those which are a part of the forbidden act itself. United States v. Kirschenblatt (CCA 2d) 16 F(2d) 202, 51 ALR 416.

A general exploratory search of premises, the seizure of papers therefrom, and their retention for use as evidence in a criminal proceeding cannot be sustained where made at a time when no crime was being committed and under a false claim of possession of a search warrant, by one making an arrest of persons on the premises under color of an invalid warrant, who required one of them, by pretension of right and threat of force, to open a desk and safe. Go-Bart Importing Co. v. United States, 282 US 344, 75 L ed 374, 51 S Ct 153.

Right to seize documents as limited to those used to commit or carry on offense. see 4 Am Jur 48, ARREST, § 68.

Lawfulness of general exploratory search of premises upon which arrest was made under warrant charging violation of liquor laws, see 30 Am Jur 528, INTOXICATING LIQUORS, § 526.

[17] Owens v. Way, 141 Ga 796, 82 SE 132, LRA1915E 399, Ann Cas 1915C 963. See also Newberry v. Carpenter, 107 Mich 567, 65 NW 530, 61 Am St Rep 346, 31 LRA 163.

Anno: 32 ALR 700; Ann Cas 1915C 964.

In Spalding v. Preston, 21 Vt 9, 50 Am Dec 68, a different conclusion was reached with respect to property which was adapted specifically to an illegal use. **Anno:** Ann Cas 1915C 964.

[18] See supra, § 48.

[19] As to admissibility of illegally obtained evidence, see 20 Am Jur 354, EVIDENCE, §§ 394 et seq.

[20] Weeks v. United States, 232 US 383, 58 L ed 652, 34 S Ct 341, LRA1915B 834, Ann Cas 1915C 1177.

[1] People v. Chaigles, 237 NY 193, 142 NE 583, 32 ALR 676.

[2] **Anno:** LRA1915B 839, 840.

in the course of civil proceedings, or for the maintenance of any mere private right; their use was confined to cases of public prosecutions, instituted and pursued for the suppression of crime or the detection and punishment of criminals.[3] All searches, therefore, which are instituted and pursued on the complaint or suggestion of one party into the house or possessions of another, in order to secure a personal advantage, and not with any design to afford aid in the administration of justice in reference to acts or offenses in violation of penal laws, must be held to be unreasonable, and consequently, under the constitutional provisions, unwarrantable, illegal, and void.[4]

§ 57. Search of Sealed Mail Matter.—Letters and sealed packages subject to letter postage in the mail are as fully guarded from examination and inspection, except as to their outward form and weight, as if retained by the senders in their own domicils. While in the mail, they can be opened and examined only under like warrant, issued on similar oath or affirmation, particularly describing the thing to be seized, as is required when papers are subjected to search in one's own household. No law of Congress can place in the hands of officials connected with the postal service any authority to invade the secrecy of letters and sealed packages in the mail; and all regulations adopted as to mail matter of this kind must be in subordination to the principle embodied in the Fourth Amendment to the Constitution.[5] But where an article unlawfully imported in a sealed envelope is sent through the mails, it may be seized by the proper officer in the hands of the owner after the owner has opened the envelope.[6]

2. Compulsory Production of Books and Papers

§ 58. Generally.—The violation of the right to be secure in one's home does not require actual entry on the premises and a search for and the seizure of property in order to constitute an unreasonable search and seizure. The compulsory production of one's private books and papers to be used against him in a criminal or penal proceeding is within the meaning and spirit of the constitutional provision.[7] This applies, however, only to criminal actions and

[3] See supra, § 4.

[4] Williams v. State, 100 Ga 511, 28 SE 624, 39 LRA 269; People ex rel. Robert Simpson Co. v. Kempner, 208 NY 16, 101 NE 794, 46 LRA(NS) 970, Ann Cas 1914D 169; State v. Schmuck, 77 Ohio St 438, 83 NE 797, 14 LRA(NS) 1128, 122 Am St Rep 527; Cohn v. State, 120 Tenn 61, 109 SW 1149, 17 LRA(NS) 451, 15 Ann Cas 1201.

Anno: 101 Am St Rep 329; 24 Eng Rul Cas 9.

[5] Olmstead v. United States, 277 US 438, 72 L ed 944, 48 S Ct 564, 66 ALR 376; Weeks v. United States, 232 US 383, 58 L ed 652, 34 S Ct 341, LRA1915B 834, Ann Cas 1915C 1177; Ex parte Jackson, 96 US 727, 24 L ed 877.

Anno: 24 Eng Rul Cas 10.

[6] Von Cotzhausen v. Nazro, 107 US 215, 27 L ed 540, 2 S Ct 503.

[7] Boyd v. United States, 116 US 616, 29 L ed 746, 6 S Ct 524; Owens v. State, 133 Miss 753, 98 So 233, citing RCL.

Anno: 29 LRA 819; 52 L ed 541.

The substance of the offense of an unreasonable search and seizure is the compulsory production of private papers, whether under a search warrant or a subpoena duces tecum, against which the person, whether an individual or corporation, is entitled to protection. Hale v. Henkel, 201 US 43, 50 L ed 652, 26 S Ct 370.

A statute making the nonproduction of books, papers, and invoices, in suits for penalties or to establish forfeitures, a confession of the allegations which it is claimed they would prove if produced is equivalent to their compulsory production, within the spirit and meaning of the prohibition. Boyd v. United States, 116 US 616, 29 L ed 746, 6 S Ct 524. **Anno:** 29 LRA 819.

But the delivery of private letters to a prosecuting attorney by an agent of their owner, although a flagrant breach of trust, does not make the receiving of such letters an unlawful search and seizure. Barrett v. Fish, 72 Vt 18, 47 A 174, 51 LRA 754, 82 Am St Rep 914.

Compulsory production of private books and papers as violation of immunity from self-incrimination, see 14 Am Jur 876, Criminal Law, §§ 154 et seq.

As to production, for purposes of public justice, of private letters in hands of person other than writer, see 34 Am Jur 414, Literary Property and Copyright, § 20.

proceedings for penalties and forfeitures, and has no application to civil proceedings.[8] Thus, compelling a person to disclose his possession of any property of a decedent's estate, or his knowledge concerning such estate, on penalty of imprisonment for refusal, in proceedings on behalf of the estate, being a remedial, and not a penal, proceeding, is not within the provision.[9] Similarly, it is clear that the search and seizure clause of the Fourth Amendment was not intended to interfere with the power of the courts to compel, through a subpoena duces tecum, the production, upon a trial in court, of documentary evidence.[10] Thus, there can be no unreasonable search and seizure when a writ, suitably specific and properly limited in its scope, calls for the production of documents which, as against their lawful owner to whom the writ is directed, the party procuring its issuance is entitled to have produced.[11] Hence, an order for the production of books and papers which limits the examination to such matters as are pertinent to the issue does not infringe the constitutional guaranty against unreasonable search and seizure.[12] However, parties litigant who desire to inspect the books and records of opposing parties must make some showing as to the necessity of such inspection, and their demands must specify with reasonable exactness the particular books and papers which they desire to examine.[13]

A subpoena duces tecum may nevertheless be so onerous as to constitute an unreasonable search; however, to uphold an objection against a subpoena duces tecum on the ground of unreasonable search, the search involved must be out of proportion to the ends sought, as when the person served is required to fetch all his books at once to an exploratory investigation whose purposes and limitations can be determined only as it proceeds.[14]

[8] Levy v. Superior Ct. 105 Cal 600, 38 P 965, 29 LRA 811, writ of error dismissed without consideration of this point in 167 US 175, 42 L ed 126, 17 S Ct 769; Federal Min. & Smelting Co. v. Public Utilities Commission, 26 Idaho 391, 143 P 1173, LRA 1917F 1195; Dalton v. Calhoun County Dist. Ct. 164 Iowa 187, 145 NW 498, Ann Cas 1916D 695; State ex rel. Boston & M. Consol. Copper & S. Min. Co. v. District Ct. 27 Mont 441, 71 P 602, 94 Am St Rep 831.

Anno: 29 LRA 819.

But in view of the constitutional guaranty against unreasonable searches, it has been held that the legislature cannot compel an employer to disclose to employees communications made by or to him with respect to the qualifications of a discharged employee or one seeking employment. St. Louis Southwestern R. Co. v. Griffin, 106 Tex 477, 171 SW 703, LRA1917B 1108.

[9] Levy v. Superior Ct. 105 Cal 600, 38 P 965, 29 LRA 811, writ of error dismissed without consideration of this point in 167 US 175, 42 L ed 126, 17 S Ct 769.

Anno: 29 LRA 811.

[10] Hale v. Henkel, 201 US 43, 50 L ed 652, 26 S Ct 370. See also Southern P. Co. v. Superior Ct. 15 Cal(2d) 206, 100 P(2d) 302, 130 ALR 323.

[11] Wilson v. United States, 221 US 361, 55 L ed 771, 31 S Ct 538, Ann Cas 1912D 558.

The protection of the constitutional guaranty against unreasonable searches and seizures covers not only the wrongful seizure of books and papers, but any advantages as well which the prosecution may gain over the object of its pursuit by the forbidden act; thus, knowledge gained by the Federal Government's own wrong in seizing papers in violation of the owners' constitutional protection against unlawful searches and seizures cannot be used by the government in a criminal prosecution by serving subpoenas upon such owners to produce the original papers, which it had returned after copies had been made, and by obtaining a court order commanding compliance with such subpoenas. Silverthorne Lumber Co. v. United States, 251 US 385, 64 L ed 319, 40 S Ct 182, 24 ALR 1426.

Anno: 24 ALR 1429.

[12] Carden v. Ensminger, 329 Ill 612, 161 NE 137, 58 ALR 1256.

As to orders for production generally, see 17 Am Jur 33, DISCOVERY AND INSPECTION, § 49.

[13] Federal Min. & Smelting Co. v. Public Utilities Commission, 26 Idaho 391, 143 P 1173, LRA1917F 1195; State ex rel. Smith v. District Ct. 112 Mont 506, 118 P(2d) 141 citing RCL; State ex rel. Boston & M. Consol. Copper & S. Min. Co. v. District Ct. 27 Mont 441, 71 P 602, 94 Am St Rep 831.

Anno: 31 LRA(NS) 835.

See generally as to the sufficiency of an application for discovery, 17 Am Jur 30, DISCOVERY, INSPECTION, MENTAL AND PHYSICAL EXAMINATION, § 46.

[14] McMann v. Securities & Exch. Commission (CCA 2d) 87 F(2d) 377, 109 ALR 1445, writ of certiorari denied in 301 US 684, 81 L ed 1342, 57 S Ct 785.

A subpoena duces tecum issued by the Securities and Exchange Commission against stockbrokers, which is limited to transactions by the brokers for a customer in respect of stock of two companies as to which the Commission already had some

COINS AND COINAGE

CODIFICATION

Act Apr. 23, 1918, ch. 63, §§ 1—4, 40 Stat. 535, 536, authorized the Secretary of the Treasury from time to time to melt or break up and sell as bullion not in excess of 350,000,000 standard silver dollars then or thereafter in the Treasury; and made provisions for sales of such bullion, the retirement of outstanding silver certificates, the purchase of silver and coinage of dollars to replace those broken up, etc. Those sections were omitted from the Code as temporary.

CROSS REFERENCES

Gold Reserve Act of 1934, see sections 213, 411—415, 417, 467, of Title 12, Banks and Banking, and sections 315b, 405b, 408a, 408b, 440—446, 733, 734, 752, 753, 754a, 754b, 767, 771, 821, 822a, 822b, and 824 of this title.

§ 311. Policy of United States as to bimetallism.

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

COINAGE OF GOLD DISCONTINUED

The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

POSSESSION OF GOLD COINS AND BULLION

The possession of gold coins and bullion was prohibited except under Government license by Ex. Ord. No. 6260, eff. Aug. 28, 1933, set out in note under section 95a of Title 12, Banks and Banking.

§ 311a. Repealed. Pub. L. 88–36, title I, § 1, June 4, 1963, 77 Stat. 54.

Section, act June 19, 1934, ch. 674, § 2, 48 Stat. 1178, declared it to be United States policy to have silver constitute one-fourth of the monetary value in the proportion of silver to gold.

§ 312. International monetary conference commissioners.

Whenever the President of the United States shall determine that the United States should be represented at any international conference called by the United States or any other country with a view to securing by international agreement a fixity of relative value between gold and silver as money by means of a common ratio between these metals, with free mintage at such ratio, he may appoint five or more commissioners to such international conference; and for compensation of said commissioners, and for all reasonable expenses connected therewith, to be approved by the Secretary of State, including the proportion to be paid by the United States of the joint expenses of any such conference, the sum of $100,000 or so much thereof as may be necessary, is appropriated. (Mar. 3, 1897, ch. 376, § 1, 29 Stat. 624.)

CODIFICATION

Section 2 of the act of Mar. 3, 1897, authorized the President to call an international conference for the purposes specified in section 1, and to appoint special envoys to such of the nations of Europe as he might designate to seek an agreement for said purposes. Section 3 repealed previous provisions for appointment of delegates to such international conference similar to those of that act. These sections were omitted, as temporary.

§ 313. International bimetallism.

The provisions of sections 146, 313, 314, 320, 406, 408, 411, 429, 455, and 751 of this title and sections 51, 101, 178, and 542 of Title 12, are not intended to preclude the accomplishment of international bimetallism whenever conditions shall make it expedient and practicable to secure the same by concurrent action of the leading commercial nations of the world and at a ratio which shall insure permanence of relative value between gold and silver. (Mar. 14, 1900, ch. 41, § 14, 31 Stat. 49.)

CODIFICATION

See note to section 314 of this title.

§ 314. Standard unit of value.

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

DERIVATION

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

CODIFICATION

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

WEIGHT OF GOLD

Weight of gold dollar reduced to 15 5/21 grains nine-tenths fine, see Proc. No. 2072, Jan. 31, 1934, 48 Stat. 1750, set out as note to section 821 of this title.

§§ 315, 315a. Omitted.

CODIFICATION

Section 315, R. S. § 3511; act Sept. 26, 1890, ch. 945, § 1, 26 Stat. 485, provided for the types of gold coins of the United States and the respective weight of each. The coinage of gold was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

Section 315a, act Apr. 11, 1930, ch. 131, 46 Stat. 154, discontinued coinage of quarter-eagles. All gold coinage was discontinued and existing gold coins were withdrawn from circulation by section 315b of this title and all laws inconsistent therewith were repealed by section 446 of this title.

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

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

REPEALS

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

TRANSFER OF FUNCTIONS

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

§ 316. Silver coins; weight.

The silver coins of the United States shall be a dollar; a half-dollar, or fifty-cent piece; a quarter-dollar, or twenty-five-cent piece; and a dime, or ten-cent piece. The weight of said coins shall be that determined by the President under the provisions of section 821 of this title. (R. S. § 3513; Feb. 28, 1878, ch. 20, § 1, 20 Stat. 25; May 12, 1933, ch. 25, title III, § 43, 48 Stat. 51; June 5, 1933, ch. 48, § 2, 48 Stat. 113; Jan. 30, 1934, ch. 6, § 12, 48 Stat. 342; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704; Jan. 23, 1937, 2 p. m., ch. 5, § 2, 50 Stat. 4; July 6, 1939, ch. 260, § 3, 53 Stat. 998.)

DERIVATION

Act Feb. 12, 1873, ch. 131, § 15, 17 Stat. 427.

CODIFICATION

Words "said coins" * * * "that determined by the President under the provisions of section 821 of this title" have been substituted for words "four hundred and twelve and one-half grains troy of standard silver, the weight of the half-dollar shall be one hundred and ninety-two and nine-tenths grains; the quarter dollar and the dimes shall be respectively, one-half and one-fifth of the weight of said half-dollar," in view of authority of President to fix the weight of silver dollars and subsidiary coins within limitations under section 821 of this title.

R. S. § 3513 also provided for a trade dollar, but all laws and parts of laws authorizing the coinage and issuance of trade dollars, were repealed by act Mar. 3, 1887, ch. 396, § 3, 24 Stat. 635. The legal tender quality of such dollars had previously been abolished and the Secretary of the Treasury authorized to limit their coinage, by Res. July 22, 1876, No. 17, § 2, 19 Stat. 215.

The provisions concerning the dollar are based on act Feb. 28, 1878, ch. 20, § 1, providing for the coinage of such dollars of the weight specified in this section, on which should be the devices and superscriptions provided by act Jan. 18, 1837, ch. 3, 5 Stat. 137. The provision for the coinage of such dollars was omitted as superseded. See act July 14, 1890, ch. 708, §§ 1, 3, 26 Stat. 289; act Nov. 1, 1893, ch. 8, 28 Stat. 4; act June 13, 1898, ch. 448, § 34, 30 Stat. 467.

A portion of act Feb. 28, 1878, ch. 20, § 1, 20 Stat. 25, omitted here, is set out in section 458 of this title.

The coinage of silver twenty-cent pieces was authorized by act March 3, 1875, ch. 143, 18 Stat. 478. Act was repealed, and the coinage of such pieces prohibited, by act May 2, 1878, ch. 79, 20 Stat. 47.

Act March 14, 1900, ch. 41, § 8, 31 Stat. 47, authorized the use of silver bullion purchased under act July 14, 1890, ch. 708, 26 Stat. 289, for the coinage of subsidiary silver coin, and required the cancellation of a corresponding amount of Treasury notes. A proviso limited the amount of subsidiary silver coin that should be outstanding at any time, but act March 3, 1903, ch. 1007, § 1, 32 Stat. 1109, provided that the authority so given might be exercised without limitation as to the amount of subsidiary coin outstanding. These provisions were omitted from the Code as obsolete.

CROSS REFERENCES

Stabilization of domestic prices of silver, see Proc. No. 2067, Dec. 21, 1933, 48 Stat. 1723, set out as note under section 821 of this title.

§§ 316a—316d. Repealed. Pub. L. 88–36, title I, § 1, June 4, 1963, 77 Stat. 54.

Section 316a, act June 19, 1934, ch. 674, § 7, 48 Stat. 1179, provided for acquisition and use of silver, payment therefor, expenses, forfeitures and penalties.

Section 316b, act June 19, 1934, ch. 674, § 6, 48 Stat. 1178, authorized the regulation of acquisition and use of silver and prescribed penalties for violations.

Section 316c, act July 6, 1939, ch. 260, § 4, 53 Stat. 998, related to coinage of silver mined after July 1, 1939, seigniorage and regulations.

Section 316d, act July 31, 1946, ch. 718, 60 Stat. 750, provided for industrial use of silver held or owned by United States and acceptance for coinage and seigniorage of silver mined after July 1, 1946.

§ 317. Minor coins; weight and alloy.

The minor coins of the United States shall be a five-cent piece, and a one-cent piece. The alloy for the five-cent pieces shall be of copper and nickel, to be composed of three-fourths copper and one-fourth nickel. The alloy of the 1-cent piece shall be 95 per centum of copper and 5 per centum of zinc. The weight of the piece of 5 cents shall be seventy-seven and sixteen-hundredths grains troy, and of the one-cent piece, forty-eight grains. (R.S. § 3515; Sept. 26, 1890, ch. 945, § 1, 26 Stat. 485; Sept. 5, 1962, Pub. L. 87–643, § 1, 76 Stat. 440.)

DERIVATION

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

CODIFICATION

R. S. § 3515, contained provisions for a three-cent piece, but such provisions were superseded by act Sept. 26, 1890, ch. 945, 26 Stat. 485, prohibiting the coinage of the three cent nickel piece.

1962—Pub. L. 87–643 eliminated tin from the 5 per centum portion of the one-cent piece alloy.

TRANSFER OF FUNCTIONS

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

CONTENTS OF ONE-CENT PIECE

Treasury Department order of Dec. 23, 1942, 7 F. R. 10837, suspending the provisions of this section insofar as they affect the contents of one-cent pieces and setting out the physical properties thereof, expired on Dec. 31, 1946.

CROSS REFERENCES

Power of President to fix weight of subsidiary coins, see section 821 of this title.

tions, or the application thereof to any person or circumstances, is held invalid, the remainder of said sections, and the application of such provision to other persons or circumstances, shall not be affected thereby. (Jan. 30, 1934, ch. 6, § 16, 48 Stat. 344.)

REPEALS

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

§ 446. Laws repealed.

All Acts and parts of Acts inconsistent with any of the provisions of sections 315b, 405b, 408a, 408b, 440—446, 733, 734, 752, 753, 754a, 754b, 767, 771, 821, 822a, 822b, and 824 of this title and sections 213, 411—415, 417, and 467 of Title 12 are repealed. (Jan. 30, 1934, ch. 6, § 17, 48 Stat. 344.)

SILVER PURCHASE

§§ 448—448e. Repealed. Pub. L. 88-36, title I, § 1, June 4, 1963, 77 Stat. 54.

Sections 448, 448a, act June 19, 1934, ch. 674, §§ 1, 9, 48 Stat. 1178, 1181, declared the short title for the silver provisions to be the "Silver Purchase Act of 1934" and authorized the issuance of rules and regulations, respectively.

Section 448b, acts June 19, 1934, ch. 674, § 10, 48 Stat. 1181; June 25, 1959, Pub. L. 86-70, § 26, 73 Stat. 147, defined "person", "the continental United States", "monetary value", "stocks of silver" and "stocks of gold".

Sections 448c—448e, act June 19, 1934, ch. 674, §§ 11—13, 48 Stat. 1181, authorized appropriations, reserved the right to amend or repeal the silver purchase provisions and provided for a separability clause, and repealed inconsistent laws and declared the authority of the President and the Secretary of the Treasury to be supplemental to other conferred authority, respectively.

Chapter 9.—LEGAL TENDER

Sec.
451. United States gold certificates.
452. United States notes.
453. Treasury notes.
454. Interest-bearing notes.
455. Legal-tender quality of money not affected by certain sections.
456. Foreign coins.
457. Gold coins of United States.
458. Standard silver dollars; paid in silver.
459. Subsidiary silver coins.
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462. Coins and currencies.
463. Provision for payment of obligations in gold prohibited; uniformity in value of coins and currencies.

§ 451. United States gold certificates.

Gold certificates of the United States payable to bearer on demand shall be legal tender in payment of all debts and dues, public and private. (Dec. 24, 1919, ch. 15, § 1, 41 Stat. 370.)

CROSS REFERENCES

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

§ 452. United States notes.

United States notes shall be lawful money, and a legal tender in payment of all debts, public and private, within the United States, except for duties on imports and interest on the public debt. (R. S. § 3588.)

DERIVATION

Acts Feb. 25, 1862, ch. 33, § 1, 12 Stat. 345; July 11, 1862, ch. 142, § 1, 12 Stat. 532; Res. Jan. 17, 1863, No. 9, 12 Stat. 823; act Mar. 3, 1863, ch. 73, § 3, 12 Stat. 711.

CROSS REFERENCES

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

§ 453. Treasury notes.

Demand Treasury notes authorized by the Act of July 17, 1861, chapter 5, 12 Stat. 259, and the Act of February 12, 1862, chapter 20, 12 Stat. 338, shall be lawful money and a legal tender in like manner as United States notes. Treasury notes issued under the Act of July 14, 1890, chapter 708, 26 Stat. 289, shall be a legal tender in payment of all debts, public and private, except where otherwise expressly stipulated in the contract, and shall be receivable for customs, taxes, and all public dues. (R. S. § 3589; July 14, 1890, ch. 708, § 2, 26 Stat. 289.)

DERIVATION

Act July 17, 1861, ch. 5, § 1, 12 Stat. 259; act Feb. 12, 1862, ch. 20, § 1, 12 Stat. 338; act Feb. 25, 1862, ch. 33, § 1, 12 Stat. 345; act Mar. 17, 1862, ch. 45, § 2, 12 Stat. 370.

CODIFICATION

The first sentence of section is from R. S. § 3589. The second sentence is from act July 14, 1890.

CROSS REFERENCES

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

§ 454. Interest-bearing notes.

Treasury notes issued under the authority of the Acts of March 3, 1863, chapter 73, 12 Stat. 710, and June 30, 1864, chapter 172, 13 Stat. 218—222, shall be legal tender to the same extent as United States notes, for their face value, excluding interest: *Provided*, That Treasury notes issued under the Act June 30, 1864, ch. 172, 13 Stat. 218—222 shall not be a legal tender in payment or redemption of any notes issued by any bank, banking association, or banker, calculated and intended to circulate as money. (R. S. § 3590.)

DERIVATION

Acts Mar. 3, 1863, ch. 73, § 2, 12 Stat. 710; June 30, 1864, ch. 172, § 2, 13 Stat. 218.

CROSS REFERENCES

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

§ 455. Legal-tender quality of money not affected by certain sections.

Nothing contained in sections 146, 313, 314, 320, 406, 408, 410, 411, 429, and 751 of this title, and sections, 51, 101, 177, and 178 of Title 12 shall be construed to affect the legal-tender quality as now provided by law of the silver dollar, or of any other money coined or issued by the United States. (Mar. 14, 1900, ch. 41, § 3, 31 Stat. 46.)

CROSS REFERENCES

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

§ 456. Foreign coins.

No foreign gold or silver coins shall be a legal tender in payment of debts. (R. S. § 3584.)

DERIVATION

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

CROSS REFERENCES

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

§ 457. Gold coins of United States.

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

DERIVATION

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

CROSS REFERENCES

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

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

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

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

§ 458. Standard silver dollars; paid in silver.

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

CODIFICATION

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

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

CROSS REFERENCES

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

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

§ 459. Subsidiary silver coins.

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

CODIFICATION

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

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

CROSS REFERENCES

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

§ 460. Minor coins.

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

DERIVATION

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

CROSS REFERENCES

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

§ 461. Commemorative coins.

CODIFICATION

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

Section was from acts Apr. 13, 1904, ch. 1253, § 6, 33 Stat. 178; June 1, 1918, ch. 91, § 1, 40 Stat. 594; May 10, 1920, ch. 176, § 1, 41 Stat. 595; May 10, 1920, ch. 177, § 1, 41 Stat. 595; May 12, 1920, ch. 182, § 1, 41 Stat. 597; Mar. 4, 1921, ch. 153, § 1, 41 Stat. 1363; Feb. 2, 1922, ch. 45, 42 Stat. 362; Jan. 24, 1923, ch. 38, § 1, 42 Stat. 1172; Feb. 26, 1923, ch. 113, § 1, 42 Stat. 1287; Mar. 17, 1924, ch. 58, § 1, 43 Stat. 23; Jan. 14, 1925, ch. 79, § 5, 43 Stat. 749; Feb. 24, 1925, ch. 302, §§ 1—3, 43 Stat. 965, 966; Mar. 3, 1925, ch. 482, § 4, 43 Stat. 1254; May 17, 1926, ch. 307, § 1, 44 Stat. 559; Mar. 7, 1928, ch. 135, § 1, 45 Stat. 198; June 15, 1933, ch. 82, § 1, 48 Stat. 149; May 9, 1934, ch. 265, §§ 1—4, 48 Stat. 679; May 14, 1934, ch. 286, §§ 1—3, 48 Stat. 776; May 26, 1934, ch. 355, §§ 1—4, 48 Stat. 807; June 21, 1934, ch. 695, §§ 1—4, 48 Stat. 1200; May 2, 1935, ch. 88, §§ 1—5, 49 Stat. 165, 166; May 3, 1935, ch. 90, §§ 1—4, 49 Stat. 174; June 5, 1935, ch. 176, 49 Stat. 324; Mar. 18, 1936, ch. 149, §§ 1—5, 49 Stat. 1165; Mar. 20, 1936, ch. 164, §§ 1—3, 49 Stat. 1187; Apr. 13, 1936, ch. 212, §§ 1—3, 49 Stat. 1205; May 5, 1936, ch. 300, §§ 1—3, 49 Stat. 1257; May 5, 1936, ch. 304, §§ 1—3, 49 Stat. 1259; May 6, 1936, ch. 331, §§ 1—3, 49 Stat. 1262, 1263; May 15, 1936, ch. 399, §§ 1—3, 49 Stat. 1276; May 15, 1936, ch. 402, §§ 1—3, 49 Stat. 1277, 1278; May 15, 1936, ch. 406, §§ 1—3, 49 Stat. 1352, 1353; May 28, 1936, ch. 466, §§ 1—3, 49 Stat. 1387, 1388; June 16, 1936, ch. 583, §§ 1—3, 49 Stat. 1522; June 16, 1936, ch. 584, §§ 1—3, 49 Stat. 1523; June 16, 1936, ch. 586, §§ 1—3, 49 Stat. 1524; June 24, 1936, ch. 760, §§ 1—3, 49 Stat. 1911; June 26, 1936, ch. 835, §§ 1—3, 49 Stat. 1972; June 26, 1936, ch. 837, §§ 1—3, 49 Stat. 1973; June 24, 1937, ch. 377, §§ 1—3, 50 Stat. 306; June 28, 1937, ch. 384, §§ 1—3, 50 Stat. 322, 323.

§ 462. Coins and currencies.

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

in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 475. Same; bonds.

All officers in any mint, or assay office, authorized by law to act as depositaries, shall, respectively, give bonds to the United States for the faithful discharge of the duties of their respective offices as depositaries according to law and for such amounts as shall be directed by the Secretary of the Treasury with sureties to the satisfaction of the General Counsel for the Department of the Treasury; and shall, from time to time, renew, strengthen, and increase their official bonds as the Secretary of the Treasury may direct. (R. S. § 3600; May 29, 1920, ch. 214, § 1, 41 Stat. 654; May 10, 1934, ch. 277, § 512, 48 Stat. 759.)

DERIVATION

Acts Aug. 6, 1846, ch. 90, §§ 5, 7, 9 Stat. 60; Apr. 7, 1868, ch. 28, § 14, 14 Stat. 26; June 15, 1870, ch. 12, § 1, 16 Stat. 152; Feb. 12, 1873, ch. 131, § 65, 17 Stat. 435; Mar. 3, 1873, ch. 229, § 5, 17 Stat. 543.

CODIFICATION

Upon incorporation of this section into the Code, words "All assistant treasurers, and all officers in any mint or assay office, authorized by law to act as assistant treasurers" were changed to "all officers in any mint or assay office, authorized by law to act as depositaries" to conform to act May 29, 1920, section 476 of this title.

TRANSFER OF FUNCTIONS

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

The office of Solicitor of the Treasury was abolished and its powers and duties transferred to the General Counsel for the Department of the Treasury by act May 10, 1934.

§ 476. Transfer of duties of assistant treasurers to other officers, etc.

The Secretary of the Treasury may, in his discretion, transfer any or all of the duties and functions performed or authorized to be performed prior to May 29, 1920, by assistant treasurers at Boston, New York, Philadelphia, Baltimore, New Orleans, Saint Louis, San Francisco, Cincinnati, and Chicago, or their offices, to the Treasurer of the United States, or the mints or assay offices of the United States, under such rules and regulations as he may prescribe, or may utilize any of the Federal reserve banks acting as depositaries or fiscal agents of the United States, for the purpose of performing any or all of such duties and functions, notwithstanding the limitations of sections 391 and 392 of Title 12, or any other provisions of law. (May 29, 1920, ch. 214, § 1, 41 Stat. 655.)

CODIFICATION

Section, and sections 477—479 of this title were provisions of the Legislative, Executive, and Judicial Appropriation Act for the fiscal year 1921, act May 29, 1920.

Other provisions of section 1 of that Act, omitted here, repealed R. S. § 3595, providing for the appointment of Assistant Treasurers at the cities named in the text, and all laws or parts of laws so far as they authorized the establishment or maintenance of offices of such Assistant Treasurers or of Subtreasuries, directed the discontinuance of such subtreasuries, and the exercise of all duties and functions by such assistant treasurers or their offices, terminated the office of each assistant treasurer specified and the services of any officers or other employees assigned to duty at his office, and made provision for the transfer of employees in the subtreasuries in the classified civil service.

TRANSFER OF FUNCTIONS

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

§ 477. Deposit of money or bullion with Federal reserve banks.

If any moneys or bullion, constituting part of the trust funds or other special funds required by law prior to May 29, 1920, to be kept in Treasury offices, shall be deposited with any Federal reserve bank, then such moneys or bullion shall by such bank be kept separate and distinct from the assets, funds, and securities of the Federal reserve bank and be held in the joint custody of the Federal reserve agent and the Federal reserve bank. (May 29, 1920, ch. 214, § 1, 41 Stat. 655.)

CODIFICATION

Prior to its incorporation into the Code, section read as follows: "If any moneys or bullion, constituting part of the trust funds or other special funds heretofore required by law to be kept in Treasury offices, shall be deposited with any Federal reserve bank, then such moneys or bullion shall by such bank be kept separate and distinct from the assets, funds, and securities of the Federal reserve bank and be held in the joint custody of the Federal reserve agent and the Federal reserve bank."

See note under section 476 of this title.

§ 478. Member banks as depositaries.

Nothing in sections 476—479 of this title shall be construed to deny the right of the Secretary of the Treasury to use member banks of the Federal reserve system as depositaries as authorized by law. (May 29, 1920, ch. 214, § 1, 41 Stat. 655.)

CODIFICATION

See note under section 476 of this title.

§ 479. Quarters occupied by subtreasuries; assignment to Federal reserve banks.

The Secretary of the Treasury may assign any or all the rooms, vaults, equipment, and safes or space in the buildings used prior to May 29, 1920, by the subtreasuries to any Federal reserve bank acting as fiscal agent of the United States. (May 29, 1920, ch. 214, § 1, 41 Stat. 655.)

CODIFICATION

See note under section 476 of this title.

§ 480. Deputies in case of sickness or absence.

In case of the sickness or unavoidable absence of any depositary from his office, he may, with the approval of the Secretary of the Treasury, authorize the chief clerk, or some other clerk employed therein, to act in his place, and to discharge all the duties required by law of such depositary. The official bond given by the principal of the office shall be

held to cover and apply to the acts of the person appointed to act in his place in such cases. Such acting officer shall moreover, for the time being, be subject to all the liabilities and penalties prescribed by law for the official misconduct, in like cases, of the depositary, respectively, for whom he acts. (R. S., § 3613; May 29, 1920, ch. 214, § 1, 41 Stat. 655.)

DERIVATION

Act Feb. 13, 1865, ch. 32, 13 Stat. 427.

CODIFICATION

Reference to any assistant treasurer near beginning of section was omitted as superseded by act May 29, 1920.

§ 481. Bond of special agents.

Whenever it becomes necessary for the head of any department or office to employ special agents, other than officers of the Army or Navy, who may be charged with the disbursement of public moneys, such agents shall, before entering upon duty, give bond in such form and with such security as the head of the department or office employing them may approve. (R. S., § 3614.)

DERIVATION

Act Aug. 4, 1854, ch. 242, § 14, 10 Stat. 573.

§ 482. Collectors of public moneys to pay over.

All collectors and receivers of public money of every description, within the District of Columbia, shall, as often as they may be directed by the Secretary of the Treasury or the Postmaster General so to do, pay over to the Treasurer of the United States, at the Treasury, all public moneys collected by them or in their hands. All such collectors and receivers of public moneys within the cities of New York, Boston, Philadelphia, New Orleans, San Francisco, Baltimore, Charleston, and Saint Louis shall, upon the same direction, pay over to the designated depositary in their respective cities, at such offices, respectively, all the public moneys collected by them, or in their hands; to be safely kept by the respective depositaries, until otherwise disposed of according to law. It shall be the duty of the Secretary and Postmaster General, respectively, to direct such payments by collectors and receivers, at least as often as once in each week, and as much oftener as they may think proper. (R. S. § 3615; May 29, 1920, ch. 214, § 1, 41 Stat. 654.)

DERIVATION

Acts Aug. 6, 1846, ch. 90, § 9, 9 Stat. 61; Feb. 12, 1873, ch. 131, § 65, 17 Stat. 435.

CODIFICATION

Prior to its incorporation into the Code, section contained another sentence which preceded the second of the present text, and which read as follows: "All such collectors and receivers of public moneys within the cities of New York, Boston, Philadelphia, New Orleans, San Francisco, Baltimore, Charleston, and Saint Louis shall, upon the same direction, pay over to the assistant treasurers in their respective cities, at their offices, respectively, all the public moneys collected by them, or in their hands; to be safely kept by the respective depositaries, until otherwise disposed of according to law."

It was omitted as superseded by act May 29, 1920 or as obsolete in view of that section.

TRANSFER OF FUNCTIONS

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

§ 483. Marshals and district attorneys paying into Treasury.

All marshals, United States attorneys, and other persons than those mentioned in section 482 of this title, having public money to pay to the United States, may pay the same to any depositary constituted by or in pursuance of law, which may be designated by the Secretary of the Treasury. (R. S. § 3616; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

DERIVATION

Acts Aug. 6, 1846, ch. 90, § 15, 9 Stat. 62; July 8, 1870, ch. 230, § 111, 16 Stat. 216.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorney" for "district attorney". See section 501 of Title 28, Judiciary and Judicial Procedure.

§ 484. Deposit without deduction.

The gross amount of all moneys received from whatever source for the use of the United States, except as otherwise provided in section 487 of this title, shall be paid by the officer or agent receiving the same into the Treasury, at as early a day as practicable, without any abatement or deduction on account of salary, fees, costs, charges, expenses, or claim of any description whatever. But nothing herein shall affect any provision relating to the revenues of the Post Office Department. (R. S. § 3617.)

DERIVATION

Acts Mar. 3, 1849, ch. 110, § 1, 9 Stat. 398; Sept. 28, 1850, ch. 78, § 3, 9 Stat. 507.

CODIFICATION

Prior to its incorporation into the Code, words "except as otherwise provided" were followed by "in the next section." The words last quoted were omitted because of other possible exceptions such as section 489 of this title.

CROSS REFERENCES

Diplomatic missions, consular offices, and district accounting and disbursing offices of the foreign service, use of moneys received for salaries, allowances, see sections 813 and 814 of Title 22, Foreign Relations and Intercourse.

Proceeds of sale of materials, see section 487 of this title.

Rental of plant in connection with river and harbor works, deposit of proceeds, see section 559 of Title 33, Navigation and Navigable Waters.

§ 485. Receipts from private messages sent over Government lines.

All moneys received for the transmission of private dispatches over any and all telegraph lines owned or operated by the United States, shall be paid into the Treasury of the United States, as required by section 484 of this title. (Mar. 3, 1883, ch. 143, 22 Stat. 616.)

§ 486. Private messages over telephone lines controlled by Treasury Department.

Private messages may, with the consent and authority of the Secretary of the Treasury, be transmitted over any and all telephone lines controlled by the Treasury Department, whenever it does not interfere with Government business, at such rates and on

See Title 26 USC Sections Sections 7401 thru7406 which gives the Internal Reveune Service the authority to law and collect an Income Tax from the individual by action or proceeding in the United States District Court.

See Sections 7421 thru 7425 which restrain any proceedings or attempt on the part of Taxpayers to have a judicial determination on the payment of Taxes before paid. Permission from the Secretary or his delegate must be obtained before suit can be brought/

This can hardly be constitutional.

See also Sections 7441 thru 7493 for the Statutes on the organization, makeup and Jurisdiction of the Tax Court of the United States which is established as an independent agency of the Executive Branch of the Government and which is known as the Tax Court of the United States.

This is impossible. No part of the Judicial Power of the Government of the United States can vest any where except in Courts ordained and established by Congress as a part of the Judicial Branch of the Government of the United States. See Martin vs. Hunter's Lessee, 1 Wheaton U.S.Reports 97 at page 103. The Executive, Judicial and Legislative power cannot be vested in one Branch of Government. This is the exact definition of a Dictatorship.

This is the reason why I refuse to go along with the destruction of my Country and therefore refuse to submit to the Dictatorship established.

I am also attaching Sections 7201 thru 7212 which show the nature, extent and lengths that the subversive element has gone to to impose criminal sanctions for the purpose of extortion and to demonstrate that it is not possible to submit to the jurisdiction of the Internal Revenue Agency and at the same time obtain due process of law or any protection of the rights of the people to remain secure in their persons, papers and effects or their rights in and to life, liberty or property.

Chapter 76.—JUDICIAL PROCEEDINGS

Subchapter
A. Civil actions by the United States.
B. Proceedings by taxpayers.
C. The Tax Court.
D. Court review of Tax Court decisions.
E. Miscellaneous provisions.

Subchapter A.—Civil Actions by the United States

Sec.
7401. Authorization.
7402. Jurisdiction of district courts.
7403. Action to enforce lien or to subject property to payment of tax.
7404. Authority to bring civil action for estate taxes.
7405. Action for recovery of erroneous refunds.
7406. Disposition of judgments and moneys recovered.
7407. Cross references.

§ 7401. Authorization.

No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Secretary or his delegate authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action

be commenced. (Aug. 16, 1954, ch. 736, 68A Stat. 873.)

§ 7402. Jurisdiction of district courts.

(a) To issue orders, processes, and judgments.

The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue in civil actions, writs and orders of injunction, and of *ne exeat republica*, orders appointing receivers, and such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws.

(b) To enforce summons.

If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides or may be found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(c) For damages to United States officers or employees.

Any officer or employee of the United States acting under authority of this title, or any person acting under or by authority of any such officer or employee, receiving any injury to his person or property in the discharge of his duty shall be entitled to maintain an action for damages therefor, in the district court of the United States, in the district wherein the party doing the injury may reside or shall be found.

(d) Action on bonds.

The United States district courts, concurrently with the courts of the several States, shall have jurisdiction of any action brought on the official bond of any internal revenue officer or employee required to give bond under regulations promulgated by authority of section 7803.

(e) General jurisdiction.

For general jurisdiction of the district courts of the United States in civil actions involving internal revenue, see section 1340 of title 28 of the United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 873.)

§ 7403. Action to enforce lien or to subject property to payment of tax.

(a) Filing.

In any case where there has been a refusal or neglect to pay any tax, or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or his delegate, at the request of the Secretary or his delegate, may direct a civil action to be filed in a district court of the United States to enforce the lien of the United States under this title with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title, or interest, to the payment of such tax or liability.

(b) Parties.

All persons having liens upon or claiming any interest in the property involved in such action shall be made parties thereto.

(c) Adjudication and decree.

The court shall, after the parties have been duly notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sales according to the findings of the court in respect to the interests of the parties and of the United States.

(d) Receivership.

In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Secretary or his delegate during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity. (Aug. 16, 1954, ch. 736, 68A Stat. 874.)

CROSS REFERENCES

Civil action to clear title to property, leave to file; adjudication; costs, see section 7424 of this title.

Distilled spirits, lien for taxes, see section 5004 of this title.

Lien for taxes, see section 6321 et seq. of this title.

Priority of lien of United States in case of insolvency, see section 191 of Title 31, Money and Finance.

Seizure of property for collection of taxes, see section 6331 et seq. of this title.

§ 7404. Authority to bring civil action for estate taxes.

If the estate tax imposed by chapter 11 is not paid on or before the due date thereof, the Secretary or his delegate shall proceed to collect the tax under the provisions of general law; or appropriate proceedings in the name of the United States may be commenced in any court of the United States having jurisdiction to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. This section insofar as it applies to the collection of a deficiency shall be subject to the provisions of sections 6213 and 6601. (Aug. 16, 1954, ch. 736, 68A Stat. 874.)

§ 7405. Action for recovery of erroneous refunds.

(a) Refunds after limitation period.

Any portion of a tax imposed by this title, refund of which is erroneously made, within the meaning of section 6514, may be recovered by civil action brought in the name of the United States.

(b) Refunds otherwise erroneous.

Any portion of a tax imposed by this title which has been erroneously refunded (if such refund would not be considered as erroneous under section 6514) may be recovered by civil action brought in the name of the United States.

(c) Interest.

For provision relating to interest on erroneous refunds, see section 6602.

(d) Periods of limitation.

For periods of limitations on actions under this section, see section 6532 (b).

(Aug. 16, 1954, ch. 736, 68A Stat. 874.)

§ 7406. Disposition of judgments and moneys recovered.

All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties shall be paid to the Secretary or his delegate as collections of internal revenue taxes. (Aug. 16, 1964, ch. 736, 68A Stat. 875.)

§ 7407. Cross references.

(1) For provisions for collecting taxes in general, see chapter 64.
(2) For venue in a civil action for the collection of any tax, see section 1396 of Title 28 of the United States Code.
(3) For venue of a proceeding for the recovery of any fine, penalty, or forfeiture, see section 1395 of Title 28 of the United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 875.)

Subchapter B.—Proceedings by Taxpayers

Sec.
7421. Prohibition of suits to restrain assessment or collection.
7422. Civil actions for refund.
7423. Repayments to officers or employees.
7424. Civil action to clear title to property.
7425. Cross references.

§ 7421. Prohibition of suits to restrain assessment or collection.

(a) Tax.

Except as provided in sections 6212 (a) and (c), and 6213 (a), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

(b) Liability of transferee or fiduciary.

No suit shall be maintained in any court for the purpose of restraining the assessment or collection (pursuant to the provisions of chapter 71) of—

(1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any internal revenue tax, or

(2) the amount of the liability of a fiduciary under section 3467 of the Revised Statutes (31 U. S. C. 192) in respect of any such tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 876.)

§ 7422. Civil actions for refund.

(a) No suit prior to filing claim for refund.

No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary or his delegate, according to the provisions of law in that regard, and the regulations of the Secretary or his delegate established in pursuance thereof.

(b) Protest or duress.

Such suit or proceeding may be maintained whether or not such tax, penalty, or sum has been paid under protest or duress.

(c) Suits against collection officer a bar.

A suit against any officer or employee of the United States (or former officer or employee) or his personal representative for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected shall be treated as if the United States had been a party to such suit in applying the doctrine of res judicata in all suits instituted after June 15, 1942, in respect of any internal revenue tax, and in all proceedings in the Tax Court and on review of decisions of the Tax Court where the petition to the Tax Court was filed after such date.

(d) Credit treated as payment.

The credit of an overpayment of any tax in satisfaction of any tax liability shall, for the purpose of any suit for refund of such tax liability so satisfied, be deemed to be a payment in respect of such tax liability at the time such credit is allowed.

(e) Stay of proceedings.

If the Secretary or his delegate prior to the hearing of a suit brought by a taxpayer in a district court or the Court of Claims for the recovery of any income tax, estate tax, or gift tax (or any penalty relating to such taxes) mails to the taxpayer a notice that a deficiency has been determined in respect of the tax which is the subject matter of taxpayer's suit, the proceedings in taxpayer's suit shall be stayed during the period of time in which the taxpayer may file a petition with the Tax Court for a redetermination of the asserted deficiency, and for 60 days thereafter. If the taxpayer files a petition with the Tax Court, the district court or the Court of Claims, as the case may be, shall lose jurisdiction of taxpayer's suit to whatever extent jurisdiction is acquired by the Tax Court of the subject matter of taxpayer's suit for refund. If the taxpayer does not file a petition with the Tax Court for a redetermination of the asserted deficiency, the United States may counterclaim in the taxpayer's suit, or intervene in the event of a suit as described in subsection (c) (relating to suits against officers or employees of the United States), within the period of the stay of proceedings notwithstanding that the time for such pleading may have otherwise expired. The taxpayer shall have the burden of proof with respect to the issues raised by such counterclaim or intervention of the United States except as to the issue of whether the taxpayer has been guilty of fraud with intent to evade tax. This subsection shall not apply to a suit by a taxpayer which, prior to the date of enactment of this title, is commenced, instituted, or pending in a district court or the Court of Claims for the recovery of any income tax, estate tax, or gift tax (or any penalty relating to such taxes).

(f) Cross references.

(1) For provisions relating generally to claims for refund or credit, see chapter 65 (relating to abatements, credit, and refund) and chapter 66 (relating to limitations).
(2) For duty of United States attorneys to defend, suits, see section 507 of Title 28 of the United States Code.
(3) For jurisdiction of United States district courts, see section 1346 of Title 28 of the United States Code.
(4) For payment by the Treasury of judgments against internal revenue officers or employees, upon certificate of probable cause, see section 2006 of Title 28 of the United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 876; Sept. 2, 1958, Pub. L. 85–866, title I, § 78, 72 Stat. 1662.)

AMENDMENTS

1958—Subsec. (f)(2). Pub. L. 85–866 deleted "district" preceding "attorneys".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of subsec. (f) (2) of this section by Pub. L. 85-866 as effective Aug. 17, 1954, see section 1 (c) of Pub. L. 85-866, set out as a note under section 165 of this title.

CROSS REFERENCES

Credits against estimated income tax considered an overpayment of tax for preceding taxable year, see section 6402 (b) of this title.

Overpayment of income tax credited to estimated income tax, see section 6513 (d) of this title.

Period of limitation on action by taxpayer for refund, see section 6532 (a) of this title.

Period of limitation on filing claim for refund, see section 6511 of this title.

§ 7423. Repayments to officers or employees.

The Secretary or his delegate, subject to regulations prescribed by the Secretary or his delegate, is authorized to repay—

(1) Collections recovered.

To any officer or employee of the United States the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expense of suit; also

(2) Damages and costs.

All damages and costs recovered against any officer or employee of the United States in any suit brought against him by reason of anything done in the due performance of his official duty under this title.

(Aug. 16, 1954, ch. 736, 68A, Stat. 877.)

CROSS REFERENCES

Delinquent internal revenue officers and employees, see section 7803 (d) of this title.

§ 7424. Civil action to clear title to property.

(a) Obtaining leave to file.

(1) Request for institution of proceedings by United States.

Any person having a lien upon or any interest in the property referred to in section 7403, notice of which has been duly filed of record in the jurisdiction in which the property is located, prior to the filing of notice of the lien of the United States as provided in section 6323, or any person purchasing the property at a sale to satisfy such prior lien or interest, may make written request to the Secretary or his delegate to authorize the filing of a civil action as provided in section 7403.

(2) Petition to court.

If the Secretary or his delegate fails to authorize the filing of such civil action within 6 months after receipt of such written request, such person or purchaser may, after giving notice to the Secretary or his delegate, file a petition in the district court of the United States for the district in which the property is located, praying leave to file a civil action for a final determination of all claims to or liens upon the property in question.

(3) Court order.

After a full hearing in open court, the district court may in its discretion enter an order granting leave to file such civil action, in which the United States and all persons having liens upon or claiming any interest in the property shall be made parties.

(b) Adjudication.

Upon the filing of such civil action, the district court shall proceed to adjudicate the matters involved therein, in the same manner as in the case of civil actions filed under section 7403. For the purpose of such adjudication, the assessment of the tax upon which the lien of the United States is based shall be conclusively presumed to be valid.

(c) Costs.

All costs of the proceedings on the petition and the civil action shall be borne by the person filing the civil action. (Aug. 16, 1954, ch. 736, 68A Stat. 877.)

§ 7425. Cross references.

(1) For exclusion of tax liability from discharge in bankruptcy, see section 17 of the Bankruptcy Act, as amended (52 Stat. 851; 11 U. S. C. 35).

(2) For limit on amount allowed in bankruptcy proceedings on debts owing to the United States, see section 57 (j) of the Bankruptcy Act, as amended (52 Stat. 867; 11 U. S. C. 93).

(3) For recognition of tax liens in proceedings under the Bankruptcy Act, see section 67 (b) and (c) of that act, as amended (52 Stat. 876-877; 11 U. S. C. 107).

(4) For collection of taxes in connection with wage earners' plans in bankruptcy courts, see section 680 of the Bankruptcy Act, as added June 22, 1938 (52 Stat. 938; 11 U. S. C. 1080).

(5) For provisions permitting the United States to be made party defendant in a proceeding in a State court for the foreclosure of a lien upon real estate where the United States may have claim upon the premises involved, see section 2410 of Title 28 of the United States Code.

(6) For priority of lien of the United States in case of insolvency, see R. S. 3466 (31 U. S. C. 191).

(7) For interest on judgments for overpayments, see section 2411 (a) of Title 28 of the United States Code.

(8) For review of a Tax Court decision, see section 7482.

(9) For statute prohibiting suits to replevy property taken under revenue laws, see section 2463 of Title 28 of the United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 878.)

Subchapter C.—The Tax Court

Part
I. Organization and jurisdiction.
II. Procedure.
III. Miscellaneous provisions.

PART I.—ORGANIZATION AND JURISDICTION

Sec.
7441. Status.
7442. Jurisdiction.
7443. Membership.
7444. Organization.
7445. Offices.
7446. Times and places of sessions.
7447. Retirement.
7448. Annuities to widows and dependent children of judges.

AMENDMENTS

1961—Pub. L. 87-370, § 2, Oct. 4, 1961, 75 Stat. 801, added item 7448.

§ 7441. Status.

The Board of Tax Appeals shall be continued as an independent agency in the Executive Branch of the Government, and shall be known as the Tax Court of the United States. The members thereof shall be known as the chief judge and the judges of the Tax Court. (Aug. 16, 1954, ch. 736, 68A Stat. 879.)

CROSS REFERENCES

Procedure before Tax Court generally, see section 7451 et seq. of this title.

§ 7442. Jurisdiction.

The Tax Court and its divisions shall have such jurisdiction as is conferred on them by this title, by chapters 1, 2, 3, and 4 of the Internal Revenue

Code of 1939, by title II and title III of the Revenue Act of 1926 (44 Stat. 10–87), or by laws enacted subsequent to February 26, 1926. (Aug. 16, 1954, ch. 736, 68A Stat. 879.)

CROSS REFERENCES

Action for refund, see section 7422 of this title.

Damages for instituting frivolous proceeding, see section 6674 of this title.

Definition of Tax Court, see section 7701 (a) (27) of this title.

Effect of repeal of Internal Revenue Code of 1939, existing rights and liabilities, see section 7851 (b) (1) of this title.

Effective date of repeal of chapters 1, 2, 3, and 4 of Internal Revenue Code of 1939, see section 7851 (a) (1) (A), (B) of this title.

Exclusive jurisdiction of Tax Court of petitions for redetermination of excessive profits under Government contracts, see sections 1191 (d) and 1218 (b) of Appendix to Title 50, War and National Defense.

Jurisdiction as to increase of deficiency, additional amounts, or additions to tax, see section 6214 (a) of this title.

Jurisdiction over other years, see section 6214 (b) of this title.

Notice of deficiency generally, see section 6212 of this title.

Stay of proceedings in district court or Court of Claims upon filing of petition with Tax Court, see section 7422 (e) of this title.

Time for filing petition in Tax Court, see section 6213 (a) of this title.

§ 7443. Membership.

(a) Number.

The Tax Court shall be composed of 16 members.

(b) Appointment.

Judges of the Tax Court shall be appointed by the President, by and with the advice and consent of the Senate, solely on the grounds of fitness to perform the duties of the office.

(c) Salary.

Each judge shall receive salary at the rate of $30,000 per annum, to be paid in monthly installments.

(d) Expenses for travel and subsistence.

Judges of the Tax Court shall receive necessary traveling expenses, and expenses actually incurred for subsistence while traveling on duty and away from their designated stations, subject to the same limitations in amount as are now or may hereafter be applicable to the United States Customs Court.

(e) Term of office.

The terms of office of all judges of the Tax Court shall expire 12 years after the expiration of the terms for which their predecessors were appointed; but any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor.

(f) Removal from office.

Judges of the Tax Court may be removed by the President, after notice and opportunity for public hearing, for inefficiency, neglect of duty, or malfeasance in office, but for no other cause.

(g) Disbarment of removed judges.

A judge of the Tax Court removed from office in accordance with subsection (f) shall not be permitted at any time to practice before the Tax Court. (Aug. 16, 1954, ch. 736, 66A Stat. 879; Mar. 2, 1955, ch. 9, § 1(h), 69 Stat. 10; Aug. 14, 1964, Pub. L. 88–426, title IV, § 403(i), 78 Stat. 434.)

AMENDMENTS

1964—Subsec. (c). Pub. L. 88–426 increased the salary of the judges from $22,500 to $30,000.

1955—Subsec. (c). Act Mar. 2, 1955, increased the salary of the judges from "$15,000" a year to "$22,500".

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment of section by Pub. L. 88–426 effective on the first day of the first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88–426, see section 501 of Pub. L. 88–426, set out as a note under section 1113 of Title 5, Executive Departments and Government Officers and Employees.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment to this section by act Mar. 2, 1955, effective Mar. 1, 1955, see note under section 31 of Title 2, The Congress.

CROSS REFERENCES

Expenditures by Tax Court, see section 7472 of this title.

Retirement of judges, see section 7447 of this title.

Traveling expenses of judges of Customs Court, see section 456 of Title 28, Judiciary and Judicial Procedure.

§ 7444. Organization.

(a) Seal.

The Tax Court shall have a seal which shall be judicially noticed.

(b) Designation of chief judge.

The Tax Court shall at least biennially designate a judge to act as chief judge.

(c) Divisions.

The chief judge may from time to time divide the Tax Court into divisions of one or more judges, assign the judges of the Tax Court thereto, and in case of a division of more than one judge, designate the chief thereof. If a division, as a result of a vacancy or the absence or inability of a judge assigned thereto to serve thereon, is composed of less than the number of judges designated for the division, the chief judge may assign other judges to the division or direct the division to proceed with the transaction of business without awaiting any additional assignment of judges thereto.

(d) Quorum.

A majority of the judges of the Tax Court or of any division thereof shall constitute a quorum for the transaction of the business of the Tax Court or of the division, respectively. A vacancy in the Tax Court or in any division thereof shall not impair the powers nor affect the duties of the Tax Court or division nor of the remaining judges of the Tax Court or division, respectively. (Aug. 16, 1954, ch. 736, 68A Stat. 880.)

CROSS REFERENCES

Employees of Tax Court, see section 7471 of this title.

Provisions of special application to divisions, see section 7460 of this title.

§ 7445. Offices.

The principal office of the Tax Court shall be in the District of Columbia, but the Tax Court or any of its divisions may sit at any place within the United States. (Aug. 16, 1954, ch. 736, 68A Stat. 880.)

(i) to the beneficiary or beneficiaries whom the judge may have designated by a writing filed prior to his death with the chief judge, except that in the case of the chief judge such designation shall be by a writing filed by him, prior to his death, as prescribed by the Tax Court;

(ii) if there be no such beneficiary, to the widow of such judge;

(iii) if none of the above, to the child or children of such judge and the descendents of any deceased children by representation;

(iv) if none of the above, to the parents of such judge or the survivor of them;

(v) if none of the above, to the duly appointed executor or administrator of the estate of such judge; and

(vi) if none of the above, to such other next of kin of such judge as may be determined by the chief judge to be entitled under the laws of the domicile of such judge at the time of his death.

Determination as to the widow, child, or parent of a judge for the purposes of this paragraph shall be made by the chief judge without regard to the definitions in subsections (a) (6) and (7).

(2) In any case in which the annuities of all persons entitled to annuity based upon the service of a judge shall terminate before the aggregate amount of annuity paid equals the total amount credited to the individual account of such judge, with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year, to the date of the death of such judge, the difference shall be paid, upon establishment of a valid claim therefor, in the order of precedence prescribed in paragraph (1).

(3) Any accrued annuity remaining unpaid upon the termination (other than by death) of the annuity of any person based upon the service of a judge shall be paid to such person. Any accrued annuity remaining unpaid upon the death of any person receiving annuity based upon the service of a judge shall be paid, upon the establishment of a valid claim therefor, in the following order of precedence:

(A) to the duly appointed executor or administrator of the estate of such person;

(B) if there is no such executor or administrator payment may be made, after the expiration of thirty days from the date of the death of such person, to such individual or individuals as may appear in the judgment of the chief judge to be legally entitled thereto, and such payment shall be a bar to recovery by any other individual.

(k) Payments to persons under legal disability.

Where any payment under this section is to be made to a minor, or to a person mentally incompetent or under other legal disability adjudged by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of such claimant or is otherwise legally vested with the care of the claimant or his estate. Where no guardian or other fiduciary of the person under legal disability has been appointed under the laws of the State of residence of the claimant, the chief judge shall determine the person who is otherwise legally vested with the care of the claimant or his estate.

(*l*) Method of payment of annuities.

Annuities granted under the terms of this section shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity shall have accrued. None of the moneys mentioned in this section shall be assignable, either in law or in equity, or subject to execution, levy, attachment, garnishment, or other legal process.

(m) Computation of annuities.

The annuity of the widow of a judge electing under subsection (b) shall be an amount equal to the sum of (1) 1¼ percent of the average annual salary received by such judge for judicial service and any other prior allowable service during the last 5 years of such service prior to his death, or prior to his receiving retired pay under section 7447(d), whichever first occurs, multiplied by the sum of his years of judicial service, his years of prior allowable service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, his years of prior allowable service performed as a member of the Armed Forces of the United States, and his years, not exceeding 15, of prior allowable service performed as a congressional employee (as defined in section 1(c) of the Civil Service Retirement Act (5 U.S.C. 2251(c)), and (2) three-fourths of 1 percent of such average annual salary multiplied by his years of any other prior allowable service, but such annuity shall not exceed 37½ percent of such average annual salary and shall be further reduced in accordance with subsection (d), if applicable.

(n) Includible service.

Subject to the provisions of subsection (d), the years of service of a judge which are allowable as the basis for calculating the amount of the annuity of his widow shall include his years of service as a member of the United States Board of Tax Appeals and as a judge of the Tax Court, his years of service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, his years of active service as a member of the Armed Forces of the United States not exceeding 5 years in the aggregate and not including any such service for which credit is allowed for the purposes of retirement or retired pay under any other provision of law, and his years of any other civilian service within the purview of section 3 of the Civil Service Retirement Act (5 U.S.C. 2253).

(*o*) Simultaneous entitlement.

Nothing contained in this section shall be construed to prevent a widow eligible therefor from simultaneously receiving an annuity under this section and any annuity to which she would otherwise be entitled under any other law without regard to this section, but in computing such other annuity service used in the computation of her annuity under this section shall not be credited.

(p) Estimates of expenditures.

The chief judge shall submit to the Bureau of the Budget annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the survivors annuity fund, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, according to law. The chief judge shall cause periodic examinations of the survivors annuity fund to be made by an actuary, who may be an actuary employed by another department of the Government temporarily assigned for the purpose, and whose findings and recommendations shall be transmitted by the chief judge to the Tax Court.

(q) Transitional provision.

In the case of a judge who dies within 6 months after the date of enactment of this section after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), but without having made an election as provided in subsection (b), an annuity shall be paid to his widow and surviving dependents as is provided in this section, as if such judge had elected on the day of his death to bring himself within the purview of this section but had not made the deposit provided for by subsection (d). An annuity shall be payable under this section computed upon the basis of the actual length of service as a judge and other allowable service of the judge and subject to the reduction required by subsection (d) even though no deposit has been made, as required by subsection (h) with respect to any of such service.

(r) Waiver of civil service benefits.

Any judge electing under subsection (b) shall, at the time of such election, waive all benefits under the Civil Service Retirement Act. Such a waiver shall be made in the same manner and shall have the same force and effect as a waiver filed under section 7447(g)(3).

(s) Authorization of appropriation.

Funds necessary to carry out the provisions of this section may be appropriated out of any money in the Treasury not otherwise appropriated. (Added Pub. L. 87–370, § 1, Oct. 4, 1961, 75 Stat. 796.)

REFERENCES IN TEXT

Within 6 months after the enactment of this section, referred to in subsecs. (b) and (q), means within 6 months after the enactment of Pub. L. 87–370, approved Oct. 4, 1961.

The Civil Service Retirement Act, referred to in subsecs. (d), (h) and (r), is classified to chapter 30 of Title 5, Executive Departments and Government Officers and Employees.

PART II.—PROCEDURE

Sec.
7451. Fee for filing petition.
7452. Representation of parties.
7453. Rules of practice, procedure, and evidence.
7454. Burden of proof in fraud and transferee cases.
7455. Service of process.
7456. Administration of oaths and procurement of testimony.
7457. Witness fees.
7458. Hearings.
7459. Reports and decisions.
7460. Provisions of special application to divisions.
7461. Publicity of proceedings.
7462. Publication of reports.
7463. Provisions of special application to transferees.

§ 7451. Fee for filing petition.

The Tax Court is authorized to impose a fee in an amount not in excess of $10 to be fixed by the Tax Court for the filing of any petition for the redetermination of a deficiency. (Aug. 16, 1954, ch. 736, 68A Stat. 884.)

CROSS REFERENCES

Disposition of fees, see section 7473 of this title.

RULES OF PRACTICE IN THE TAX COURT

Fee for filing petition, see rule 7 (b), Appendix to this title.

Method of payment of fees, see rule 1 (e), Appendix to this title.

§ 7452. Representation of parties.

The Secretary or his delegate shall be represented by the Chief Counsel for the Internal Revenue Service or his delegate in the same manner before the Tax Court as he has heretofore been represented in proceedings before such Court. The taxpayer shall continue to be represented in accordance with the rules of practice prescribed by the Court. No qualified person shall be denied admission to practice before the Tax Court because of his failure to be a member of any profession or calling. (Aug. 16, 1954, ch. 736, 68A Stat. 884; Sept. 22, 1959, Pub. L. 86–368, § 2(a), 73 Stat. 648.)

AMENDMENTS

1959—Pub. L. 86–368 substituted "Chief Counsel for the Internal Revenue Service or his delegate" for "Assistant General Counsel of the Treasury Department serving as Chief Counsel of the Internal Revenue Service, or the delegate of such Chief Counsel,".

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86–368 effective when the Chief Counsel for the Internal Revenue Service first appointed pursuant to amendment of section 7801 of this title by Pub. L. 86–368 qualifies and takes office, see note set out under section 7801 of this title.

RULES OF PRACTICE IN THE TAX COURT

Admission to practice, see rule 2, Appendix to this title.

Counsel; appearance, see rule 24, Appendix to this title.

Personal representation in lieu of counsel, see rule 3, Appendix to this title.

TAX COURT FORMS

Entry of appearance, see Form 305, Appendix to this title.

§ 7453. Rules of practice, procedure, and evidence.

The proceedings of the Tax Court and its divisions shall be conducted in accordance with such rules of practice and procedure (other than rules of evidence) as the Tax Court may prescribe and in accordance with the rules of evidence applicable in trials without a jury in the United States District Court of the District of Columbia. (Aug. 16, 1954, ch. 736, 68A Stat. 884.)

CROSS REFERENCES

Rules of Practice before the Tax Court of the United States, see Appendix to this title.

§ 7454. Burden of proof in fraud and transferee cases.

(a) Fraud.

In any proceeding involving the issue whether the petitioner has been guilty of fraud with intent to evade tax, the burden of proof in respect of such issue shall be upon the Secretary or his delegate.

(b) Cross reference.

For provisions relating to burden of proof as to transferee liability, see section 6902 (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 884.)

RULES OF PRACTICE IN THE TAX COURT

Burden of proof, see rule 32, Appendix to this title.

§ 7455. Service of process.

The mailing by certified mail or registered mail of any pleading, decision, order, notice, or process in respect of proceedings before the Tax Court shall be held sufficient service of such pleading, decision, order, notice, or process. (Aug. 16, 1954, ch. 736, 68A Stat. 884; Sept. 2, 1958, Pub. L. 85–866, title I, § 89 (b), 72 Stat. 1665.)

AMENDMENTS

1958—Pub. L. 85–866 inserted "certified mail or" preceding "registered mail".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment applicable only if mailing occurred after Sept. 2, 1958, see section 89 (d) of Pub. L. 85–866, set out as a note under section 7502 of this title.

RULES OF PRACTICE IN THE TAX COURT

Service upon the parties, see rule 22, Appendix to this title.

§ 7456. Administration of oaths and procurement of testimony.

(a) In general.

For the efficient administration of the functions vested in the Tax Court or any division thereof, any judge of the Tax Court, the clerk of the court or his deputies, as such, or any other employee of the Tax Court designated in writing for the purpose by the chief judge, may administer oaths, and any judge of the Tax Court may examine witnesses and require, by subpoena ordered by the Tax Court or any division thereof and signed by the judge (or by the clerk of the Tax Court or by any other employee of the Tax Court when acting as deputy clerk)—

(1) the attendance and testimony of witnesses, and the production of all necessary returns, books, papers, documents, correspondence, and other evidence, from any place in the United States at any designated place of hearing, or

(2) the taking of a deposition before any designated individual competent to administer oaths under this title. In the case of a deposition the testimony shall be reduced to writing by the individual taking the deposition or under his direction and shall then be subscribed by the deponent.

(b) Production of records in the case of foreign corporations, foreign trusts or estates and nonresident alien individuals.

The Tax Court or any division thereof, upon motion and notice by the Secretary or his delegate, and upon good cause shown therefor, shall order any foreign corporation, foreign trust or estate, or nonresident alien individual, who has filed a petition with the Tax Court, to produce, or, upon satisfactory proof to the Tax Court or any of its divisions, that the petitioner is unable to produce, to make available to the Secretary or his delegate, and, in either case, to permit the inspection, copying, or photographing of, such books, records, documents, memoranda, correspondence and other papers, wherever situated, as the Tax Court or any division thereof, may deem relevant to the proceedings and which are in the possession, custody or control of the petitioner, or of any person directly or indirectly under his control or having control over him or subject to the same common control. If the petitioner fails or refuses to comply with any of the provisions of such order, after reasonable time for compliance has been afforded to him, the Tax Court or any division thereof, upon motion, shall make an order striking out pleadings or parts thereof, or dismissing the proceeding or any part thereof, or rendering a judgment by default against the petitioner. For the purpose of this subsection, the term "foreign trust or estate" includes an estate or trust, any fiduciary of which is a foreign corporation or nonresident alien individual; and the term "control" is not limited to legal control.

(c) Commissioners.

The chief judge may from time to time by written order designate an attorney from the legal staff of the Tax Court to act as a commissioner in a particular case. The commissioner so designated shall proceed under such rules and regulations as may be promulgated by the Tax Court. The commissioner shall receive the same travel and subsistence allowances now or hereafter provided by law for commissioners of the United States Court of Claims. (Aug. 16, 1954, ch. 736, 68A Stat. 885.)

CROSS REFERENCES

Travel and subsistence expenses of employees of the Tax Court, see section 7471 (b) of this title.

Traveling and maintenance expenses of commissioners of Court of Claims, see section 792 (b) of Title 28, Judiciary and Judicial Procedure.

RULES OF PRACTICE IN THE TAX COURT

Commissioners, see rule 48, Appendix to this title.

Depositions, see rule 45, Appendix to this title.

Depositions upon written interrogatories, see rule 46, Appendix to this title.

Place of trial, requests and designation, see rule 26, Appendix to this title.

Subpoenas, see rule 44, Appendix to this title.

TAX COURT FORMS

Subpoena, see Form 2, Appendix to this title.

§ 7457. Witness fees.

(a) Amount.

Any witness summoned or whose deposition is taken under section 7456 shall receive the same fees and mileage as witnesses in courts of the United States.

(b) Payment.

Such fees and mileage and the expenses of taking any such deposition shall be paid as follows:

(1) Witnesses for Secretary or his delegate.

In the case of witnesses for the Secretary or his delegate, such payments shall be made by the Secretary or his delegate out of any moneys appropriated for the collection of internal revenue taxes, and may be made in advance.

(2) Other Witnesses.

In the case of any other witnesses, such payments shall be made, subject to rules prescribed by the Tax Court, by the party at whose instance the witness appears or the deposition is taken.

(Aug. 16, 1954, ch. 736, 68A Stat. 886.)

CROSS REFERENCES

Fees and mileage of witnesses in courts of United States, see section 1821 of Title 28, Judiciary and Judicial Procedure.

RULES OF PRACTICE IN THE TAX COURT

Fees and mileage, see rule 60, Appendix to this title.

§ 7458. Hearings.

Notice and opportunity to be heard upon any proceeding instituted before the Tax Court shall be given to the taxpayer and the Secretary or his delegate. If an opportunity to be heard upon the proceeding is given before a division of the Tax Court, neither the taxpayer nor the Secretary nor his delegate shall be entitled to notice and opportunity to be heard before the Tax Court upon review, except upon a specific order of the chief judge. Hearings before the Tax Court and its divisions shall be open to the public, and the testimony, and, if the Tax Court so requires, the argument, shall be stenographically reported. The Tax Court is authorized to contract (by renewal of contract or otherwise) for the reporting of such hearings, and in such contract to fix the terms and conditions under which transcripts will be supplied by the contractor to the Tax Court and to other persons and agencies. (Aug. 16, 1954, ch. 736, 68A Stat. 886.)

§ 7459. Reports and decisions.

(a) Requirement.

A report upon any proceeding instituted before the Tax Court and a decision thereon shall be made as quickly as practicable. The decision shall be made by a judge in accordance with the report of the Tax Court, and such decision so made shall, when entered, be the decision of the Tax Court.

(b) Inclusion of findings of fact or opinions in report.

It shall be the duty of the Tax Court and of each division to include in its report upon any proceeding its findings of fact or opinion or memorandum opinion. The Tax Court shall report in writing all its findings of fact, opinions, and memorandum opinions.

(c) Date of decision.

A decision of the Tax Court (except a decision dismissing a proceeding for lack of jurisdiction) shall be held to be rendered upon the date that an order specifying the amount of the deficiency is entered in the records of the Tax Court. If the Tax Court dismisses a proceeding for reasons other than lack of jurisdiction and is unable from the record to determine the amount of the deficiency determined by the Secretary or his delegate, or if the Tax Court dismisses a proceeding for lack of jurisdiction, an order to that effect shall be entered in the records of the Tax Court, and the decision of the Tax Court shall be held to be rendered upon the date of such entry.

(d) Effect of decision dismissing petition.

If a petition for a redetermination of a deficiency has been filed by the taxpayer, a decision of the Tax Court dismissing the proceeding shall be considered as its decision that the deficiency is the amount determined by the Secretary or his delegate. An order specifying such amount shall be entered in the records of the Tax Court unless the Tax Court cannot determine such amount from the record in the proceeding, or unless the dismissal is for lack of jurisdiction.

(e) Effect of decision that tax is barred by limitation.

If the assessment or collection of any tax is barred by any statute of limitations, the decision of the Tax Court to that effect shall be considered as its decision that there is no deficiency in respect of such tax.

(f) Findings of fact as evidence.

The findings of the Board of Tax Appeals made in connection with any decision prior to February 26, 1926, shall, notwithstanding the enactment of the Revenue Act of 1926 (44 Stat. 9), continue to be prima facie evidence of the facts therein stated.

(g) Penalty.

For penalty for taxpayer instituting proceedings before Tax Court merely for delay, see section 6673.

(Aug. 16, 1954, ch. 736, 68A Stat. 886.)

RULES OF PRACTICE IN THE TAX COURT

Computation by parties for entry of decision, see rule 50, Appendix to this title.

Dismissal, see rule 21, Appendix to this title.

§ 7460. Provisions of special application to divisions.

(a) Hearings, determinations, and reports.

A division shall hear, and make a determination upon, any proceeding instituted before the Tax Court and any motion in connection therewith, assigned to such division by the chief judge, and shall make a report of any such determination which constitutes its final disposition of the proceeding.

(b) Effect of action by a division.

The report of the division shall become the report of the Tax Court within 30 days after such report by the division, unless within such period the chief judge has directed that such report shall be reviewed by the Tax Court. Any preliminary action by a division which does not form the basis for the entry of the final decision shall not be subject to review by the Tax Court except in accordance with such rules as the Tax Court may prescribe. The report of a division shall not be a part of the record in any case in which the chief judge directs that such report shall be reviewed by the Tax Court. (Aug. 16, 1954, ch. 736, 68A Stat. 887.)

§ 7461. Publicity of proceedings.

All reports of the Tax Court and all evidence received by the Tax Court and its divisions, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public; except that after the decision of the Tax Court in any proceeding has become final the Tax Court may, upon motion of the taxpayer or the Secretary or his delegate, permit the withdrawal by the party entitled thereto of originals of books, documents, and records, and of models, diagrams, and other exhibits, introduced in evidence before the Tax Court or any division; or the Tax Court may, on its own motion, make such other disposition thereof as it deems advisable. (Aug. 16, 1954, ch. 736, 68A Stat. 887.)

CROSS REFERENCES

Management and disposition of records, see chapters 10 and 11 of Title 44, Public Printing and Documents.

§ 7462. Publication of reports.

The Tax Court shall provide for the publication of its reports at the Government Printing Office in such form and manner as may be best adapted for

public information and use, and such authorized publication shall be competent evidence of the reports of the Tax Court therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. Such reports shall be subject to sale in the same manner and upon the same terms as other public documents. (Aug. 16, 1954, ch. 736, 68A Stat. 887.)

§ 7463. Provisions of special application to transferees.

(1) For rules of burden of proof in transferee proceedings, see section 6902 (a).

(2) For authority of Tax Court to prescribe rules by which a transferee of property of a taxpayer shall be entitled to examine books, records and other evidence, see section 6902 (b).

(Aug. 16, 1954, ch. 736, 68A Stat. 888.)

PART III.—MISCELLANEOUS PROVISIONS

Sec.
7471. Employees.
7472. Expenditures.
7473. Disposition of fees.
7474. Fee for transcript of record.

§ 7471. Employees.

(a) Appointment and compensation.

The Tax Court is authorized in accordance with the civil service laws to appoint, and in accordance with the Classification Act of 1949 (63 Stat. 954; 5 U. S. C. chapter 21), as amended, to fix the compensation of, such employees as may be necessary efficiently to execute the functions vested in the Tax Court.

(b) Expenses for travel and subsistence.

The employees of the Tax Court shall receive their necessary traveling expenses, and expenses for subsistence while traveling on duty and away from their designated stations, as provided in the Travel Expense Act of 1949 (63 Stat. 166; 5 U. S. C. chapter 16).

(c) Commissioners.

For travel and subsistence allowances of commissioners of the Tax Court, see section 7456 (c).

(Aug. 16, 1954, ch. 736, 68A Stat. 888.)

§ 7472. Expenditures.

The Tax Court is authorized to make such expenditures (including expenditures for personal services and rent at the seat of Government and elsewhere, and for law books, books of reference, and periodicals), as may be necessary efficiently to execute the functions vested in the Tax Court. All expenditures of the Tax Court shall be allowed and paid, out of any moneys appropriated for purposes of the Tax Court, upon presentation of itemized vouchers therefor signed by the certifying officer designated by the chief judge. (Aug. 16, 1954, ch. 736, 68A Stat. 888.)

§ 7473. Disposition of fees.

All fees received by the Tax Court shall be covered into the Treasury as miscellaneous receipts. (Aug. 16, 1954, ch. 736, 68A Stat. 888.)

CROSS REFERENCES

Fees—
Filing petition, see section 7451 of this title.
Transcript of record, see section 7474 of this title.

§ 7474. Fee for transcript of record.

The Tax Court is authorized to fix a fee, not in excess of the fee fixed by law to be charged and collected therefor by the clerks of the district courts, for comparing, or for preparing and comparing, a transcript of the record, or for copying any record, entry, or other paper and the comparison and certification thereof. (Aug. 16, 1954, ch. 736, 68A Stat. 888.)

CROSS REFERENCES

District court, subject to approval of Judicial Conference, to fix fees for transcripts of records, see section 753 (f) of Title 28, Judiciary and Judicial Procedure.

RULES OF PRACTICE IN THE TAX COURT

Preparation of record on review; costs, see rule 52, Appendix to this title.

Subchapter D.—Court Review of Tax Court Decisions

Sec.
7481. Date when Tax Court decision becomes final.
7482. Courts of review.
7483. Petition for review.
7484. Change of incumbent in office.
7485. Bond to stay assessment and collection.
7486. Refund, credit, or abatement of amounts disallowed.
7487. Cross reference.

§ 7481. Date when tax court decision becomes final.

The decision of the Tax Court shall become final—

(1) Timely petition for review not filed.

Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; or

(2) Decision affirmed or petition for review dismissed.

(A) Petition for certiorari not filed on time.

Upon the expiration of the time allowed for filing a petition for certiorari, if the decision of the Tax Court has been affirmed or the petition for review dismissed by the United States Court of Appeals and no petition for certiorari has been duly filed; or

(B) Petition for certiorari denied.

Upon the denial of a petition for certiorari, if the decision of the Tax Court has been affirmed or the petition for review dismissed by the United States Court of Appeals; or

(C) After mandate of Supreme Court.

Upon the expiration of 30 days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the decision of the Tax Court be affirmed or the petition for review dismissed.

(3) Decision modified or reversed.

(A) Upon mandate of Supreme Court.

If the Supreme Court directs that the decision of the Tax Court be modified or reversed, the decision of the Tax Court rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of 30 days from the time it was rendered, unless within such 30 days either the Secretary or his delegate or the taxpayer has instituted proceedings to have such decision corrected to accord with the mandate, in which event the

decision of the Tax Court shall become final when so corrected.

(B) Upon mandate of the Court of Appeals.

If the decision of the Tax Court is modified or reversed by the United States Court of Appeals, and if—

(i) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(ii) the petition for certiorari has been denied, or

(iii) the decision of the United States Court of Appeals has been affirmed by the Supreme Court, then the decision of the Tax Court rendered in accordance with the mandate of the United States Court of Appeals shall become final on the expiration of 30 days from the time such decision of the Tax Court was rendered, unless within such 30 days either the Secretary or his delegate or the taxpayer has instituted proceedings to have such decision corrected so that it will accord with the mandate, in which event the decision of the Tax Court shall become final when so corrected.

(4) Rehearing.

If the Supreme Court orders a rehearing; or if the case is remanded by the United States Court of Appeals to the Tax Court for a rehearing, and if—

(A) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(B) the petition for certiorari has been denied, or

(C) the decision of the United States Court of Appeals has been affirmed by the Supreme Court,

then the decision of the Tax Court rendered upon such rehearing shall become final in the same manner as though no prior decision of the Tax Court has been rendered.

(5) Definition of "mandate."

As used in this section, the term "mandate", in case a mandate has been recalled prior to the expiration of 30 days from the date of issuance thereof, means the final mandate.

(Aug. 16, 1954, ch. 736, 68A Stat. 889.)

CROSS REFERENCES

Date of decision of Tax Court, see section 7459 (c) of this title.

Final decisions of Tax Court for purposes of chapter 63 and Subtitles A or B of this title, see section 6214 (c) of this title.

Time for petition for—

Certiorari to Supreme Court, see section 2101 of Title 28, Judiciary and Judicial Procedure.

Review of decision of Tax Court, see section 7483 of this title.

§ 7482. Courts of review.

(a) Jurisdiction.

The United States Courts of Appeals shall have exclusive jurisdiction to review the decisions of the Tax Court, except as provided in section 1254 of Title 28 of the United States Code, in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury; and the judgment of any such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in section 1254 of Title 28 of the United States Code.

(b) Venue.

(1) In general.

Except as provided in paragraph (2), such decisions may be reviewed by the United States Court of Appeals for the circuit in which is located the office to which was made the return of the tax in respect of which the liability arises, or, if no return was made, then by the United States Court of Appeals for the District of Columbia.

(2) By agreement.

Notwithstanding the provisions of paragraph (1), such decisions may be reviewed by any United States Court of Appeals which may be designated by the Secretary or his delegate and the taxpayer by stipulation in writing.

(c) Powers.

(1) To affirm, modify, or reverse.

Upon such review, such courts shall have power to affirm or, if the decision of the Tax Court is not in accordance with law, to modify or to reverse the decision of the Tax Court, with or without remanding the case for a rehearing, as justice may require.

(2) To make rules.

Rules for review of decisions of the Tax Court shall be those prescribed by the Supreme Court under section 2074 of title 28 of the United States Code. Until such rules become effective the rules adopted under authority of section 1141 (c) (2) of the Internal Revenue Code of 1939 shall remain in effect.

(3) To require additional security.

Nothing in section 7483 shall be construed as relieving the petitioner from making or filing such undertakings as the court may require as a condition of or in connection with the review.

(4) To impose damages.

The United States Court of Appeals and the Supreme Court shall have power to impose damages in any case where the decision of the Tax Court is affirmed and it appears that the petition was filed merely for delay.

(Aug. 16, 1954, ch. 736, 68A Stat. 890.)

CROSS REFERENCES

Courts of appeals; certiorari; appeal; certified questions, see section 1254 of Title 28, Judiciary and Judicial Procedure.

Damages and costs on affirmance, see section 1912 of Title 28, Judiciary and Judicial Procedure.

Determination of appeal by appellate court, see section 2106 of Title 28, Judiciary and Judicial Procedure.

Final decision of the Tax Court, see section 7481 of this title.

Findings of fact or opinion of Tax Court, see section 7459 of this title.

Internal revenue districts, see section 7621 of this title.

Jurisdiction of Tax Court, see section 7442 of this title.

Place for paying tax shown on returns, see section 6151 of this title.

Rules for review of decisions of the Tax Court, see section 2074 of Title 28, Judiciary and Judicial Precedure.

§ 7483. Petition for review.

The decision of the Tax Court may be reviewed by a United States Court of Appeals as provided in section 7482 if a petition for such review is filed by either the Secretary (or his delegate) or the taxpayer within 3 months after the decision is rendered. If, however, a petition for such review is so filed by one party to the proceeding, a petition for review of the decision of the Tax Court may be filed by any other party to the proceeding within 4 months after such decision is rendered. (Aug. 16, 1954, ch. 736, 68A Stat. 891.)

CROSS REFERENCES

Date of decision of Tax Court, see section 7459 (c) of this title.

Fees and costs of Court of Appeals, see section 1913 of Title 28, Judiciary and Judicial Procedure.

Filing of petition for review not operative as stay of assessment or collection, see section 7485 (a) of this title.

Time for filing petition in Tax Court, see section 6213 (a) of this title.

§ 7484. Change of incumbent in office.

When the incumbent of the office of Secretary or his delegate changes, no substitution of the name of his successor shall be required in proceedings pending before any appellate court reviewing the action of the Tax Court. (Aug. 16, 1954, ch. 736, 68A Stat. 891.)

§ 7485. Bond to stay assessment and collection.

(a) Upon petition for review.

Notwithstanding any provision of law imposing restrictions on the assessment and collection of deficiencies, the review under section 7483 shall not operate as a stay of assessment or collection of any portion of the amount of the deficiency determined by the Tax Court unless a petition for review in respect of such portion is duly filed by the taxpayer, and then only if the taxpayer—

(1) on or before the time his petition for review is filed has filed with the Tax Court a bond in a sum fixed by the Tax Court not exceeding double the amount of the portion of the deficiency in respect of which the petition for review is filed, and with surety approved by the Tax Court, conditioned upon the payment of the deficiency as finally determined, together with any interest, additional amounts, or additions to the tax provided for by law, or

(2) has filed a jeopardy bond under the income or estate tax laws.

If as a result of a waiver of the restrictions on the assessment and collection of a deficiency any part of the amount determined by the Tax Court is paid after the filing of the review bond, such bond shall, at the request of the taxpayer, be proportionately reduced.

(b) Cross references.

(1) For requirement of additional security notwithstanding this section, see section 7482 (c) (3).

(2) For deposit of United States bonds or notes in lieu of sureties, see 6 U. S. C. 15.

(Aug. 16, 1954, ch. 736, 68A Stat. 891.)

CROSS REFERENCES

Bond to stay collection of jeopardy assessments, see section 6863 of this title.

TAX COURT FORMS

Appeal bond—

Approval collateral, see Form 6, Appendix to this title.

Corporate surety, see Form 5, Appendix to this title.

§ 7486. Refund, credit, or abatement of amounts disallowed.

In cases where assessment or collection has not been stayed by the filing of a bond, then if the amount of the deficiency determined by the Tax Court is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim therefor, or, if collection has not been made, shall be abated. (Aug. 16, 1954, ch. 736, 68A Stat. 891.)

CROSS REFERENCES

Abatements, credits, and refunds see section 6401 et seq. of this title.

Civil actions for refund, see section 7422 of this title.

§ 7487. Cross reference.

For authority of the Tax Court to fix fees for transcripts of records, see section 7474.

(Aug. 16, 1954, ch. 736, 68A Stat. 892.)

Subchapter E.—Miscellaneous Provisions

Sec.
7491. Burden of proof of exemptions in case of marihuana offenses.
7492. Enforceability of cotton futures contracts.
7493. Immunity of witnesses in cases relating to cotton futures.

§ 7491. Burden of proof of exemptions in case of marihuana offenses.

It shall not be necessary to negative any exemptions set forth in part II of subchapter A of chapter 39, relating to marihuana, in any complaint, information, indictment, or other writ or proceeding laid or brought with respect to part II of subchapter A of chapter 39 and the burden of proof of any such exemption shall be upon the defendant. In the absence of the production of evidence by the defendant that he has complied with the provisions of section 4753 relating to registration, or that he has complied with the provisions of section 4742 relating to order forms, he shall be presumed not to have complied with such provisions of such section, as the case may be. (Aug. 16, 1954, ch. 736, 68A Stat. 893.)

CROSS REFERENCES

Punishment for violation of laws relating to narcotic drugs and to marihuana, see section 7237 of this title.

§ 7492. Enforceability of cotton futures contracts.

No contract of sale of cotton for future delivery mentioned in section 4851 (a), which does not conform to the requirements of section 4853 and has not the necessary stamps affixed thereto as required by section 4871, shall be enforceable in any court of the United States by, or on behalf of, any party to such contract or his privies. (Aug. 16, 1954, ch. 736, 68A Stat. 893.)

§ 7493. Immunity of witnesses in cases relating to cotton futures.

No person whose evidence is deemed material by the officer prosecuting on behalf of the United States in any case brought under any provision of subchapter D of chapter 39 (relating to cotton futures)

shall withhold his testimony because of complicity by him in any violation of subchapter D of chapter 39, or of any regulation made pursuant to such chapter, but any such person called by such officer who testifies in such case shall be exempt from prosecution for any offense to which his testimony relates. (Aug. 16, 1954, ch. 736, 68A Stat. 893.)

Chapter 77.—MISCELLANEOUS PROVISIONS

Sec.
7501. Liability for taxes withheld or collected.
7502. Timely mailing treated as timely filing.
7503. Time for performance of acts where last day falls on Saturday, Sunday, or legal holiday.
7504. Fractional parts of a dollar.
7505. Sale of personal property purchased by the United States.
7506. Administration of real estate acquired by the United States.
7507. Exemption of insolvent banks from tax.
7508. Time for performing certain acts postponed by reason of war.
7509. Expenditures incurred by the Post Office Department.
7510. Exemption from tax of domestic goods purchased for the United States.
7512. Separate accounting for certain collected taxes, etc.
7513. Reproduction of returns and other documents.
7514. Authority to prescribe or modify seals.
7515. Special statistical studies and compilations and other services on request.
7516. Supplying training and training aids on request.

AMENDMENTS

1962—Pub. L. 87–870, § 3(a)(2), Oct. 23, 1962, 76 Stat. 1161, added items 7515 and 7516.

Pub. L. 87–456, title III, § 302(d), May 24, 1962, 76 Stat. 77, repealed item 7511.

1958—Pub. L. 85–866, title I, §§ 90(b), 91(b) Sept. 2, 1958, 72 Stat. 1666, 1667, added items 7513 and 7514.

Pub. L. 85–321, § 3(a), Feb. 11, 1958, 72 Stat. 6, added item 7512.

§ 7501. Liability for taxes withheld or collected.

(a) General rule.

Whenever any person is required to collect or withhold any internal revenue tax from any other person and to pay over such tax to the United States, the amount of tax so collected or withheld shall be held to be a special fund in trust for the United States. The amount of such fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose.

(b) Penalties.

For penalties applicable to violations of this section, see sections 6672 and 7202.

(Aug. 16, 1954, ch. 736, 68A Stat. 895.)

§ 7502. Timely mailing treated as timely filing.

(a) General rule.

If any claim, statement, or other document (other than a return or other document required under authority of chapter 61), required to be filed within a prescribed period or on or before a prescribed date under authority of any provision of the internal revenue laws is, after such period or such date, delivered by United States mail to the agency, officer, or office with which such claim, statement, or other document is required to be filed, the date of the United States postmark stamped on the cover in which such claim, statement, or other document is mailed shall be deemed to be the date of delivery. This subsection shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of the claim, statement, or other document, determined with regard to any extension granted for such filing, and only if the claim, statement, or other document was, within the prescribed time, deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the agency, office, or officer with which the claim, statement, or other document is required to be filed.

(b) Stamp machine.

This section shall apply in the case of postmarks not made by the United States Post Office only if and to the extent provided by regulations prescribed by the Secretary or his delegate.

(c) Registered and certified mail.

(1) Registered mail.

If any such claim, statement, or other document is sent by United States registered mail, such registration shall be prima facie evidence that the claim, statement, or other document was delivered to the agency, office, or officer to which addressed, and the date of registration shall be deemed the postmark date.

(2) Certified mail.

The Secretary or his delegate is authorized to provide by regulations the extent to which the provisions of paragraph (1) of this subsection with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail.

(d) Exception.

This section shall not apply with respect to the filing of a document in any court other than the Tax Court. (Aug. 16, 1954, ch. 736, 68A Stat. 895; Sept. 2, 1958, Pub. L. 85–866, title I, § 89 (a), 72 Stat. 1665.)

AMENDMENTS

1958—Subsec. (c). Pub. L. 85–866 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1958 AMENDMENT

Section 89 (d) of Pub. L. 85–866 provided that: "This section [amending subsec. (c) of this section and sections 167 (d), 6164 (d) (2), 6212 (a) (b) (2), 6532 (a) (1) (4) and 7455 of this title] shall apply only if the mailing occurs after the date of the enactment of this Act [Sept. 2, 1958]."

CROSS REFERENCES

Period of limitation on filing claim for refund, see section 6511 of this title.

Time return deemed filed and tax considered paid, see section 6513 of this title.

§ 7503. Time for performance of acts where last day falls on Saturday, Sunday, or legal holiday.

When the last day prescribed under authority of the internal revenue laws for performing any act falls on Saturday, Sunday, or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. For purposes of this section, the last day for the performance of any act shall be determined by including any authorized extension of time; the term

revenue laws prior to reference to the Department of Justice for prosecution or defense; and the Attorney General or his delegate may compromise any such case after reference to the Department of Justice for prosecution or defense.

(b) Record.

Whenever a compromise is made by the Secretary or his delegate in any case, there shall be placed on file in the office of the Secretary or his delegate the opinion of the General Counsel for the Department of the Treasury or his delegate, with his reasons therefor, with a statement of—

(1) The amount of tax assessed,

(2) The amount of interest, additional amount, addition to the tax, or assessable penalty, imposed by law on the person against whom the tax is assessed, and

(3) The amount actually paid in accordance with the terms of the compromise.

Notwithstanding the foregoing provisions of this subsection, no such opinion shall be required with respect to the compromise of any civil case in which the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) is less than $500. (Aug. 16, 1954, ch. 736, 68A Stat. 849.)

CROSS REFERENCES

Compromise of liability under the Federal Alcohol Administration Act, see section 207 of Title 27, Intoxicating Liquors.

Deposit of collections, see section 7809 of this title.

Election by taxpayer for application of section 1333, see section 1335 of this title.

Election of standard deduction, see section 144 of this title.

Fraud and false statement, see section 7206 of this title.

Joint returns of income tax by husband and wife, see section 6013 of this title.

Limitation on—

Credit or refund, see section 6511 of this title.

Deductions allowable to individuals in certain cases, see section 270 of this title.

Mitigating effect of—

Limitation in case of related taxes under different chapters, see section 6521 of this title.

Limitations and other provisions, see section 1311 of this title.

Renegotiation of government contracts, see section 1481 of this title.

§ 7123. Cross references.

(a) Criminal penalties.

For criminal penalties for concealment of property, false statement, or falsifying and destroying records, in connection with any closing agreement, compromise, or offer of compromise, see section 7206.

(b) Compromises after judgment.

For compromises after judgment, see R. S. 3469 (31 U. S. C. 194).

(Aug. 16, 1954, ch. 736, 68A Stat. 850.)

Chapter 75.—CRIMES, OTHER OFFENSES, AND FORFEITURES

Subchapter
A. Crimes.
B. Other offenses.
C. Forfeitures.
D. Miscellaneous penalty and forfeiture provisions.

Subchapter A.—Crimes

Part
I. General provisions.
II. Penalties applicable to certain taxes.

PART I.—GENERAL PROVISIONS

Sec.
7201. Attempt to evade or defeat tax.
7202. Willful failure to collect or pay over tax.
7203. Willful failure to file return, supply information, or pay tax.
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7212. Attempts to interfere with administration of internal revenue laws.
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7214. Offenses by officers and employees of the United States.
7215. Offenses with respect to collected taxes.

AMENDMENTS

1958—Pub. L. 85-321, § 3(b), Feb. 11, 1958, 72 Stat. 6 added item 7215.

§ 7201. Attempt to evade or defeat tax.

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution. (Aug. 16, 1954, ch. 736, 68A Stat. 851.)

CROSS REFERENCES

Costs in criminal proceedings, see section 1918 (b) of Title 28, Judiciary and Judicial Procedure.

Definition of person, see section 7343 of this title.

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Failure to pay, or attempt to evade payment of, tax on cotton futures, see section 7233 of this title.

Penalty for—

Delivery or disclosure of false or fraudulent return, statement or other document, see section 7207 of this title.

Making or subscribing false return, see section 7206 (1) of this title.

Period of limitation—

Criminal prosecutions arising under internal revenue laws, see section 6531 (2) of this title.

Offenses not capital, see section 3282 of Title 18, Crimes and Criminal Procedure.

§ 7202. Willful failure to collect or pay over tax.

Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution. (Aug. 16, 1954, ch. 736, 68A Stat. 851.)

CROSS REFERENCES

Costs in criminal proceedings, see section 1918 (b) of Title 28, Judiciary and Judicial Procedure.

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Felony defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Period of limitation on criminal prosecutions, see section 6531 of this title.

§ 7203. Willful failure to file return, supply information, or pay tax.

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015 or section 6016), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution. (Aug. 16, 1954, ch. 736, 68A Stat. 851.)

CROSS REFERENCES

Cost in criminal proceedings, see section 1918 (b) of Title 18, Judiciary and Judicial Procedure.
Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.
Information returns, see section 6031 et seq. of this title.
Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.
Persons required to make returns—
Estate tax, see section 6018 of this title.
Gift tax, see section 6019 of this title.
Income tax, see section 6012 of this title.
Period of limitation on criminal prosecution for offense of willfully failing to pay any tax or make a return, see section 6531 (4) of this title.

§ 7204. Fraudulent statement or failure to make statement to employees.

In lieu of any other penalty provided by law (except the penalty provided by section 6674) any person required under the provisions of section 6051 to furnish a statement who willfully furnishes a false or fraudulent statement or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6051, or regulations prescribed thereunder, shall, for each such offense, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both. (Aug. 16, 1954, ch. 736, 68A Stat. 852.)

CROSS REFERENCES

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.
Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.
Penalty for fraud against Social Security Act, see section 1307 of Title 42, The Public Health and Welfare.
Penalty for furnishing fraudulent statement to employee, see section 6674 of this title.
Period of limitation on criminal prosecutions, see section 6531 of this title.

§ 7205. Fraudulent withholding exemption certificate or failure to supply information.

Any individual required to supply information to his employer under section 3402 (f) who willfully supplies false or fraudulent information, or who willfully fails to supply information thereunder which would require an increase in the tax to be withheld under section 3402, shall, in lieu of any penalty otherwise provided, upon conviction thereof, be fined not more than $500, or imprisoned not more than 1 year, or both. (Aug. 16, 1954, ch. 736, 68A Stat. 852.)

CROSS REFERENCES

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.
Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.
Period of limitation on criminal prosecutions, see section 6531 of this title.

§ 7206. Fraud and false statements.

Any person who—

(1) Declaration under penalties of perjury.

Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or

(2) Aid or assistance.

Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document; or

(3) Fraudulent bonds, permits, and entries.

Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal revenue laws, or by any regulation made in pursuance thereof, or procures the same to be falsely or fraudulently executed, or advises, aids in, or connives at such execution thereof; or

(4) Removal or concealment with intent to defraud.

Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by section 6331, with intent to evade or defeat the assessment or collection of any tax imposed by this title; or

(5) Compromises and closing agreements.

In connection with any compromise under section 7122, or offer of such compromise, or in connection with any closing agreement under section 7121, or offer to enter into any such agreement, willfully—

(A) Concealment of property.

Conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or

(B) Withholding, falsifying, and destroying records.

Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax;

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than 3 years, or both, together with the costs of prosecution. (Aug. 16, 1954, ch. 736, 68A Stat. 852.)

CROSS REFERENCES

Attempt to evade or defeat tax, see section 7201 of this title.

Costs in criminal proceedings, see section 1918 (b) of Title 28, Judiciary and Judicial Procedure.

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Felony defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Penalty for making—

False affidavit for purpose of defrauding United States, see section 494 of Title 18, Crimes and Criminal Procedure.

False claim against United States, see section 287 of Title 18, Crimes and Criminal Procedure.

False or fraudulent statement with any department or agency of United States, see section 1001 of Title 18, Crimes and Criminal Procedure.

Period of limitation on criminal prosecution of offense described in subdivision (1) of this section, see section 6531 (5) of this title.

Period of limitation on criminal prosecution of offense described in subdivision (2) of this section, see section 6531 (3) of this title.

Perjury, see section 1621 of Title 18, Crimes and Criminal Procedure.

Verification of return under penalty of perjury, see section 6065 (a) of this title.

§ 7207. Fraudulent returns, statements, or other documents.

Any person who willfully delivers or discloses to the Secretary or his delegate any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both. Any person required pursuant to section 6047 (b) or (c) to furnish any information to the Secretary or any other person who willfully furnishes to the Secretary or such other person any information known by him to be fraudulent or to be false as to any material matter shall be fined not more than $1,000, or imprisoned not more than 1 year, or both (Aug. 16, 1954, ch. 736, 68A Stat. 853; Oct. 10, 1962, Pub. L. 87–792, § 7(m)(3), 76 Stat. 831.)

AMENDMENTS

1962—Pub. L. 87–792 inserted sentence providing that any person required pursuant to section 6047 (b) or (c) to furnish any information to the Secretary or any other person who willfully furnishes to the Secretary or such other person any information known by him to be fraudulent or to be false as to any material matter shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 37 of this title.

CROSS REFERENCES

Attempt to evade or defeat tax, see section 7201 of this title.

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Period of limitation on criminal prosecution for offense described in this section, see section 6531 (5) of this title.

§ 7208. Offenses relating to stamps.

Any person who—

(1) Counterfeiting.

With intent to defraud, alters, forges, makes, or counterfeits any stamp, coupon, ticket, book, or other device prescribed under authority of this title for the collection or payment of any tax imposed by this title, or sells, lends, or has in his possession any such altered, forged, or counterfeited stamp, coupon, ticket, book, or other device, or makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such stamp, coupon, ticket, book, or other device; or

(2) Mutilation or removal.

Fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title, any adhesive stamp or the impression of any stamp, die, plate, or other article provided, made, or used in pursuance of this title; or

(3) Use of mutilated, insufficient, or counterfeited stamps.

Fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title,

(A) any adhesive stamp, or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title; or

(B) any adhesive stamp or the impression of any stamp, die, plate, or other article of insufficient value; or

(C) any forged or counterfeited stamp, or the impression of any forged or counterfeited stamp, die, plate, or other article; or

(4) Reuse of stamps.

(A) Preparation for reuse.

Willfully removes, or alters the cancellation or defacing marks of, or otherwise prepares, any adhesive stamp, with intent to use, or cause the same to be used, after it has already been used; or

(B) Trafficking.

Knowingly or willfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same; or

(C) Possession.

Knowingly and without lawful excuse (the burden of proof of such excuse being on the accused) has in possession any washed, restored, altered stamp, which has been removed from any vellum, parchment, paper, instrument, writing, package, or article; or

(5) Emptied stamped packages.

Commits the offense described in section 7271 (relating to disposal and receipt of stamped packages) with intent to defraud the revenue, or to defraud any person;

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both. (Aug. 16, 1954, ch. 736, 68A Stat. 853.)

CROSS REFERENCES

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Felony defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Period of limitation on criminal prosecutions, see section 6531 of this title.

§ 7209. Unauthorized use or sale of stamps.

Any person who buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in this title or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device prescribed by the Secretary or his delegate under this title for the collection or payment of any tax imposed by this title, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 6 months, or both. (Aug. 16, 1954, ch. 736, 68A Stat. 854.)

CROSS REFERENCES

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Period of limitation on criminal prosecutions, see section 6531 of this title.

§ 7210. Failure to obey summons.

Any person who, being duly summoned to appear to testify, or to appear and produce books, accounts, records, memoranda, or other papers, as required under sections 6420 (e) (2), 6421 (f) (2), 7602, 7603, and 7604 (b), neglects to appear or to produce such books, accounts, records, memoranda, or other papers, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with costs of prosecution. (Aug. 16, 1954, ch. 736, 68A Stat. 854; Apr. 2, 1956, ch. 160, § 4(h), 70 Stat. 91; June 29, 1956, ch. 462, title II, § 208(d)(3), 70 Stat. 396.)

AMENDMENTS

1956—Act June 29, 1956, inserted reference to section 6421(f)(2) of this title.

Act Apr. 2, 1956, inserted reference to section 6420(e)(2) of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of this section by act June 29, 1956, as effective June 29, 1956, see section 211 of act June 29, 1956, set out as a note under section 4041 of this title.

CROSS REFERENCES

Attachment for contempt for refusal to obey summons to produce books or give testimony, see section 7604 (b) of this title.

Costs in criminal proceedings, see section 1918 (b) of Title 28, Judiciary and Judicial Procedure.

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Period of limitation on criminal prosecutions, see section 6531 of this title.

§ 7211. False statements to purchasers or lessees relating to tax.

Whoever in connection with the sale or lease, or offer for sale or lease, of any article, or for the purpose of making such sale or lease, makes any statement, written or oral—

(1) intended or calculated to lead any person to believe that any part of the price at which such article is sold or leased, or offered for sale or lease, consists of a tax imposed under the authority of the United States, or

(2) ascribing a particular part of such price to a tax imposed under the authority of the United States,

knowing that such statement is false or that the tax is not so great as the portion of such price ascribed to such tax, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than 1 year, or both. (Aug. 16, 1954, ch. 736, 68A Stat. 854.)

CROSS REFERENCES

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Period of limitation on criminal prosecutions, see section 6531 of this title.

§ 7212. Attempts to interfere with administration of Internal Revenue laws.

(a) Corrupt or forcible interference.

Whoever corruptly or by force or threats of force (including any threatening letter or communication) endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity under this title, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or endeavors to obstruct or impede, the due administration of this title, shall, upon conviction thereof, be fined not more than $5,000, or imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person convicted thereof shall be fined not more than $3,000, or imprisoned not more than 1 year, or both. The term "threats of force", as used in this subsection, means threats of bodily harm to the officer or employee of the United States or to a member of his family.

(b) Forcible rescue of seized property.

Any person who forcibly rescues or causes to be rescued any property after it shall have been seized under this title, or shall attempt or endeavor so to do, shall, excepting in cases otherwise provided for, for every such offense, be fined not more than $500, or not more than double the value of the property so rescued, whichever is the greater, or be imprisoned not more than 2 years. (Aug. 16, 1954, ch. 736, 68A Stat. 855.)

CROSS REFERENCES

Effective date of this chapter, see section 7851 (a) (6) (C) (iii) of this title.

Entry of premises for examination of taxable objects, see section 7606 of this title.

Felony and misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Penalty for refusal to permit entry or examination, see section 7342 of this title.

Period of limitation on criminal prosecution for offense under this section, see section 6531 (6) of this title.

Punishment for assaulting, resisting or impeding certain federal officers and employees, see section 111 of Title 18, Crimes and Criminal Procedure.

§ 7213. Unauthorized disclosure of information.

(a) Income returns.

(1) Federal employees and other persons.

It shall be unlawful for any officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to

Feb. 12, 1873.

CHAP. CXXXI. — *An Act revising and amending the Laws relative to the Mints, Assay-offices, and Coinage of the United States.*

See § 67, p. 435.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the mint of the United States is hereby established as a bureau of the Treasury Department, embracing in its organization and under its control all mints for the manufacture of coin, and all assay-offices for the stamping of bars, which are now, or which may be hereafter, authorized by law. The chief officer of the said bureau shall be denominated the director of the mint, and shall be under the general direction of the Secretary of the Treasury. He shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold his office for the term of five years, unless sooner removed by the President, upon reasons to be communicated by him to the Senate.

Mint established as a bureau, and includes what.

Director, appointment, and term of office;

powers;

SEC. 2. That the director of the mint shall have the general supervision of all mints and assay-offices, and shall make an annual report to the Secretary of the Treasury of their operations, at the close of each fiscal year, and from time to time such additional reports, setting forth the operations and condition of such institutions, as the Secretary of the Treasury shall require, and shall lay before him the annual estimates for their support. And the Secretary of the Treasury shall appoint the number of clerks, classified according to law, necessary to discharge the duties of said bureau.

reports;

annual estimates.

Clerks, number and appointment.

Officers of each mint, and their appointment.

SEC. 3. That the officers of each mint shall be a superintendent, an assayer, a melter and refiner, and a coiner, and for the mint at Philadelphia, an engraver, all to be appointed by the President of the United States, by and with the advice and consent of the Senate.

Superintendent of mint, powers;

SEC. 4. That the superintendent of each mint shall have the control thereof, the superintendence of the officers and persons employed therein, and the supervision of the business thereof, subject to the approval of the director of the mint, to whom he shall make reports at such times and according to such forms as the director of the mint may prescribe, which shall exhibit, in detail, and under appropriate heads, the deposits of bullion, the amount of gold, silver, and minor coinage, and the amount of unparted, standard, and refined bars issued, and such other statistics and information as may be required. The superintendent of each mint shall also receive and safely keep, until legally withdrawn, all moneys or bullion which shall be for the use or the expenses of the mint. He shall receive all bullion brought to the mint for assay or coinage; shall be the keeper of all bullion or coin in the mint, except while the same is legally in the hands of other officers; and shall deliver all coins struck at the mint to the persons to whom they shall be legally payable. From the report of the assayer and the weight of the bullion, he shall compute the value of each deposit, and also the amount of the charges or deductions, if any, of all which he shall give a detailed memorandum to the depositor; and he shall also give at the same time, under his hand, a certificate of the net amount of the deposit, to be paid in coins or bars of the same species of bullion as that deposited, the correctness of which certificate shall be verified by the assayer, who shall countersign the same; and in all cases of transfer of coin or bullion, he shall give and receive vouchers, stating the amount and character of such coin or bullion. He shall keep and render, quarter-yearly, to the director of the mint, for the purpose of adjustment, according to such forms as may be prescribed by the Secretary of the Treasury, regular and faithful accounts of his transactions with the other officers of the mint and the depositors; and shall also render to him a monthly statement of the ordinary expenses of the mint or assay-office under his charge. He shall also appoint all assistants, clerks, (one of whom shall be designated "chief clerk,") and workmen employed under his superintendence; but no person shall be

reports, their form and contents.

Moneys or bullion.

Coin.

Deposits.

Certificate of deposit, to be countersigned by assayer.

Transfers of coin, &c.

Quarterly accounts to director, &c.

Assistants, clerks, &c.

appointed to employment in the offices of the assayer, melter and refiner, coiner, or engraver, except on the recommendation and nomination in writing of those officers, respectively; and he shall forthwith report to the director of the mint the names of all persons appointed by him, the duties to be performed, the rate of compensation, the appropriation from which compensation is to be made, and the grounds of the appointment; and if the director of the mint shall disapprove the same, the appointment shall be vacated.

clerks, &c., in offices of assayer, &c.

Appointments to be reported to director and approved by him.

SEC. 5. That the assayer shall assay al metals and bullion, whenever such assays are required in the operations of the mint; he shall also make assays of coins or samples of bullion whenever required by the superintendent.

Assayer's duties.

SEC. 6. That the melter and refiner shall execute all the operations which are necessary in order to form ingots of standard silver or gold, and alloys for minor coinage, suitable for the coiner, from the metals legally delivered to him for that purpose; and shall also execute all the operations which are necessary in order to form bars conformable in all respects to the law, from the gold and silver bullion delivered to him for that purpose. He shall keep a careful record of all transactions with the superintendent, noting the weight and character of the bullion; and shall be responsible for all bullion delivered to him until the same is returned to the superintendent and the proper vouchers obtained.

Melter and refiner.

SEC. 7. That the coiner shall execute all the operations which are necessary in order to form coins, conformable in all respects to the law, from the standard gold and silver ingots, and alloys for minor coinage, legally delivered to him for that purpose; and shall be responsible for all bullion delivered to him, until the same is returned to the superintendent and the proper vouchers obtained.

Coiner.

SEC. 8. That the engraver shall prepare from the original dies already authorized all the working-dies required for use in the coinage of the several mints, and, when new coins or devices are authorized, shall, if required by the director of the mint, prepare the devices, models, moulds, and matrices, or original dies, for the same; but the director of the mint shall nevertheless have power, with the approval of the Secretary of the Treasury, to engage temporarily for this purpose the services of one or more artists distinguished in their respective departments of art, who shall be paid for such service from the contingent appropriation for the mint at Philadelphia.

Engraver.

New coins or devices.

SEC. 9. That whenever any officer of a mint or assay-office shall be temporarily absent, on account of sickness or any other cause, it shall be lawful for the superintendent, with the consent of said officer, to appoint some person attached to the mint to act in the place of such officer during his absence; but all such appointments shall be forthwith reported to the director of the mint for his approval; and in all cases whatsoever the principal shall be responsible for the acts of his representative. In case of the temporary absence of the superintendent, the chief clerk shall act in his place; and in case of the temporary absence of the director of the mint, the Secretary of the Treasury may designate some one to act in his place.

If any officer is absent, &c.;

superintendent;

director.

SEC. 10. That every officer, assistant, and clerk of the mint shall, before he enters upon the execution of his office take an oath or affirmation before some judge of the United States, or judge of the superior court, or of some court of record of any State, faithfully and diligently to perform the duties thereof, in addition to other official oaths prescribed by law; which oaths, duly certified, shall be transmitted to the Secretary of the Treasury; and the superintendent of each mint may require such oath or affirmation from any of the employees of the mint.

Oath of officers, assistants, clerks, and employees.

SEC. 11. That the superintendent, the assayer, the melter and refiner, and the coiner of each mint, before entering upon the execution of their

Bond of super-

intendent and others; respective offices, shall become bound to the United States, with one or more sureties, approved by the Secretary of the Treasury, in the sum of not less than ten nor more than fifty thousand dollars, with condition for the faithful, and diligent performance of the duties of his office. Similar

of assistants and clerks; bonds may be required of the assistants and clerks, in such sums as the superintendent shall determine, with the approbation of the director of the mint; but the same shall not be construed to relieve the superintendent or other officers from liability to the United States for acts, omissions, or negligence of their subordinates or employees: *Provided*, That

Increase thereof. the Secretary of the Treasury, may, at his discretion, increase the bonds of the superintendent.

Salary of director; SEC. 12. That there shall be allowed to the director of the mint an annual salary of four thousand five hundred dollars, and actual necessary travelling expenses in visiting the different mints and assay-offices, for

superintendents, assayers, &c.; which vouchers shall be rendered, to the superintendents of the mints at Philadelphia and San Francisco, each four thousand five hundred dollars; to the assayers, melters and refiners, and coiners of said mints, each three thousand dollars; to the engraver of the mint at Philadelphia, three thousand dollars; to the superintendent of the mint at Carson city, three thousand dollars; and to the assayer, to the melter and refiner, and to the coiner of the mint at Carson city, each, two thousand five hundred

assistants, clerks, and workmen; dollars; to the assistants and clerks such annual salary shall be allowed as the director of the mint may determine, with the approbation of the Secretary of the Treasury; and to the workmen shall be allowed such wages, to be determined by the superintendent, as may be customary and reasonable according to their respective stations and occupations, and approved by the director of the mint; and the salaries provided for in

payable monthly. this section, and the wages of the workmen permanently engaged, shall be payable in monthly instalments.

Standard of gold and silver coins. SEC. 13. That the standard for both gold and silver coins of the United States shall be such that of one thousand parts by weight nine hundred shall be of pure metal and one hundred of alloy; and the alloy of the

Alloy. silver coins shall be of copper, and the alloy of the gold coins shall be of copper, or of copper and silver; but the silver shall in no case exceed one-tenth of the whole alloy.

Gold coins; SEC. 14. That the gold coins of the United States shall be a one-dollar piece, which, at the standard weight of twenty-five and eight-tenths grains, shall be the unit of value; a quarter-eagle, or two-and-a-half dollar piece; a three-dollar piece; a half-eagle, or five-dollar piece; an eagle, or ten-dollar piece; and a double eagle, or twenty-dollar piece. And the

standard weight; standard weight of the gold dollar shall be twenty-five and eight-tenths grains; of the quarter-eagle, or two-and-a-half dollar piece, sixty-four and a half grains; of the three-dollar piece, seventy-seven and four-tenths grains; of the half-eagle, or five-dollar piece, one hundred and twenty-nine grains; of the eagle, or ten-dollar piece, two hundred and fifty-eight grains; of the double-eagle, or twenty-dollar piece, five hundred and sixteen grains; which coins shall be a legal tender in all payments at their nominal value when not below the standard weight and limit of tolerance provided in this act for the single piece, and, when reduced in

to be legal tender; weight, below said standard and tolerance, shall be a legal tender at valuation in proportion to their actual weight; and any gold coin of the

reduction in weight by natural abrasion; United States, if reduced in weight by natural abrasion not more than one-half of one per centum below the standard weight prescribed by law, after a circulation of twenty years, as shown by its date of coinage, and at a ratable proportion for any period less than twenty years, shall be

where to be received. received at their nominal value by the United States treasury and its offices, under such regulations as the Secretary of the Treasury may prescribe for the protection of the government against fraudulent abrasion or

other practices; and any gold coins in the treasury of the United States reduced in weight below this limit of abrasion shall be recoined.

Silver coins

SEC. 15. That the silver coins of the United States shall be a trade-dollar, a half-dollar, or fifty-cent piece, a quarter-dollar, or twenty-five-cent piece, a dime, or ten-cent piece; and the weight of the trade-dollar shall be four hundred and twenty grains troy; the weight of the half-dollar shall be twelve grams (grammes) and one-half of a gram, (gramme;) the quarter-dollar and the dime shall be respectively, one-half and one-fifth of the weight of said half-dollar; and said coins shall be a legal tender at their nominal value for any amount not exceeding five dollars in any one payment.

weight; to be legal tender.

Minor coins, and their alloy;

SEC. 16. That the minor coins of the United States shall be a five-cent piece, a three-cent piece, and a one-cent piece, and the alloy for the five and three cent pieces shall be of copper and nickel, to be composed of three-fourths copper and one-fourth nickel, and the alloy of the one-cent piece shall be ninety-five per centum of copper and five per centum of tin and zinc, in such proportions as shall be determined by the director of the mint. The weight of the piece of five cents shall be seventy-seven and sixteen-hundredths grains, troy; of the three-cent piece, thirty grains; and of the one-cent piece, forty-eight grains; which coins shall be a legal tender, at their nominal value, for any amount not exceeding twenty-five cents in any one payment.

weight; to be legal tender.

No coins, except, &c.

SEC. 17. That no coins, either of gold, silver, or minor coinage, shall hereafter be issued from the mint other than those of the denominations, standards, and weights herein set forth.

Devices and legends upon coins.

SEC. 18. That upon the coins of the United States there shall be the following devices and legends: Upon one side there shall be an impression emblematic of liberty, with an inscription of the word "Liberty" and the year of the coinage, and upon the reverse shall be the figure or representation of an eagle, with the inscriptions "United States of America" and "E Pluribus Unum," and a designation of the value of the coin; but on the gold dollar and three-dollar piece, the dime, five, three, and one-cent piece the figure of the eagle shall be omitted; and on the reverse of the silver trade-dollar, the weight and fineness of the coin shall be inscribed; and the director of the mint, with the approval of the Secretary of the Treasury, may cause the motto "In God we trust" to be inscribed upon such coins as shall admit of such motto; and any one of the foregoing inscriptions may be on the rim of the gold and silver coins.

Inscriptions.

Bars of gold or silver;

SEC. 19. That at the option of the owner, gold or silver may be cast into bars of fine metal, or of standard fineness, or unparted, as he may prefer, with a stamp upon the same designating the weight and fineness,

stamp and devices;

and with such devices impressed thereon as may be deemed expedient to prevent fraudulent imitation, and no such bars shall be issued of a less weight than five ounces.

limit to weight.

Deposits of gold bullion for coinage;

SEC. 20. That any owner of gold bullion may deposit the same at any mint, to be formed into coin or bars for his benefit; but it shall be lawful to refuse any deposit of less value than one hundred dollars, or any bullion so base as to be unsuitable for the operations of the mint; and when gold and silver are combined, if either metal be in such small proportion that it cannot be separated advantageously, no allowance shall be made to the depositor for its value.

of silver bullion.

SEC. 21. That any owner of silver bullion may deposit the same at any mint, to be formed into bars, or into dollars of the weight of four hundred and twenty grains, troy, designated in this act as trade-dollars, and no deposit of silver for other coinage shall be received; but silver bullion contained in gold deposits, and separated therefrom, may be paid for in silver coin, at such valuation as may be, from time to time, established by the director of the mint.

Bullion to be weighed when deposited, and receipt given;

SEC. 22. That when bullion is deposited in any of the mints, it shall be weighed by the superintendent, and, when practicable, in the presence of the depositor, to whom a receipt shall be given, which shall state the description and weight of the bullion; but when the bullion is in such a state as to require melting, or the removal of base metals, before its value can be ascertained, the weight, after such operation, shall be considered as the true weight of the bullion deposited. The fitness of the bullion to be received shall be determined by the assayer, and the mode of melting by the melter and refiner.

fitness and mode of melting, how determined.

Assay of bullion;

SEC. 23. That from every parcel of bullion deposited for coinage or bars, the superintendent shall deliver to the assayer a sufficient portion for the purpose of being assayed, but all such bullion remaining from the operations of the assay shall be returned to the superintendent by the assayer.

Report of assayer.

SEC. 24. That the assayer shall report to the superintendent the quality or fineness of the bullion assayed by him, and such information as will enable him to compute the amount of the charges hereinafter provided for, to be made to the depositor.

Charges for converting bullion into coin, and preparation of bars;

SEC. 25. That the charge for converting standard gold bullion into coin shall be one-fifth of one per centum; and the charges for converting standard silver into trade-dollars, for melting and refining when bullion is below standard, for toughening when metals are contained in it which render it unfit for coinage, for copper used for alloy when the bullion is above standard, for separating the gold and silver when these metals exist together in the bullion, and for the preparation of bars, shall be fixed, from time to time, by the director, with the concurrence of the Secretary of the Treasury, so as to equal but not exceed, in their judgment, the actual average cost to each mint and assay-office of the material, labor, wastage, and use of machinery employed in each of the cases aforementioned.

not to exceed the actual average cost.

Assayer to verify certain calculations and countersign certificate.

SEC. 26. That the assayer shall verify all calculations made by the superintendent of the value of deposits, and, if satisfied of the correctness thereof, shall countersign the certificate required to be given by the superintendent to the depositor.

Purchase of bullion for silver coinage.

SEC. 27. That in order to procure bullion for the silver coinage authorized by this act, the superintendents, with the approval of the director of the mint, as to price, terms, and quantity, shall purchase such bullion with the bullion-fund. The gain arising from the coinage of such silver bullion into coin of a nominal value exceeding the cost thereof shall be credited to a special fund denominated the silver-profit fund. This fund shall be charged with the wastage incurred in the silver coinage, and with the expense of distributing said coins as hereinafter provided. The balance to the credit of this fund shall be from time to time, and at least twice a year, paid into the treasury of the United States.

Gain to be credited to silver-profit fund, and paid into the treasury.

Silver coins to be paid out where and for what.

SEC. 28. That silver coins other than the trade-dollar shall be paid out at the several mints, and at the assay-office in New York city, in exchange for gold coins at par, in sums not less than one hundred dollars; and it shall be lawful, also, to transmit parcels of the same, from time to time, to the assistant treasurers, depositaries, and other officers of the United States, under general regulations proposed by the director of the mint, and approved by the Secretary of the Treasury; but nothing herein contained shall prevent the payment of silver coins, at their nominal value, for silver parted from gold, as provided in this act, or for change less than one dollar in settlement for gold deposits: *Provided*, That for two years after the passage of this act, silver coins shall be paid at the mint in Philadelphia and the assay-office in New York city for silver bullion purchased for coinage, under such regulations as may be pre-

Proviso.

scribed by the director of the mint, and approved by the Secretary of the Treasury.

Purchase of metal for the minor coinage; to be carried on only at Philadelphia.

SEC. 29. That for the purchase of metal for the minor coinage authorized by this act, a sum not exceeding fifty thousand dollars in lawful money of the United States shall be transferred by the Secretary of the Treasury to the credit of the superintendent of the mint at Philadelphia, at which establishment only, until otherwise provided by law, such coinage shall be carried on. The superintendent, with the approval of the director of the mint as to price, terms, and quantity, shall purchase the metal required for such coinage by public advertisement, and the lowest and best bid shall be accepted, the fineness of the metals to be determined on the mint assay. The gain arising from the coinage of such metals into coin of a nominal value, exceeding the cost thereof, shall be credited to the special fund denominated the minor-coinage profit fund; and this fund shall be charged with the wastage incurred in such coinage, and with the cost of distributing said coins as hereinafter provided. The balance remaining to the credit of this fund, and any balance of profits accrued from minor coinage under former acts, shall be, from time to time, and at least twice a year, covered into the treasury of the United States.

Minor-coinage profit fund.

Minor coins, where deliverable, &c.; exchangeable for what; redeemable in what sums.

SEC. 30. That the minor coins authorized by this act may, at the discretion of the director of the mint, be delivered in any of the principal cities and towns of the United States, at the cost of the mint, for transportation, and shall be exchangeable at par at the mint in Philadelphia, at the discretion of the superintendent, for any other coins of copper, bronze, or copper-nickel heretofore authorized by law; and it shall be lawful for the treasurer and the several assistant treasurers and depositaries of the United States to redeem, in lawful money, under such rules as may be prescribed by the Secretary of the Treasury, all copper, bronze, and copper-nickel coins authorized by law when presented in sums of not less than twenty dollars; and whenever, under this authority, these coins are presented for redemption in such quantity as to show the amount outstanding to be redundant, the Secretary of the Treasury is authorized and required to direct that such coinage shall cease until otherwise ordered by him.

Such coinage to cease, when.

Melting and refining.

SEC. 31. That parcels of bullion shall be, from time to time, transferred by the superintendent to the melter and refiner; a careful record of these transfers, noting the weight and character of the bullion, shall be kept, and vouchers shall be taken for the delivery of the same, duly receipted by the melter and refiner, and the bullion thus placed in the hands of the melter and refiner shall be subjected to the several processes which may be necessary to form it into ingots of the legal standard, and of a quality suitable for coinage.

Ingots for coinage; to be assayed and certificate given;

SEC. 32. That the ingots so prepared shall be assayed; and if they prove to be within the limits allowed for deviation from the standard, the assayer shall certify the fact to the superintendent, who shall thereupon receipt for the same, and transfer them to the coiner.

not to be used, if they differ from, &c., more than, &c.

SEC. 33. That no ingots shall be used for coinage which differ from the legal standard more than the following proportions, namely: In gold ingots, one thousandth; in silver ingots, three thousandths; in minor-coinage alloys, twenty-five thousandths, in the proportion of nickel.

Bars for payment of deposits, their fineness, &c.

SEC. 34. That the melter and refiner shall prepare all bars required for the payment of deposits; but the fineness thereof shall be ascertained and stamped thereon by the assayer; and the melter and refiner shall deliver such bars to the superintendent, who shall receipt for the same.

Ingots for coinage to be delivered to coiner.

SEC. 35. That the superintendent shall, from time to time, deliver to the coiner ingots for the purpose of coinage; a careful record of these transfers, noting the weight and character of the bullion, shall be kept, and vouchers shall be taken for the delivery of the same, duly receipted by the coiner; and the ingots thus placed in the hands of the coiner shall

Statute I.

March 28, 1792.

CHAP. XIV.—*An Act supplemental to the act for making further and more effectual provision for the protection of the frontiers of the United States.*

[Obsolete.] 1795, ch. 44, sec. 18.

President of the U. S. may appoint not more than four B. Generals.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for the President of the United States, by and with the advice and consent of the Senate, to appoint such number of brigadier generals as may be conducive to the good of the public service. Provided the whole number appointed or to be appointed, shall not exceed four.

APPROVED, March 28, 1792.

Statute I.

April 2, 1792.

CHAP. XV.—*An Act for finishing the Lighthouse on Baldhead at the mouth of Cape Fear river in the State of North Carolina.*

[Obsolete.]

Secretary of Treasury to finish the lighthouse on Baldhead in North Carolina.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury, under the direction of the President of the United States, be authorized, as soon as may be, to cause to be finished in such manner as shall appear advisable, the lighthouse heretofore begun under the authority of the state of North Carolina, on Baldhead at the mouth of Cape Fear river in the said state: And that a sum, not exceeding four thousand dollars, be appropriated for the same, out of any monies heretofore appropriated, which may remain unexpended, after satisfying the purposes for which they were appropriated, or out of any other monies, which may be in the treasury, not subject to any prior appropriation.

APPROVED, April 2, 1792.

Statute I.

April 2, 1792.

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

Mint established at the seat of government.

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

Director to employ workmen, &c.

SEC. 2. *And be it further enacted,* That the Director of the mint shall employ as many clerks, workmen and servants, as he shall from time to time find necessary, subject to the approbation of the President of the United States.

SEC. 3. *And be it further enacted,* That the respective functions and

(a) The acts establishing and regulating the mint of the United States, and for regulating coins, have been: An act establishing a mint and regulating the coins of the United States passed April 2, 1792, chap. 16; an act regulating foreign coins, and for other purposes, February 9, 1793, chap. 5; an act in alteration of the act establishing a mint and regulating the coins of the United States, March 3, 1794, chap. 4; an act supplementary to the act entitled, "An act to establish a mint and regulating the coins of the United States," passed March 3, 1795, chap. 47; an act respecting the mint, May 27, 1796, chap. 33; an act respecting the mint, April 24, 1800, chap. 34; an act concerning the mint, March 3, 1801, chap. 21; an act to prolong the continuance of the mint at Philadelphia, January 14, 1818, chap. 4; an act further to prolong the continuance of the mint at Philadelphia, March 3, 1823, chap. 43; an act to continue the mint at the city of Philadelphia, and for other purposes, May 19, 1828, chap. 67; an act concerning the gold coins of the United States, and for other purposes, June 28, 1834, chap. 95; an act to establish branches of the mint of the United States, March 3, 1835, chap. 39; an act supplementary to an act entitled, "An act establishing a mint, and regulating the coins of the United States," January 18, 1837, chap. 3; an act to amend an act entitled, "An act to establish branches of the mint of the United States," February 13, 1837, chap. 14; an act amendatory of an act establishing the branch mint at Dahlonega, Georgia, and defining the duties of the assayer and coiner, 1843, ch. 46. General Index.

duties of the officers above mentioned shall be as follow: The Director of the mint shall have the chief management of the business thereof, and shall superintend all other officers and persons who shall be employed therein. The Assayer shall receive and give receipts for all metals which may lawfully be brought to the mint to be coined; shall assay all such of them as may require it, and shall deliver them to the Chief Coiner to be coined. The Chief Coiner shall cause to be coined all metals which shall be received by him for that purpose, according to such regulations as shall be prescribed by this or any future law. The Engraver shall sink and prepare the necessary dies for such coinage, with the proper devices and inscriptions, but it shall be lawful for the functions and duties of Chief Coiner and Engraver to be performed by one person. The Treasurer shall receive from the Chief Coiner all the coins which shall have been struck, and shall pay or deliver them to the persons respectively to whom the same ought to be paid or delivered: he shall moreover receive and safely keep all monies which shall be for the use, maintenance and support of the mint, and shall disburse the same upon warrants signed by the Director.

Duty of the officers.

Assayer.

Act of March 3, 1794, ch. 4, sec. 2.

Chief Coiner.

Engraver.

Treasurer.

Sec. 4. *And be it further enacted*, That every officer and clerk of the said mint shall, before he enters upon the execution of his office, take an oath or affirmation before some judge of the United States faithfully and diligently to perform the duties thereof.

To take oath.

Sec. 5. *And be it further enacted*, That the said assayer, chief coiner and treasurer, previously to entering upon the execution of their respective offices, shall each become bound to the United States of America, with one or more sureties to the satisfaction of the Secretary of the Treasury, in the sum of ten thousand dollars, with condition for the faithful and diligent performance of the duties of his office.

And give bond.

Act of March 3, 1794, ch. 4, sec. 2.

Sec. 6. *And be it further enacted*, That there shall be allowed and paid as compensations for their respective services—To the said director, a yearly salary of two thousand dollars, to the said assayer, a yearly salary of one thousand five hundred dollars, to the said chief coiner, a yearly salary of one thousand five hundred dollars, to the said engraver, a yearly salary of one thousand two hundred dollars, to the said treasurer, a yearly salary of one thousand two hundred dollars, to each clerk who may be employed, a yearly salary not exceeding five hundred dollars, and to the several subordinate workmen and servants, such wages and allowances as are customary and reasonable, according to their respective stations and occupations.(*a*)

Salaries.

Sec. 7. *And be it further enacted*, That the accounts of the officers and persons employed in and about the said mint and for services performed in relation thereto, and all other accounts concerning the business and administration thereof, shall be adjusted and settled in the treasury department of the United States, and a quarter yearly account of the receipts and disbursements of the said mint shall be rendered at the said treasury for settlement according to such forms and regulations as shall have been prescribed by that department; and that once in each year a report of the transactions of the said mint, accompanied by an abstract of the settlements which shall have been from time to time made, duly certified by the comptroller of the treasury, shall be laid before Congress for their information.

Accounts how and where to be settled.

Sec. 8. *And be it further enacted*, That in addition to the authority vested in the President of the United States by a resolution of the last session, touching the engaging of artists and the procuring of apparatus

President of U. S. to cause buildings to be provided.

(*a*) The acts relating to the salaries of the officers of the mint now in force, are: An act to continue the mint in the city of Philadelphia, May 19, 1828, chap. 67, sec. 6; an act supplementary to the act entitled, "An act establishing a mint, and regulating the coins of the United States," January 18, 1837, chap. 3, sec. 7; an act to establish branches of the mint of the United States, Feb. 13, 1837, chap. 14, sec. 2.

for the said mint, the President be authorized, and he is hereby authorized to cause to be provided and put in proper condition such buildings, and in such manner as shall appear to him requisite for the purpose of carrying on the business of the said mint; and that as well the expenses which shall have been incurred pursuant to the said resolution as those which may be incurred in providing and preparing the said buildings, and all other expenses which may hereafter accrue for the maintenance and support of the said mint, and in carrying on the business thereof, over and above the sums which may be received by reason of the rate per centum for coinage herein after mentioned, shall be defrayed from the treasury of the United States, out of any moneys which from time to time shall be therein, not otherwise appropriated.

Expense how to be defrayed.

Species of the coins to be struck.

Eagles.

Half Eagles.

Quarter Eagles.

Dollars or Units.

Half Dollars.

Quarter Dollars.

Dismes.

Half Dismes.

Cents.

Half Cents.

Act of May 8, 1792.

SEC. 9. *And be it further enacted*, That there shall be from time to time struck and coined at the said mint, coins of gold, silver, and copper, of the following denominations, values and descriptions, viz. EAGLES—each to be of the value of ten dollars or units, and to contain two hundred and forty-seven grains and four eighths of a grain of pure, or two hundred and seventy grains of standard gold. HALF EAGLES—each to be of the value of five dollars, and to contain one hundred and twenty-three grains and six eighths of a grain of pure, or one hundred and thirty-five grains of standard gold. QUARTER EAGLES—each to be of the value of two dollars and a half dollar, and to contain sixty-one grains and seven eighths of a grain of pure, or sixty-seven grains and four eighths of a grain of standard gold. DOLLARS or UNITS—each to be of the value of a Spanish milled dollar as the same is now current, and to contain three hundred and seventy-one grains and four sixteenth parts of a grain of pure, or four hundred and sixteen grains of standard silver. HALF DOLLARS—each to be of half the value of the dollar or unit, and to contain one hundred and eighty-five grains and ten sixteenth parts of a grain of pure, or two hundred and eight grains of standard silver. QUARTER DOLLARS—each to be of one fourth the value of the dollar or unit, and to contain ninety-two grains and thirteen sixteenth parts of a grain of pure, or one hundred and four grains of standard silver. DISMES—each to be of the value of one tenth of a dollar or unit, and to contain thirty-seven grains and two sixteenth parts of a grain of pure, or forty-one grains and three fifth parts of a grain of standard silver. HALF DISMES—each to be of the value of one twentieth of a dollar, and to contain eighteen grains and nine sixteenth parts of a grain of pure, or twenty grains and four fifth parts of a grain of standard silver. CENTS—each to be of the value of the one hundredth part of a dollar, and to contain eleven penny-weights of copper. HALF CENTS—each to be of the value of half a cent, and to contain five penny-weights and half a penny-weight of copper.(a)

Of what devices.

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

SEC. 11. *And be it further enacted*, That the proportional value of gold to silver in all coins which shall by law be current as money within

(a) The acts regulating the gold and silver coins of the United States, are: An act establishing a mint and regulating the coins of the United States, April 2, 1792, chap. 16, sec. 9; an act concerning the gold coins of the United States, and for other purposes, June 28, 1834, chap. 9; an act supplementary to the act entitled, "An act to establish a mint, and regulating the coins of the United States, January 18, 1837, chap. 3, sec. 8, 9, 10.

the United States, shall be as fifteen to one, according to quantity in weight, of pure gold or pure silver; that is to say, every fifteen pounds weight of pure silver shall be of equal value in all payments, with one pound weight of pure gold, and so in proportion as to any greater or less quantities of the respective metals.(*a*)

Proportional value of gold to silver.

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

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

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

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

Standard for silver coins—alloy how to be regulated.

Alloy.

SEC. 14. *And be it further enacted*, That it shall be lawful for any person or persons to bring to the said mint gold and silver bullion, in order to their being coined; and that the bullion so brought shall be there assayed and coined as speedily as may be after the receipt thereof, and that free of expense to the person or persons by whom the same shall have been brought. And as soon as the said bullion shall have been coined, the person or persons by whom the same shall have been delivered, shall upon demand receive in lieu thereof coins of the same species of bullion which shall have been so delivered, weight for weight, of the pure gold or pure silver therein contained: *Provided nevertheless*, That it shall be at the mutual option of the party or parties bringing such bullion, and of the director of the said mint, to make an immediate exchange of coins for standard bullion, with a deduction of one half per cent. from the weight of the pure gold, or pure silver contained in the said bullion, as an indemnification to the mint for the time which will necessarily be required for coining the said bullion, and for the advance which shall have been so made in coins. And it shall be the duty of the Secretary of the Treasury to furnish the said mint, from time to time whenever the state of the treasury will admit thereof, with such sums as may be necessary for effecting the said exchanges, to be replaced as speedily as may be out of the coins which shall have been made of the bullion for which the monies so furnished shall have been exchanged; and the said deduction of one half per cent. shall constitute a fund towards defraying the expenses of the said mint.

Persons may bring gold and silver bullion, to be coined free of expense;

Act of April 24, 1800, ch. 34. how the director may exchange coins therefor, deducting half per cent.

Duty of Secretary of Treasury herein.

The half per cent. to constitute a fund, &c.

SEC. 15. *And be it further enacted*, That the bullion which shall be brought as aforesaid to the mint to be coined, shall be coined, and the equivalent thereof in coins rendered, if demanded, in the order in which

Order of delivering coins to persons bringing bullion, and

(*a*) See note to section 9. (*b*) See note to section 9. (*c*) See note to section 9.

penalty on giving undue preference, &c.
Act of March 3, 1795, ch. 86.

the said bullion shall have been brought or delivered, giving priority according to priority of delivery only, and without preference to any person or persons; and if any preference shall be given contrary to the direction aforesaid, the officer by whom such undue preference shall be given, shall in each case forfeit and pay one thousand dollars; to be recovered with costs of suit. And to the end that it may be known if such preference shall at any time be given, the assayer or officer to whom the said bullion shall be delivered to be coined, shall give to the person or persons bringing the same, a memorandum in writing under his hand, denoting the weight, fineness and value thereof, together with the day and order of its delivery into the mint.

Coins made a lawful tender,

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

and to be made conformable to the standard weights, &c.

Sec. 17. *And be it further enacted*, That it shall be the duty of the respective officers of the said mint, carefully and faithfully to use their best endeavours that all the gold and silver coins which shall be struck at the said mint shall be, as nearly as may be, conformable to the several standards and weights aforesaid, and that the copper whereof the cents and half cents aforesaid may be composed, shall be of good quality.

The Treasurer to reserve not less than three pieces or each coin to be assayed;

when and by whom, &c.

1801, ch. 21.

Sec. 18. And the better to secure a due conformity of the said gold and silver coins to their respective standards, *Be it further enacted*, That from every separate mass of standard gold or silver, which shall be made into coins at the said mint, there shall be taken, set apart by the treasurer and reserved in his custody a certain number of pieces, not less than three, and that once in every year the pieces so set apart and reserved, shall be assayed under the inspection of the Chief Justice of the United States, the Secretary and Comptroller of the Treasury, the Secretary for the department of State, and the Attorney General of the United States, (who are hereby required to attend for that purpose at the said mint, on the last Monday in July in each year,) or under the inspection of any three of them, in such manner as they or a majority of them shall direct, and in the presence of the director, assayer and chief coiner of the said mint; and if it shall be found that the gold and silver so assayed, shall not be inferior to their respective standards herein before declared more than one part in one hundred and forty-four parts, the officer or officers of the said mint whom it may concern shall be held excusable; but if any greater inferiority shall appear, it shall be certified to the President of the United States, and the said officer or officers shall be deemed disqualified to hold their respective offices.

Penalty on debasing the coins.

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

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

Sec. 20. *And be it further enacted*, That the money of account of the United States shall be expressed in dollars or units, dismes or tenths, cents or hundredths, and milles or thousandths, a disme being the tenth part of a dollar, a cent the hundredth part of a dollar, a mille the thou-

sandth part of a dollar, and that all accounts in the public offices and all proceedings in the courts of the United States shall be kept and had in conformity to this regulation.

Approved, April 2, 1792.

Statute I.

April 12, 1792.

1789, ch. 9.

Chap. XVII.—*An Act supplementary to the act for the establishment and support of lighthouses, beacons, buoys, and public piers.*

Expenses of beacons, &c. to be borne till July 1793.

Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all expenses which shall accrue from the first day of July next, inclusively, for the necessary support, maintenance, and repairs of all lighthouses, beacons, buoys, the stakeage of channels, on the sea-coast, and public piers, shall continue to be defrayed by the United States, until the first day of July, in the year one thousand seven hundred and ninety-three, notwithstanding such lighthouses, beacons, or public piers, with the lands and tenements thereunto belonging, and the jurisdiction of the same, shall not in the mean time be ceded to, or vested in the United States, by the state or states respectively, in which the same may be, and that the said time be further allowed, to the states respectively to make such cession.

1793, ch. 27.

Floating beacons to be placed at Charleston harbor and Chesapeake bay.

Sec. 2. *And be it further enacted*, That the secretary of the treasury be authorized to cause to be provided, erected, and placed, a floating beacon, and as many buoys, as may be necessary for the security of navigation, at and near the entrance of the harbor of Charleston, in the state of South Carolina. And also to have affixed three floating beacons in the bay of Chesapeak; one at the north end of Willoughby's Spit, another at the tail of the Horse Shoe; and the third on the shoalest place of the middle ground.

Approved, April 12, 1792.

Statute I.

April 12, 1792.

Chap. XVIII.—*An Act to erect a Lighthouse on Montok Point in the state of New York.*

Lighthouse on certain conditions to be built on Montok Point in State of N. Y.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That as soon as the jurisdiction of such land on Montok Point in the state of New York as the President of the United States shall deem sufficient and most proper for the convenience and accommodation of a lighthouse shall have been ceded to the United States it shall be the duty of the secretary of the treasury, to provide by contract which shall be approved by the President of the United States, for building a lighthouse thereon, and for furnishing the same with all necessary supplies, and also to agree for the salaries or wages of the person or persons who may be appointed by the President for the superintendence and care of the same; and the President is hereby authorized to make the said appointments. That the number and disposition of the lights in the said lighthouse shall be such as may tend to distinguish it from others, and as far as is practicable, prevent mistakes.

Approved, April 12, 1792.

The following act of Congress, although strictly a private act, has application to so large a body of lands in the state of Ohio, as to justify its insertion in the form of a note.

An act for ascertaining the Bounds of a Tract of Land purchased by John Cleves Symmes.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the United States be and he hereby is authorized at the request of John Cleves Symmes, or his agent or agents, to alter the contract made between the late board of treasury and the said John Cleves Symmes, for the sale of a tract of land of one million of acres, in such manner that the said tract may extend from the mouth of the Great Miami, to the mouth of the Little Miami, and

millions of dollars shall be, and the same is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to defray any expenses which have been, or may be incurred in preventing or suppressing the hostilities of any Indians; to be expended under the direction of the Secretary of War, conformably to the acts of Congress of the nineteenth of March, and the second of July last, and of the acts therein referred to.

How to be expended.

Approved, January 9, 1837.

Statute II.
Jan. 18, 1837.

Chap. III.—*An Act supplementary to the act entitled "An act establishing a mint, and regulating the coins of the United States."*(a)

Act of April 2, 1792, ch. 16.
Act of March 3, 1835, ch. 39.
Act of Feb. 27, 1843, ch. 46.
Act of April 2, 1844, ch. 7.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the officers of the mint of the United States shall be a director, a treasurer, an assayer, a melter and refiner, a chief coiner and an engraver, to be appointed by the President of the United States, by and with the advice and consent of the Senate.

Officers.

Sec. 2. *And be it further enacted*, That the respective duties of the officers of the mint shall be as follows:

Duties of.

Director.

First. The director shall have the control and management of the mint, the superintendence of the officers and persons employed therein, and the general regulation and supervision of the business of the several branches. And in the month of January of every year he shall make report to the President of the United States of the operations of the mint and its branches for the year preceding. And also to the Secretary of the Treasury, from time to time, as said Secretary shall require, setting forth all the operations of the mint subsequent to the last report made upon the subject.

Treasurer.

Second. The treasurer shall receive, and safely keep all moneys which shall be for the use and support of the mint; shall keep all the current accounts of the mint, and pay all moneys due by the mint, on warrants from the director. He shall receive all bullion brought to the mint for coinage; shall be the keeper of all bullion and coin in the mint, except while the same is legally placed in the hands of other officers, and shall, on warrants from the director, deliver all coins struck at the mint to the persons to whom they shall be legally payable. And he shall keep regular and faithful accounts of all the transactions of the mint, in bullion and coins, both with the officers of the mint and the depositors; and shall present, quarter-yearly, to the Treasury Department of the United States, according to such forms as shall be prescribed by that department, an account of the receipts and disbursements of the mint, for the purpose of being adjusted and settled.

Assayer.

Third. The assayer shall carefully assay all metals used in coinage, whenever such assays are required in the operations of the mint; and he shall also make assays of coins whenever instructed to do so by the director.

Melter and refiner.

Fourth. The melter and refiner shall execute all the operations which are necessary in order to form ingots of standard silver or gold, suitable for the chief coiner, from the metals legally delivered to him for that purpose.

Chief coiner.

Fifth. The chief coiner shall execute all the operations which are necessary in order to form coins, conformable in all respects to the law, from the standard silver and gold ingots, and the copper planchets, legally delivered to him for this purpose.

Engraver.

Sixth. The engraver shall prepare and engrave, with the legal devices and inscriptions, all the dies used in the coinage of the mint and its branches.

(a) See notes of the acts relating to the Mint, and to Coins of the United States, vol. 1, 246.

SEC. 3. *And be it further enacted*, That the director shall appoint, with the approbation of the President, assistants to the assayer, melter and refiner, chief coiner, and engraver, and clerks for the director and treasurer, whenever, on representation made by the director to the President, it shall be the opinion of the President that such assistants or clerks are necessary. And it shall be the duty of the assistants to aid their principals in the execution of their respective offices, and of the clerks to perform such duties as shall be prescribed for them by the director.

Appointment of assistants and clerks.

Their duties.

SEC. 4. *And be it further enacted*, That whenever any officer of the mint shall be temporarily absent, on account of sickness, or any other sufficient cause, it shall be lawful for the director, with the assent of said officer, to appoint some person attached to the mint, to act in the place of such officer during his absence, and that the director shall employ such workmen and servants in the mint as he shall from time [to time] find necessary.

Vacancies in case of temporary absence how filled.

Employment of workmen and servants.

SEC. 5. *And be it further enacted*, That every officer, assistant, and clerk of the mint, shall, before he enters upon the execution of his office, take an oath or affirmation before some judge of the United States, or judge of the superior court or any court of record of any State, faithfully and diligently to perform the duties thereof.

Oath to be taken.

SEC. 6. *And be it further enacted*, That the following officers of the mint, before entering upon the execution of their respective offices, shall become bound to the United States, with one or more sureties, to the satisfaction of the Secretary of the Treasury, in the sums hereinafter mentioned, with condition for the faithful and diligent performance of the duties of their offices, viz: The treasurer in the sum of ten thousand dollars; the assayer in the sum of five thousand dollars; the melter and refiner in the sum of ten thousand dollars; the chief coiner in the sum of ten thousand dollars. And that similar bonds may also be required of the assistants and clerks, in such sums as the director shall determine, with the approbation of the Secretary of the Treasury.

Bonds required.

SEC. 7. *And be it further enacted*, That there shall be allowed to the officers of the mint the following salaries per annum: To the director, for his services, including travelling expenses incurred in visiting the different branches, and all other charges whatever, three thousand five hundred dollars; to the treasurer, assayer, melter and refiner, chief coiner, and engraver, each, two thousand dollars; to the assistants and clerks, such annual salaries shall be allowed as the director may determine, with the approbation of the President: *Provided*, That an assistant shall not receive more than fifteen hundred dollars; and that a clerk shall not receive more than twelve hundred dollars; to the workmen and servants shall be allowed such wages, to be determined by the director, as may be customary and reasonable, according to their respective stations and occupations; and that the salaries provided for in this section shall be payable in quarterly instalments.

Salaries of officers, clerks, and assistants.

Proviso.

Wages of workmen and servants.

SEC. 8. *And be it further enacted*, That the standard for both gold and silver coins of the United States shall hereafter be such, that of one thousand parts by weight, nine hundred shall be of pure metal, and one hundred of alloy; and the alloy of the silver coins shall be of copper; and the alloy of the gold coins shall be of copper and silver, provided that the silver do not exceed one-half of the whole alloy.

Standard for gold and silver coins.

Alloys.

SEC. 9. *And be it further enacted*, That of the silver coins, the dollar shall be of the weight of four hundred and twelve and one-half grains; the half dollar of the weight of two hundred and six and one-fourth grains; the quarter dollar of the weight of one hundred and three and one-eighth grains; the dime, or tenth part of a dollar, of the weight of forty-one and a quarter grains; and the half dime, or twentieth part of a dollar, of the weight of twenty grains, and five-eighths of a grain.

Weight of silver coins.

Dollars, &c., shall be legal tenders, &c.

And that dollars, half dollars, and quarter dollars, dimes, and half dimes, shall be legal tenders of payment, according to their nominal value, for any sums whatever.

Weight of gold coins.

Eagles, &c., shall be a legal tender, &c.

Sec. 10. *And be it further enacted*, That of the gold coins, the weight of the eagle shall be two hundred and fifty-eight grains; that of the half eagle one hundred and twenty-nine grains; and that of the quarter eagle sixty-four and one-half grains. And that for all sums whatever, the eagle shall be a legal tender of payment for ten dollars; the half eagle for five dollars; and the quarter eagle for two and a half dollars.

Silver coins heretofore issued, and gold coins issued since 31st July, 1834, shall continue to be legal tenders.

Sec. 11. *And be it further enacted*, That the silver coins heretofore issued at the mint of the United States, and the gold coins issued since the thirty-first day of July, one thousand eight hundred and thirty-four, shall continue to be legal tenders of payment for their nominal values, on the same terms as if they were of the coinage provided for by this act.

Weight of copper coins.

Sec. 12. *And be it further enacted*, That of the copper coins, the weight of the cent shall be one hundred and sixty-eight grains, and the weight of the half-cent eighty-four grains. And the cent shall be considered of the value of one hundredth part of a dollar, and the half-cent of the value of one two-hundredth part of a dollar.

Proportional value of a dollar.

Devices and legends of coins.

Sec. 13. *And be it further enacted*, That upon the coins struck at the mint there shall be the following devices and legends: upon one side of each of said coins there shall be an impression emblematic of liberty, with an inscription of the word Liberty, and the year of the coinage; and upon the reverse of each of the gold and silver coins, there shall be the figure or representation of an eagle, with the inscription United States of America, and a designation of the value of the coin; but on the reverse of the dime and half dime, cent and half cent, the figure of the eagle shall be omitted.

Gold and silver bullion brought for coinage shall be received and coined.

Proviso.

Further proviso.

Sec. 14. *And be it further enacted*, That gold and silver bullion brought to the mint for coinage, shall be received and coined, by the proper officers, for the benefit of the depositor: *Provided*, That it shall be lawful to refuse, at the mint, any deposite of less value than one hundred dollars, and any bullion so base as to be unsuitable for the operations of the mint; *And provided also*, That when gold and silver are combined, if either of these metals be in such small proportion that it cannot be separated advantageously, no allowance shall be made to the depositor for the value of such metal.

Receipt to be given for bullion.

Proviso.

Sec. 15. *And be it further enacted*, That when bullion is brought to the mint for coinage, it shall be weighed by the treasurer, in the presence of the depositor, when practicable, and a receipt given which shall state the description and weight of the bullion: *Provided*, That when the bullion is in such a state as to require melting before its value can be ascertained, the weight after melting shall be considered as the true weight of the bullion deposited.

Bullion deposited for coinage to be assayed.

Sec. 16. *And be it further enacted*, That from every parcel of bullion deposited for coinage, the treasurer shall deliver to the assayer a sufficient portion for the purpose of being assayed; but all such bullion remaining from the operations of the assay shall be returned to the treasurer by the assayer.

Assayer to report the quality, &c.

Sec. 17. *And be it further enacted*, That the assayer shall report to the treasurer the quality or standard of the bullion assayed by him; and he shall also communicate to the treasurer such information as will enable him to estimate the amount of the charges hereinafter provided for, to be made to the depositor, for the expenses of converting the bullion into standard metal fit for coinage.

Charges to which the depositor is subjected.

Sec. 18. *And be it further enacted*, That the only subjects of charge by the mint to the depositor shall be the following: For refining when

the bullion is below standard; for toughening when metals are contained in it which render it unfit for coinage; for copper used for alloy when the bullion is above standard; for silver introduced into the alloy of gold; and for separating the gold and silver when these metals exist together in the bullion: and that the rate of these charges shall be fixed, from time to time, by the director, with the concurrence of the Secretary of the Treasury, so as not to exceed, in their judgment, the actual expense to the mint of the materials and labor employed in each of the cases aforementioned; and that the amount received from these charges shall be accounted for, and appropriated for defraying the contingent expenses of the mint.

Rate of, how fixed.

Disposition of amount received.

Sec. 19. *And be it further enacted*, That from the report of the assayer, and the weight of the bullion, the treasurer shall estimate the whole value of each deposite, and also the amount of the charges or deductions if any; of all which he shall give a detailed memorandum to the depositor; and he shall also give, at the same time, under his hand, a certificate of the nett amount of the deposite, to be paid in coins of the same species of bullion as that deposited.

Value of deposit, &c., how estimated.

Sec. 20. *And be it further enacted*, That parcels of bullion shall be, from time to time, transferred by the treasurer to the melter and refiner; that a careful record of these transfers, noting the weight and character of the bullion, shall be kept; and that the bullion thus placed in the hands of the melter and refiner shall be subjected to the several processes which may be necessary to form it into ingots of the legal standard, and of a quality suitable for coinage.

Transfers of bullion by treasurer to melter and refiner.

Sec. 21. *And be it further enacted*, That the ingots thus prepared shall be assayed by the assayer, and if they prove to be within the limits allowed for deviation from the standard, they shall be transferred by the melter and refiner to the treasurer, accompanied by the assayer's certificate of their fineness; and that a careful record of the transfer shall be kept by the treasurer.

Ingots to be assayed, &c.

Sec. 22. *And be it further enacted*, That no ingots of gold shall be used for coinage of which the quality differs more than two thousandths from the legal standard; and that no ingots of silver shall be used for coinage of which the quality differs more than three thousandths from the legal standard.

Deviation from legal standard allowed in ingots of gold and silver.

Sec. 23. *And be it further enacted*, That in the treasurer's account with the melter and refiner, the melter and refiner shall be debited with the standard weight of all the bullion placed in his hands, that is to say, with the weight of metal of legal standard fineness which it will make; and that he shall be credited by the standard weight of all the ingots delivered by him to the treasurer; and that once at least in every year, at such time as the director shall appoint, the melter and refiner shall deliver up to the treasurer all the bullion in his possession, in order that his accounts may be settled up to that time; and, in this settlement, he shall be entitled to a credit for the difference between the whole amount of bullion delivered to him, and received from him, since the last settlement, as an allowance for necessary waste: *Provided*, That this allowance shall not exceed two thousandths of the whole amount of gold and silver bullion, respectively, that had been delivered to him by the treasurer.

Treasurer's account with melter and refiner.

Allowance for necessary waste.

Proviso.

Sec. 24. *And be it further enacted*, That the treasurer shall, from time to time, deliver over to the chief coiner, ingots for the purpose of coinage; that he shall keep a careful record of these transfers, noting the weight and description of the ingots; and that the ingots thus placed in the hands of the chief coiner shall be passed through the several processes necessary to make from them coins, in all respects conformable to law.

Ingots for coinage.

Sec. 25. *And be it further enacted*, That in adjusting the weights of

Deviation from legal standard allowed in the weights of coins, in single pieces. In a large number together.

the coins, the following deviations from the standard weight shall not be exceeded in any of the single pieces: In the dollar and half dollar, one grain and a half; in the quarter dollar, one grain; in the dime and half dime, half a grain; in the gold coins, one-quarter of a grain; in the copper coins, one grain in the pennyweight; and that in weighing a large number of pieces together, when delivered from the chief coiner to the treasurer, and from the treasurer to the depositors, the deviations from the standard weight shall not exceed the following limits: Four pennyweights in one thousand dollars; three pennyweights in one thousand half dollars; two pennyweights in one thousand quarter dollars; one pennyweight in one thousand dimes; one pennyweight in one thousand half dimes; two pennyweights in one thousand eagles; one and a half pennyweight in one thousand half eagles; one pennyweight in one thousand quarter eagles.

Coins to be weighed.

Sec. 26. *And be it further enacted*, That the chief coiner shall, from time to time, as the coins are prepared, deliver them over to the treasurer, who shall keep a careful record of their kind, number, and weight; and that, in receiving the coins, it shall be the duty of the treasurer to see whether the coins of that delivery are within the legal limits of the standard weight; and if his trials for this purpose shall not prove satisfactory, he shall cause all the coins of this delivery to be weighed separately, and such as are not of legal weight shall be delivered to the melter and refiner, as standard bullion, to be again formed into ingots and recoined.

Coins to be preserved for the annual trial.

Sec. 27. *And be it further enacted*, That at every delivery of coins made by the chief coiner to the treasurer, it shall be the duty of the treasurer, in the presence of the assayer, to take indiscriminately, a certain number of pieces of each variety for the annual trial of coins, (the number being prescribed by the director,) which shall be carefully labelled, and deposited in a chest appropriated for the purpose, kept under the joint care of the treasurer and assayer, and so secured that neither can have access to its contents without the presence of the other.

Disposition of clippings, &c.

Sec. 28. *And be it further enacted*, That the chief coiner shall, from time to time, deliver to the treasurer the clippings and other portions of bullion remaining after the process of coining, and that the treasurer shall keep a careful record of their amount.

Treasurer's account with chief coiner.

Sec. 29. *And be it further enacted*, That in the treasurer's account with the chief coiner, the chief coiner shall be debited with the amount in weight of standard metal of all the bullion placed in his hands, and credited with the amount, also by weight, of all the coins, clippings, and other bullion delivered by him to the treasurer; and that once at least in every year, at such time as the director shall appoint, the chief coiner shall deliver to the treasurer all the coins and bullion in his possession, so that his accounts may be settled up to that time; and, in this settlement, he shall be entitled to a credit for the difference between the whole amount of the ingots delivered to him, and of the coins and bullion received from him, since the last settlement, as an allowance for necessary waste: *Provided*, That this allowance shall not exceed two thousandths of the whole amount of the silver, or one and one-half thousandth of the whole amount of the gold, that had been delivered to him by the treasurer.

Allowance for necessary waste.

Proviso.

Payment for bullion deposited to be coined.

Sec. 30. *And be it further enacted*, That when the coins which are the equivalent to any deposite of bullion are ready for delivery, they shall be paid over to the depositor, or his order, by the treasurer, on a warrant from the director; and the payment shall be made, if demanded, in the order in which the bullion shall have been brought to the mint, giving priority according to priority of deposite only; and that in the denominations of coin delivered, the treasurer shall comply with the

wishes of the depositor, unless when impracticable or inconvenient to do so; in which case, the denominations of coin shall be designated by the director.

Deposit of public money to be kept in the mint by Secretary of Treasury.

Sec. 31. *And be it further enacted*, That for the purpose of enabling the mint to make returns to depositors with as little delay as possible, it shall be the duty of the Secretary of the Treasury to keep in the said mint, when the state of the treasury will admit thereof, a deposite of such amount of public money, or of bullion procured for the purpose, as he shall judge convenient and necessary, not exceeding one million of dollars, out of which those who bring bullion to the mint may be paid the value thereof, as soon as practicable, after this value has been ascertained; that the bullion so deposited shall become the property of the United States; that no discount or interest shall be charged on moneys so advanced; and that the Secretary of the Treasury may at any time withdraw the said deposite, or any part thereof, or may, at his discretion, allow the coins formed at the mint to be given for their equivalent in other money.

Annual trial of coins.

Act of March 3, 1823, ch. 42, sect. 2, repealed.

Sec. 32. *And be it further enacted*, That to secure a due conformity in the gold and silver coins to their respective standards and weights, an annual trial shall be made of the pieces reserved for this purpose at the mint and its branches, before the judge of the district court of the United States, for the eastern district of Pennsylvania, the attorney of the United States, for the eastern district of Pennsylvania, and the collector of the port of Philadelphia, and such other persons as the President shall, from time to time, designate for that purpose, who shall meet as commissioners, for the performance of this duty, on the second Monday in February, annually, and may continue their meetings by adjournment, if necessary; and if a majority of the commissioners shall fail to attend at any time appointed for their meeting, then the director of the mint shall call a meeting of the commissioners at such other time as he may deem convenient; and that before these commissioners, or a majority of them, and in the presence of the officers of the mint, such examination shall be made of the reserved pieces as shall be judged sufficient; and if it shall appear that these pieces do not differ from the standard fineness and weight by a greater quantity than is allowed by law, the trial shall be considered and reported as satisfactory; but if any greater deviation from the legal standard or weight shall appear, this fact shall be certified to the President of the United States, and if, on a view of the circumstances of the case, he shall so decide, the officer or officers implicated in the error shall be thenceforward disqualified from holding their respective offices.

Purchase of copper bullion.

Sec. 33. *And be it further enacted*, That copper bullion shall be purchased for the mint, from time to time, by the treasurer, under instructions from the director; that the cost shall be paid from the fund hereinafter provided for; and that the copper bullion shall be of good quality, and in form of planchets fit for passing at once into the hands of the chief coiner.

Coinage of copper.

Sec. 34. *And be it further enacted*, That the copper planchets shall be delivered, from time to time, by the treasurer to the chief coiner, to be by him coined; and all such copper shall be returned to the treasurer, by the chief coiner, weight for weight, without allowance for waste.

Copper coins may be exchanged for other money. Proviso.

Sec. 35. *And be it further enacted*, That it shall be the duty of the treasurer of the mint to deliver the copper coins, in exchange for their legal equivalent in other money, to any persons who shall apply for them: *Provided*, That the sum asked for be not less than a certain amount, to be determined by the director, and that it be not so great as, in his judgment, to interfere with the capacity of the mint to supply other applicants.

Copper coins transported at expense of the mint.

SEC. 36. *And be it further enacted*, That the copper coins may, at the discretion of the director, be delivered in any of the principal cities and towns of the United States, at the cost of the mint for transportation.

Disposition of money received in exchange for copper coins.

SEC. 37. *And be it further enacted*, That the money received by the treasurer in exchange for copper coins shall form a fund in his hands, which shall be used to purchase copper planchets, and to pay the expense of transportation of copper coins; and that if there be a surplus, the same shall be appropriated to defray the contingent expenses of the mint.

Former acts repealed.

SEC. 38. *And be it further enacted*, That all acts or parts of acts heretofore passed, relating to the mint and coins of the United States, which are inconsistent with the provisions of this act, be, and the same are hereby repealed.

APPROVED, January 18, 1837.

STATUTE II.

Jan. 18, 1837.

[Obsolete.]

CHAP. IV.—*An act making appropriations for the payment of the revolutionary and other pensioners of the United States, for the year one thousand eight hundred and thirty-seven.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropriated, to be paid out of any money in the Treasury not otherwise appropriated for the pensioners of the United States, for the year one thousand eight hundred and thirty-seven:

Revolutionary pensioners, &c. May 15, 1828, ch. 53. June 7, 1832, ch. 126. July 4, 1836, ch. 362.

For the revolutionary pensioners, under the several acts, other than those of the fifteenth of May, one thousand eight hundred and twenty-eight; the seventh of June, one thousand eight hundred and thirty-two; and the fourth of July, one thousand eight hundred and thirty-six, seven hundred and twelve thousand five hundred and sixty dollars;

Invalid pensioners.

For the invalid pensioners, under various laws, three hundred and twenty-five thousand three hundred and seventy-six dollars:

Widows and orphans.

For pensions to widows and orphans, under the act of the fourth of July, one thousand eight hundred and thirty-six, five hundred and fifty-two thousand dollars:

Widows and orphans.

For pensions to widows and orphans, payable through the office of the Third Auditor, four thousand dollars.

APPROVED, January 18, 1837.

STATUTE II.

Jan. 18, 1837.

[Expired.]

CHAP. V.—*An Act to provide for the payment of horses and other property lost or destroyed in the military service of the United States.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any field, or staff, or other officer, mounted militiaman, volunteer, ranger, or cavalry, engaged in the military service of the United States since the eighteenth of June, eighteen hundred and twelve, or who shall hereafter be in said service, and has sustained or shall sustain damage, without any fault or negligence on his part, while in said service, by the loss of a horse in battle or by the loss of a horse wounded in battle, and which has died or shall die of said wound or being so wounded shall be abandoned by order of his officer and lost; or shall sustain damage by the loss of any horse by death, or abandonment, in consequence of the United States failing to supply sufficient forage, or because the rider was dismounted and separated from his horse, and ordered to do duty on foot at a station detached from his horse; or when the officer in the immediate command ordered or shall order the horse turned out to graze in the woods, prairies, or commons, because the United States failed or shall fail to supply sufficient forage, and the loss was or shall be consequent

Act of Feb. 19, 1833, ch. 33. Act of June 30, 1834, ch. 153. Oct. 14, 1837, ch. 5. 1812, ch. 185. 1813, ch. 103.

Officers and others to be paid the value of horses lost.

CHAP. 39.—An Act To change the name of the Potomac Insurance Company of Georgetown, and for other purposes. March 10, 1900.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to incorporate a fire insurance company in Georgetown, in the District of Columbia," approved the second of March, eighteen hundred and thirty-one, and the Act entitled "An Act to amend the charter of the Potomac Fire Insurance Company of Georgetown," approved the third of March, eighteen hundred and thirty-seven, and the Act entitled "An Act to renew and continue in force the charter of the Potomac Insurance Company of Georgetown," approved the twenty-seventh of January, eighteen hundred and fifty-one, and the Act entitled "An Act to renew and continue in force the charter of the Potomac Insurance Company of Georgetown, District of Columbia," approved the twenty-fifth of March, eighteen hundred and seventy, be, and the same are hereby, amended, so that the name and style of said company shall hereafter be "The Potomac Insurance Company of the District of Columbia."

Potomac Insurance Company of the District of Columbia. Name changed. Vol. 6, pp. 460, 691. Vol. 9, p. 808. Vol. 16, p. 80.

SEC. 2. That the Act of March second, eighteen hundred and thirty-one, above referred to, be amended by inserting the words "a board of not less than" immediately before the words "twelve directors," where they occur in section six of said Act; and to further amend said Act by striking out all the words of section seven thereof and substituting in lieu thereof the following words: "Each stockholder shall be entitled to vote in person, or by agent or proxy appointed under his hand and seal, attested by one witness, at all stockholders' meetings, and shall have one vote for each share recorded in his name on the books of the company;" and to further amend said Act by striking out of section eight the words "not exceeding ten thousand dollars in any one policy," and the words "in Georgetown," where they occur in said section; and to further amend said Act by striking out section nine in full, and by striking from section ten the words "not oftener than once in six months."

Prior acts amended.

SEC. 3. That the Act of March third, eighteen hundred and thirty-seven, above mentioned, be amended by adding at the end of section two the words "and the board of directors created under this charter shall have the power to increase the capital stock at any time to any amount not in excess of one million dollars."

Increase of capital stock.

Approved, March 10, 1900.

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

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

Standard of value fixed. R. S., sec. 3511, p. 696.

SEC. 2. That United States notes, and Treasury notes issued under the Act of July fourteenth, eighteen hundred and ninety, when presented to the Treasury for redemption, shall be redeemed in gold coin of the standard fixed in the first section of this Act, and in order to secure the prompt and certain redemption of such notes as herein provided it shall be the duty of the Secretary of the Treasury to set

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

Redemption fund.

apart in the Treasury a reserve fund of one hundred and fifty million dollars in gold coin and bullion, which fund shall be used for such redemption purposes only, and whenever and as often as any of said notes shall be redeemed from said fund it shall be the duty of the Secretary of the Treasury to use said notes so redeemed to restore and maintain such reserve fund in the manner following, to wit: First, by exchanging the notes so redeemed for any gold coin in the general fund of the Treasury; second, by accepting deposits of gold coin at the Treasury or at any subtreasury in exchange for the United States notes so redeemed; third, by procuring gold coin by the use of said notes, in accordance with the provisions of section thirty-seven hundred of the Revised Statutes of the United States. If the Secretary of the Treasury is unable to restore and maintain the gold coin in the reserve fund by the foregoing methods, and the amount of such gold coin and bullion in said fund shall at any time fall below one hundred million dollars, then it shall be his duty to restore the same to the maximum sum of one hundred and fifty million dollars by borrowing money on the credit of the United States, and for the debt thus incurred to issue and sell coupon or registered bonds of the United States, in such form as he may prescribe, in denominations of fifty dollars or any multiple thereof, bearing interest at the rate of not exceeding three per centum per annum, payable quarterly, such bonds to be payable at the pleasure of the United States after one year from the date of their issue, and to be payable, principal and interest, in gold coin of the present standard value, and to be exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority; and the gold coin received from the sale of said bonds shall first be covered into the general fund of the Treasury and then exchanged, in the manner hereinbefore provided, for an equal amount of the notes redeemed and held for exchange, and the Secretary of the Treasury may, in his discretion, use said notes in exchange for gold, or to purchase or redeem any bonds of the United States, or for any other lawful purpose the public interests may require, except that they shall not be used to meet deficiencies in the current revenues. That United States notes when redeemed in accordance with the provisions of this section shall be reissued, but shall be held in the reserve fund until exchanged for gold, as herein provided; and the gold coin and bullion in the reserve fund, together with the redeemed notes held for use as provided in this section, shall at no time exceed the maximum sum of one hundred and fifty million dollars.

—how maintained.

—by bond issue.

—disposition of funds from sale of bonds.

Redeemed notes to be reissued.

Limit reserve fund.

SEC. 3. That nothing contained in this Act shall be construed to affect the legal-tender quality as now provided by law of the silver dollar, or of any other money coined or issued by the United States.

Legal-tender quality of silver dollar unaffected.

SEC. 4. That there be established in the Treasury Department, as a part of the office of the Treasurer of the United States, divisions to be designated and known as the division of issue and the division of redemption, to which shall be assigned, respectively, under such regulations as the Secretary of the Treasury may approve, all records and accounts relating to the issue and redemption of United States notes, gold certificates, silver certificates, and currency certificates. There shall be transferred from the accounts of the general fund of the Treasury of the United States, and taken up on the books of said divisions, respectively, accounts relating to the reserve fund for the redemption of United States notes and Treasury notes, the gold coin held against outstanding gold certificates, the United States notes held against outstanding currency certificates, and the silver dollars held against outstanding silver certificates, and each of the funds represented by these accounts shall be used for the redemption of the notes

Divisions of issue and redemption established.

—duties, etc

and certificates for which they are respectively pledged, and shall be used for no other purpose, the same being held as trust funds.

Cancellation of equal amount of Treasury notes for silver dollars coined, etc.

SEC. 5. That it shall be the duty of the Secretary of the Treasury, as fast as standard silver dollars are coined under the provisions of the Acts of July fourteenth, eighteen hundred and ninety, and June thirteenth, eighteen hundred and ninety-eight, from bullion purchased under the Act of July fourteenth, eighteen hundred and ninety, to retire and cancel an equal amount of Treasury notes whenever received into the Treasury, either by exchange in accordance with the provisions of this Act or in the ordinary course of business, and upon the cancellation of Treasury notes silver certificates shall be issued against the silver dollars so coined.

Vol. 26, p. 289.

—silver certificates to issue.

Gold certificates to issue for deposits of gold coin.

SEC. 6. That the Secretary of the Treasury is hereby authorized and directed to receive deposits of gold coin with the Treasurer or any assistant treasurer of the United States in sums of not less than twenty dollars, and to issue gold certificates therefor in denominations of not less than twenty dollars, and the coin so deposited shall be retained in the Treasury and held for the payment of such certificates on demand, and used for no other purpose. Such certificates shall be receivable for customs, taxes, and all public dues, and when so received may be reissued, and when held by any national banking association may be counted as a part of its lawful reserve: *Provided*, That whenever and so long as the gold coin held in the reserve fund in the Treasury for the redemption of United States notes and Treasury notes shall fall and remain below one hundred million dollars the authority to issue certificates as herein provided shall be suspended: *And provided further*, That whenever and so long as the aggregate amount of United States notes and silver certificates in the general fund of the Treasury shall exceed sixty million dollars the Secretary of the Treasury may, in his discretion, suspend the issue of the certificates herein provided for: *And provided further*, That of the amount of such outstanding certificates one-fourth at least shall be in denominations of fifty dollars or less: *And provided further*, That the Secretary of the Treasury may, in his discretion, issue such certificates in denominations of ten thousand dollars, payable to order. And section fifty-one hundred and ninety-three of the Revised Statutes of the United States is hereby repealed.

Provisos.
—suspension of authority to issue.

—denominations.

R. S., sec. 5193, p. 1004, repealed.

Denominations, silver certificates.

SEC. 7. That hereafter silver certificates shall be issued only of denominations of ten dollars and under, except that not exceeding in the aggregate ten per centum of the total volume of said certificates, in the discretion of the Secretary of the Treasury, may be issued in denominations of twenty dollars, fifty dollars, and one hundred dollars; and silver certificates of higher denomination than ten dollars, except as herein provided, shall, whenever received at the Treasury or redeemed, be retired and canceled, and certificates of denominations of ten dollars or less shall be substituted therefor, and after such substitution, in whole or in part, a like volume of United States notes of less denomination than ten dollars shall from time to time be retired and canceled, and notes of denominations of ten dollars and upward shall be reissued in substitution therefor, with like qualities and restrictions as those retired and canceled.

Silver bullion purchased under the act of July 14, 1890 (vol. 26, p. 289), may be used for subsidiary coinage.

SEC. 8. That the Secretary of the Treasury is hereby authorized to use, at his discretion, any silver bullion in the Treasury of the United States purchased under the Act of July fourteenth, eighteen hundred and ninety, for coinage into such denominations of subsidiary silver coin as may be necessary to meet the public requirements for such coin: *Provided*, That the amount of subsidiary silver coin outstanding shall not at any time exceed in the aggregate one hundred millions of dollars. Whenever any silver bullion purchased under the Act of

Proviso.
—limit of outstanding, etc.

July fourteenth, eighteen hundred and ninety, shall be used in the coinage of subsidiary silver coin, an amount of Treasury notes issued under said Act equal to the cost of the bullion contained in such coin shall be canceled and not reissued.

Recoinage of uncurrent subsidiary silver coin.

SEC. 9. That the Secretary of the Treasury is hereby authorized and directed to cause all worn and uncurrent subsidiary silver coin of the United States now in the Treasury, and hereafter received, to be recoined, and to reimburse the Treasurer of the United States for the difference between the nominal or face value of such coin and the amount the same will produce in new coin from any moneys in the Treasury not otherwise appropriated.

R. S., sec. 5138, p. 993, amended.

SEC. 10. That section fifty-one hundred and thirty-eight of the Revised Statutes is hereby amended so as to read as follows:

Requisite capital for national banks.

"Section 5138. No association shall be organized with a less capital than one hundred thousand dollars, except that banks with a capital of not less than fifty thousand dollars may, with the approval of the Secretary of the Treasury, be organized in any place the population of which does not exceed six thousand inhabitants, and except that banks with a capital of not less than twenty-five thousand dollars may, with the sanction of the Secretary of the Treasury, be organized in any place the population of which does not exceed three thousand inhabitants. No association shall be organized in a city the population of which exceeds fifty thousand persons with a capital of less than two hundred thousand dollars."

Refunding bonds.

SEC. 11. That the Secretary of the Treasury is hereby authorized to receive at the Treasury any of the outstanding bonds of the United States bearing interest at five per centum per annum, payable February first, nineteen hundred and four, and any bonds of the United States bearing interest at four per centum per annum, payable July first, nineteen hundred and seven, and any bonds of the United States bearing interest at three per centum per annum, payable August first, nineteen hundred and eight, and to issue in exchange therefor an equal amount of coupon or registered bonds of the United States in such form as he may prescribe, in denominations of fifty dollars or any multiple thereof, bearing interest at the rate of two per centum per annum, payable quarterly, such bonds to be payable at the pleasure of the United States after thirty years from the date of their issue, and said bonds to be payable, principal and interest, in gold coin of the present standard value, and to be exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority: *Provided*, That such outstanding bonds may be received in exchange at a valuation not greater than their present worth to yield an income of two and one-quarter per centum per annum; and in consideration of the reduction of interest effected, the Secretary of the Treasury is authorized to pay to the holders of the outstanding bonds surrendered for exchange, out of any money in the Treasury not otherwise appropriated, a sum not greater than the difference between their present worth, computed as aforesaid, and their par value, and the payments to be made hereunder shall be held to be payments on account of the sinking fund created by section thirty-six hundred and ninety-four of the Revised Statutes: *And provided further*, That the two per centum bonds to be issued under the provisions of this Act shall be issued at not less than par, and they shall be numbered consecutively in the order of their issue, and when payment is made the last numbers issued shall be first paid, and this order shall be followed until all the bonds are paid, and whenever any of the outstanding bonds are called for payment interest thereon shall cease three months after such call; and there is hereby appropriated out of any money in the Treasury not otherwise appropriated, to effect the exchanges of bonds provided for in this Act, a

—reissue bearing 2 per cent. interest.

Provisos.
—valuation, etc.

R. S., sec. 3694, p. 730.

Issue of bonds to be at par, etc.

sum not exceeding one-fifteenth of one per centum of the face value of said bonds, to pay the expense of preparing and issuing the same and other expenses incident thereto.

Issue of circulating notes to banks on deposit of bonds.

SEC. 12. That upon the deposit with the Treasurer of the United States, by any national banking association, of any bonds of the United States in the manner provided by existing law, such association shall be entitled to receive from the Comptroller of the Currency circulating notes in blank, registered and countersigned as provided by law, equal in amount to the par value of the bonds so deposited; and any national banking association now having bonds on deposit for the security of circulating notes, and upon which an amount of circulating notes has been issued less than the par value of the bonds, shall be entitled, upon due application to the Comptroller of the Currency, to receive additional circulating notes in blank to an amount which will increase the circulating notes held by such association to the par value of the bonds deposited, such additional notes to be held and treated in the same way as circulating notes of national banking associations heretofore issued, and subject to all the provisions of law affecting such notes: *Provided*, That nothing herein contained shall be construed to modify or repeal the provisions of section fifty-one hundred and sixty-seven of the Revised Statutes of the United States, authorizing the Comptroller of the Currency to require additional deposits of bonds or of lawful money in case the market value of the bonds held to secure the circulating notes shall fall below the par value of the circulating notes outstanding for which such bonds may be deposited as security: *And provided further*, That the circulating notes furnished to national banking associations under the provisions of this Act shall be of the denominations prescribed by law, except that no national banking association shall, after the passage of this Act, be entitled to receive from the Comptroller of the Currency, or to issue or reissue or place in circulation, more than one-third in amount of its circulating notes of the denomination of five dollars: *And provided further*, That the total amount of such notes issued to any such association may equal at any time but shall not exceed the amount at such time of its capital stock actually paid in: *And provided further*, That under regulations to be prescribed by the Secretary of the Treasury any national banking association may substitute the two per centum bonds issued under the provisions of this Act for any of the bonds deposited with the Treasurer to secure circulation or to secure deposits of public money; and so much of an Act entitled "An Act to enable national banking associations to extend their corporate existence, and for other purposes," approved July twelfth, eighteen hundred and eighty-two, as prohibits any national bank which makes any deposit of lawful money in order to withdraw its circulating notes from receiving any increase of its circulation for the period of six months from the time it made such deposit of lawful money for the purpose aforesaid, is hereby repealed, and all other Acts or parts of Acts inconsistent with the provisions of this section are hereby repealed.

Provisos.
Additional deposit required on depreciation of bonds.
R. S., sec. 5167, p. 998.

Denominations of circulating notes.

Limit of issue.

Banks may substitute 2 per cent bonds to secure circulation.

Repeal.
Vol. 22, p. 163.

Tax on circulating notes.

SEC. 13. That every national banking association having on deposit, as provided by law, bonds of the United States bearing interest at the rate of two per centum per annum, issued under the provisions of this Act, to secure its circulating notes, shall pay to the Treasurer of the United States, in the months of January and July, a tax of one-fourth of one per centum each half year upon the average amount of such of its notes in circulation as are based upon the deposit of said two per centum bonds; and such taxes shall be in lieu of existing taxes on its notes in circulation imposed by section fifty-two hundred and fourteen of the Revised Statutes.

R. S., sec. 5214, p. 1008

International bimetallism unhindered.

SEC. 14. That the provisions of this Act are not intended to preclude the accomplishment of international bimetallism whenever conditions

shall make it expedient and practicable to secure the same by concurrent action of the leading commercial nations of the world and at a ratio which shall insure permanence of relative value between gold and silver.

Approved, March 14, 1900.

March 16, 1900.

CHAP. 45.—An Act To grant an American register to the steamer Windward.

Steamer "Windward" granted American register.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is hereby authorized and directed to cause the foreign-built steamer Windward, owned by Civil Engineer Robert E. Peary, United States Navy, to be registered as a vessel of the United States, provided that she shall not engage in the coastwise trade of this Republic.

Approved, March 16, 1900.

March 23, 1900.

CHAP. 88.—An Act Declaring Cuivre River to be not a navigable stream.

Cuivre River, Mo., declared not navigable.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Cuivre River, in the counties of Lincoln and Saint Charles, in the State of Missouri, being the dividing line, is hereby declared not to be a navigable stream, and shall be so treated by the Secretary of War and all other authorities.

Approved, March 23, 1900.

March 23, 1900.

CHAP. 89.—An Act To constitute South Manchester, Connecticut, a port of delivery.

South Manchester, Conn., made port of delivery.

Immediate transportation privileges extended to.

Vol. 21, p. 174.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That South Manchester, Connecticut, be, and is hereby, constituted a port of delivery in the customs collection district of Hartford, Connecticut, and that the privileges of the seventh section of the Act approved June tenth, eighteen hundred and eighty, entitled "An Act to amend the statutes in relation to the immediate transportation of dutiable goods, and for other purposes," be, and they are hereby, extended to said port of South Manchester.

Approved, March 23, 1900.

March 23, 1900.

CHAP. 90.—An Act To amend section forty-four hundred and forty-five, of title fifty-two, of the Revised Statutes of the United States relating to the licensing of officers of steam vessels.

Steam vessels.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section forty-four hundred and forty-five, of title fifty-two, of the Revised Statutes, be, and is hereby, amended by adding thereto the following paragraphs:

Oath of applicant for license as pilot, etc.

R. S., sec. 4445, p. 861, amended.

"Every applicant for license as either master, mate, pilot, or engineer under the provisions of this title shall make and subscribe to an oath or affirmation, before one of the inspectors referred to in this title, to the truth of all the statements set forth in his application for such license.

The Constitution states in part;"No State shall Coin Money. No State shall make any Thing but gold and silver Coin a Tender in Payment of Debts. No State shall emit Bills of Credit. No State shall grant a Title of Nobility."etc. Can Congress authorize a State to grant a Title of Nobility. Certainly not. Congress cannot authorize a State to make any Thing but Gold and Silver Coin a Tender in Payment of Debts. "Thing" is capitalized; this makes it a proper nound and gives it a vivid personification.

Herewith I have included a copy of the Coinage Act of Congress of April 2,1792. Note how Congress provided for the coinage of Silver dollars (page 248, "Dollars or Units - each to be of the value of a Spanish milled dollar, as the same is now current, and to contain 416 grains of standard Silver".

Also see pages 248 and 249, The Gold Dollar provision specifies that it contain 27 grains of standard Gold. The alloy in the coin is to be 1/12 of the whole composed of silver and copper not to exceed 1/2 silver.

So you see the First Congress provided the people with a Gold and Silver Coin for legal tender purposes. Not Copper and Silver, but Gold and Silver. The Constitution, in so far as legal Tender requirements was complied with, barely so, but it was complied with. The people had a gold and silver Coin, the standard of weights and measures of which was set by Congress and which rang true in every Quarter and every Counter in the World. Not so any more.

See also the Act of Congress of January 18,1837. The weight of the Gold Coin Dollar was reduced to 25.8 grains of Gold, .9 fine and Congress directed that the alloy relationship was to be .9 pure metal gold and the alloy of the gold coin shall be 1/10 of its total weight of copper and silver provided that silver does not exceed one-half of the whole alloy.

IN 1873 Congress passed the first Act taking away the Coinage of legal tender as required by Article 1, Section 10. This Act of February 12,1873 provided that the gold Coin shall be .9 pure metal and .1 alloy, "and the alloy of the gold coins shall be of copper, or of copper and silver; but the silver shall in no case exceed one-tenth of the whole alloy." Note: a Coin containing both gold and silver is the only legal Tender known to the framers of the Constitution or permitted by the express words of the United States Constitution. It does no say gold or silver Coin it states gold and silver Coin.

The Act of March 14,1900 is attached hereto to show that "The Dollar consisting of 25.8 grains of gold .9 fine shall be the Standard unit of value, and all forms of money issued or coined shall be maintained at a parity of value with this standard.

The standard unit of value by which values are measured is not in existence in the U.S. It has been excluded from circulation and it is made an attempted criminal offense to possess the Standard unit of value or gold bullion of any kind or nature without a license.

It is therefore not possible to complete the return without incriminating ones self nor is there any ready way to measure the value of property.

Dated _____ _____

6861(a), are not in fact revenue collection proceedings protected from interference by 26 U. S. C. § 7421(a) and *Enochs v. Williams Packing & Navigation Co. Inc.*, 1962, [62-2 USTC ¶ 9545] 370 U. S. 1, but are acts in evident excess of statutory authority; as such unauthorized acts they are not protected by Section 7421(a) but subject to the prohibition of Section 6213(a) and would be subject to the injunction there authorized if the case had come up in that context. *Cf. Leedom v. Kyne*, 1958, 358 U. S. 184, 188-189; *Wolff v. Selective Service*, 2d Cir., 1967, 372 F. 2d 817, 825. Here, the context is the simpler one of a motion incident to a criminal complaint and arrest to return property taken during an arrest which the Government has failed to show a right to retain.

No effort was made to show that the arrest and search were unlawful and the Government will be entitled at the trial of the indictment to present proper evidence of Mr. Bonaguro's possession of the currency.

Accordingly, it is

ORDERED that the motion of Michael Bonaguro for return of the currency seized from him at the time of his arrest is granted and the motion to suppress evidence that he possessed the currency at the time of arrest is denied.

[¶ 9556] United States of America, Plaintiff-Appellant v. Albert Dickerson, Defendant.

U. S. Court of Appeals, 7th Circuit, No. 17349, 7/28/69.

[1954 Code Sec. 7203]

Crimes: Willful failure to file returns: Criminal tax investigation: Pre-custodial interview: Right to warning.—Evidence obtained from the taxpayer during a criminal investigation and before retention of counsel held to be suppressed, together with any evidence obtained as a result of information gained during that phase of the criminal investigation. *Miranda* warnings as to taxpayer's constitutional rights must be given to him in the first contact after the investigation has become criminal. District Court affirmed. Back references: ¶ 5709.09 and 5709.1134.

Thomas A. Foran, United States Attorney, Chicago, Ill., Johnnie M. Walters, Joseph M. Howard, Richard B. Buhrman, Department of Justice, Washington, D. C. 20530, for plaintiff-appellant. William A. Barnett, 135 S. LaSalle St., Chicago, Ill., for defendant.

Before FAIRCHILD and CUMMINGS, Circuit Judges, and GRANT, District Judge.[1]

CUMMINGS, Circuit Judge: In April, 1967, defendant was indicted for failure to file income tax returns for 1960, 1961 and 1962 in violation of Section 7203 of the Internal Revenue Code (26 U. S. C. § 7203). In March 1968, claiming a violation of his rights under the Fourth and Fifth Amendments, he filed a motion for the return of certain property and for the suppression of evidence. The motion was based on the admitted failure of the Internal Revenue Agents to warn him of his constitutional rights during five interviews with him.

[IRS Investigation]

Based on an affidavit of defendant and the testimony of Revenue Agent Donald Petrovic at the hearing on the motion to suppress, the district court found that while "auditing" a scavenger company Petrovic found an entry on its books reflecting a large payment to defendant but that the company had filed no related information return. Consequently in July 1964, Petrovic "audited" defendant, who admitted that he had failed to file certain income tax returns. Late that year Petrovic referred the case to his superiors to determine if the case warranted criminal investigation. In January 1965, the case was assigned to Special Agent Cornue, an investigator for the Intelligence Division of the Internal Revenue Service. The jurisdiction of the Intelligence Division is limited to criminal investigations. Petrovic was assigned to assist Cornue. Their joint investigation began on March 24, 1965, with a visit to defendant at his place of business. On that occasion, Cornue identified himself as a Special Agent but did not advise defendant that the investigation

[1] Chief Judge Grant is sitting by designation from the United States District Court for the Northern District of Indiana.

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formation. To a like effect, see State v. Plotner (1920) 283 Mo. 83, 222 S. W. 767, and State v. Nicholas (1910) 149 Mo. App. 121, 130 S. W. 96 (opinion adopted in (1912) 163 Mo. App. 527, 143 S. W. 1198).

VI. Indictment for greater offense as suspending running of statute against prosecution for smaller.

Where a person is indicted for a greater offense than that for which he is convicted, and the indictment is returned within the statutory period applicable to a prosecution for the smaller offense, the indictment operates to suspend the statute, and a conviction may be had for the smaller offense after the statutory period has elapsed.

Thus, in State v. Diskin (1883) 35 La. Ann. 46, the defendant was indicted for murder and convicted of manslaughter. The indictment was returned within one year (the limitation applicable to prosecutions for manslaughter) after the homicide was committed, but the defendant was convicted more than a year thereafter. It was held that the indictment for murder operated to suspend the running of the statute for manslaughter, the court saying: "It is consonant . . . both with law and reason, that an indictment for the highest grade of an offense of any distinct class interrupts prescription, seasonably filed, for each lesser grade of the same class for which, under the terms of the law, a jury may, in its discretion, convict. Hence, it follows that an indictment for murder interrupts prescription for manslaughter if filed within a year after the commission of the offense."

And in State v. McGee (1928) 167 La. 277, 119 So. 48, it was held that an indictment for murder included an indictment for manslaughter, and, when returned within the period prescribed for manslaughter, operated to suspend the running of the statute provided for that offense.

In Hickey v. State (1914) 131 Tenn. 2, 174 S. W. 269, the defendant was indicted for a felony within a year after it was committed. After a year the limitation applicable to prosecutions for misdemeanors), this indictment was found defective and a new and valid indictment was preferred, on which the defendant was acquitted of the felony, but convicted of a misdemeanor. It was held that the finding of the first indictment, though defective, was such a commencement of prosecution as would bar the running of the Statute of Limitation applicable to the misdemeanor.

VII. New proceeding after dismissal, nonsuit, or other failure of original prosecution.

a. In absence of statute suspending running of statute.

1. Majority rule.

It is generally held that the return of an indictment or the filing of an information on which no valid conviction or judgment can be had will not operate to stop the running of the Statute of Limitations pending the return or filing of another indictment or information, in the absence of a statute expressly so providing. United States v. Ballard (1844; C. C.) 3 McLean, 469, Fed. Cas. No. 14,507; United States v. Baker (1931; C. C. A. 2d) 50 F. (2d) 122 (making no mention of the Federal statute (U. S. C. title 18, § 582) as amended in 1927, which provides that the three-year limitation within which an indictment shall be found does not apply to any offense for which an indictment has been previously found, etc.; see Grimsley v. United States (1931; C. C. A. 5th) 50 F. (2d) 509, infra, VII. b, 1, which was decided under this statute); State v. Bilboa (1923) 38 Idaho, 98, 222 Pac. 785 (reversing judgment on rehearing in (1923) 38 Idaho, 92, 213 Pac. 1025); State v. Hall (1923) 38 Idaho, 119, 222 Pac. 793 (reversing on rehearing (1923) 38 Idaho, 119, 213 Pac. 1027); State v. Disbrow (1906) 130 Iowa, 19, 106 N. W. 263, 8 Ann. Cas. 190; State v. Thomas (1878) 30 La. Ann. 301; State v. Baker (1878) 30 La. Ann. 1134, overruling State v. Cason (1876) 28 La. Ann. 40; State v. Curtis (1878) 30 La. Ann. 1166; State v. Morrison (1879) 31 La. Ann. 211; State v. Vines (1882) 34 La. Ann. 1073; State v. Precovara (1897) 49 La. Ann. 593, 21 So. 724; State v. Tomlinson (1842) 25 N. C. (3 Ired. L.) 32; State v. Morris (1889) 104 N. C. 837, 10 S. E. 454; Redfield v. State (1859) 24 Tex. 133.

In United States v. Ballard (1844; C. C.) 3 McLean, 469, Fed. Cas. No. 14,507, the defendant was indicted for perjury within the two-year limitation applicable to the offense. To this indictment a nolle prosequi was entered, and later, after the limitation had run, another indictment was returned. The court held that the prosecution of the offense was barred, saying: "The first indictment had no connection with the second. In no sense can the second be considered as an amendment of the first. When a nolle prosequi was entered upon the first indictment, the prosecution was at an end; and the second indictment must be considered as the commencement of a new prosecution."

In United States v. Baker (1931; C. C. A. 2d) 50 F. (2d) 122, the defendants were indicted for using the mails to defraud. One of the counts in the indictment alleged the mailing of a letter more than three years before the indictment was returned. The limitation period was three years. It appeared that two other indictments had been returned within the statutory period against the same defendants, charging the same offense. It was held that the finding of the first indictments did not suspend the running of the statute as to that count, the court saying: "There appears to be no good reason why a former unconnected indictment found by some other grand jury should have any such effect as has been suggested and that it does not has already been decided. United States v. Ballard (1844; C. C.) 3 McLean, 469, Fed. Cas. No. 14,507, supra." This case does not refer to Grimsley v. United States (1931; C. C. A. 5th) 50 F. (2d) 509, treated infra, VII. b, 1, apparently holding to the contrary, nor does it mention the Federal statute (U. S. C. title 18, § 582) as amended in 1927, which provides that the three-year limitation within which an indictment shall be found does not apply to any offense for which an indictment has been previously found, etc.

In State v. Bilboa (1923) 38 Idaho, 98, 222 Pac. 785 (reversing judgment on rehearing in (1923) 38 Idaho, 92, 213 Pac. 1025), the defendant was tried under an information filed more than one year after the commission of the misdemeanor alleged. The statute applicable provided in effect that an information for a misdemeanor must be filed within one year after its commission. It appeared that a previous information had been filed within the statutory period, against the defendant, which substantially charged the same offense, and that a demurrer to this information was sustained for duplicity, and a new information was directed to be filed. It was held that the statute had run against the second information, and that the first information did not operate as a bar to the prosecution.

In State v. Disbrow (1906) 130 Iowa, 19, 106 N. W. 263, 8 Ann. Cas. 190, a prosecution for several acts of embezzlement, it was held that a previous indictment against the defendant, charging the same offenses, which had been set aside because defective, did not operate to suspend the running of the statute against a prosecution under a subsequent indictment; and that, as to those acts committed more than three years (the limitation applicable) before the return of the second indictment, the statute was a bar. The court, referring to a contrary view, expressed in textbooks and encyclopedias, said that such view was not supported by the decisions relied on, and continued: "It seems to us a reasonable and just proposition that, in the absence of any statute saving such right to the state, the running of the Statute of Limitations ought not to be interrupted or suspended by the return and pendency of an indictment upon which no valid conviction or judgment can be founded. Such an indictment is no indictment. It is a nullity, and, while it may serve as authority for the trial court to con-

had become criminal, nor was defendant advised of any of his constitutional rights. Petrovic and Cornue again saw defendant on May 7, 1965, and Cornue alone interviewed defendant on March 29, April 1, April 6[2] and June 24, 1965.

Cornue's affidavit in support of the Government's motion for reconsideration showed that at the June 24, 1965 interview, defendant said he had engaged a lawyer and had given him "everything he could find that had anything to do with his income tax." Defendant's lawyer was present when defendant was next interviewed by both agents on November 10, 1965.

The Government's brief concedes that the indictment resulted from the information gathered at five of the earlier interviews. These are the occasions when, according to his affidavit, defendant answered the agents' questions and furnished them with documentary and oral information. This affidavit claims that the records surrendered to the agents consisted of personal records of income and expenses, including the names of customers and names of persons to whom commission payments were made.

[*District Court's Decision*]

Relying on *Escobedo v. Illinois*, 378 U. S. 478, and *Miranda v. Arizona*, 384 U. S. 436, the district court held that "at and from the time a criminal investigation is launched against a taxpayer," IRS Agents are required to inform him of his right to remain silent, that anything he says may be used against him, and that he has a right to counsel. The *Escobedo* opinion was handed down before the civil or criminal investigations of defendant's tax returns had begun, and *Miranda* was handed down more than a year after the crucial interviews. However, the district court noted that *Miranda* is applicable to all cases filed (as here) after its promulgation.

Applying the *Miranda* rationale, the trial court held that the evidence obtained from defendant during the criminal investigation and before his retention of counsel would have to be suppressed, along with any evidence obtained as a result of information gained during that phase of the criminal investigation. 291 F. Supp. 633. The Government appealed under Title VIII of the Omnibus Crime Control Act (18 U. S. C. § 3731).[3] We affirm.

[*Miranda Examined*]

Both parties seek to find support for their positions in the *Miranda* decision, the Government stressing the physical custody in which the interrogations involved in *Miranda* and its companion cases took place and defendant laying heavy emphasis on the policies underlying the adoption of the *Miranda* warnings. We recognize the factual limitations of the precise holding in *Miranda*. On the other hand, we cannot accept an interpretation of that decision which would restrict the implementation of the Court's overriding concern with the opportunity for intelligent exercise of constitutional rights to interrogations conducted in police stations. Indeed, the opinion makes clear that the privilege against self-incrimination is imperiled when one "deprived of his freedom of action in any significant way" (384 U. S. at pp. 444, 445, 467, 477, 478) is subjected to interrogation without being apprised of his right to remain silent, the consequences of a decision to forgo that right, and the right to the presence of an attorney, retained or appointed, to assist in making that decision. And the Court has recently confirmed that these warnings are required prior to interrogating a suspect in his own bedroom if it appears he is not free to go where he pleases. *Orozco v. Texas*, 394 U. S. 324.[4]

Intelligent exercise or waiver of the Fifth Amendment privilege is the heart of the Court's concern in *Miranda*. See 384 U. S. at pp. 475-476. The Government's brief appears to recognize that ignorant compliance with the requests of the authorities can no longer be equated with a valid

[2] The April 6 interview is identified in Special Agent Cornue's affidavit of November 5, 1965.

[3] Taxpayer asserts that 18 U. S. C. § 3731 violates his rights to due process and a speedy trial insofar as it permits the Government to appeal from an adverse ruling on a motion to suppress. This point was not pressed at oral argument, and, in light of our disposition of the principal issue presented in the taxpayer's favor, does not merit extended treatment here. Far from suggesting a lack of legislative power to authorize such interlocutory appeals, *Carroll v. United States*, 354 U. S. 394, 407, relied on by the taxpayer here, decided only that such appeals were not authorized by statutes then in forces. The Court noted, "If there is serious need for appeals by the Government from suppression orders * * * it is the function of the Congress to decide whether to initiate a departure from the historical pattern of restricted appellate jurisdiction in criminal cases."

[4] The opinion does not appear to depend upon a formal arrest, and no mention is made of whether Orozco in fact knew that he was not free to leave.

waiver of constitutional rights.[5] We understand the teaching of *Miranda* to be that one confronted with governmental authority in an adversary situation should be accorded the opportunity to make an intelligent decision as to the assertion or relinquishment of those constitutional rights designed to protect him under precisely such circumstances. No contention is made that the privilege against self-incrimination does not protect one interrogated in a non-custodial setting, only that one in such circumstances has no need of advice as to his rights, or, indeed, of the pendency of a criminal investigation at all. But custodial interrogation is merely one variety of confrontation, albeit one requiring the most stringent of protections for the criminal suspect. The inquiry does not end with custody or its absence. See Hewitt, "The Constitutional Rights of the Taxpayer in a Fraud Investigation," 44 Taxes 660, 668 (1966).

In this Circuit, the district courts recently considering the question have uniformly held that some form of warnings must be given by IRS agents once an investigation has shifted to one criminal in nature, despite the absence of physical custody.[6] The Government has drawn to our attention numerous cases in this and other Courts of Appeals which are said to establish that *Miranda* has no application to criminal tax investigations. Our examination of those and other cases decided after *Miranda* reveals that in almost every instance some warnings were in fact given,[7] an attorney was present during the crucial interviews,[8] or the absence of physical custody was considered determinative.[9] We recognize, of course, that language appears in many of these cases which is inconsistent with the conclusion which we reach today. We therefore turn our attention to the asserted distinctions which are said to render the *Miranda* concern that any incriminating statements elicited from a suspect should be "truly the product of free choice" (384 U. S. at p. 457) inapplicable to criminal investigations by the IRS.

A line of cases originating between the *Escobedo* and *Miranda* decisions, notably *Kohatsu v. United States*, 351 F. 2d 898 (9th Cir. 1965), reasons that because the IRS agents cannot determine whether a crime has in fact been committed until their investigation is complete, the adversary process has not sufficiently "focused" on the suspect as to require that warnings be given. But as Judge Will observed in his persuasive opinion in *United States v. Turzynski*, [67-2 USTC ¶ 9489] 268 F. Supp. 847, 852-853 (N. D. Ill. 1967):

> "This distinction between a criminal tax investigation where the taxpayer is suspected of a fraud not yet fully identified and a criminal investigation where a known violation of the law is attempted to be linked to a particular suspect is logically irrelevant for purposes of determining when the adversary process has begun, *i.e.*, when the investigatory machinery of the government is directed toward the ultimate conviction of a particular individual, and when, therefore, a suspect should be advised of his rights. What matter if the culprit is known before the crime or the crime before the culprit. In either case the investigator is attempting to develop evidence for the

[5] *Powers v. United States*, 223 U. S. 303, and *Wilson v. United States*, 162 U. S. 613, are cited as "prior law."

[6] *United States v. Turzynski* [67-2 USTC ¶ 9489], 268 F. Supp. 847 (N. D. Ill. 1967); *United States v. Dickerson* [69-1 USTC ¶ 9174], 291 F. Supp. 633 (N. D. Ill. 1968); *United States v. Habig* [69-2 USTC ¶ 9557], No. IP 66-CR-138 (S. D. Ind. Nov. 19, 1968) (unreported); *United States v. Lackey*, Lafayette Criminal No. 177 (N. D. Ind. Oct. 2, 1968) (unreported); *United States v. Townsend*, No. IP 65-CR-115 (S. D. Ind. Sept. 14, 1966) (unreported). To the same effect, see *Goodman v. United States* [68-1 USTC ¶ 9385], 285 F. Supp. 245 (C. D. Cal. 1968); *United States v. Wainwright* [68-1 USTC ¶ 9311], 284 F. Supp. 129 (D. Colo. 1968); *United States v. Gower* [67-2 USTC ¶ 15,760], 271 F. Supp. 655, 660 (M. D. Pa. 1967); *United States v. Kingry* [67-1 USTC ¶ 9262], (N. D. Fla. 1967); *United States v. Schoenburg* [67-1 USTC ¶ 9393], (D. Ariz. 1966). See also *United States v. Guerrina* [53-1 USTC ¶ 9369], 112 F. Supp. 126 (E. D. Pa. 1953), modified, [55-1 USTC ¶ 9143] 126 F. Supp. 609 (E. D. Pa. 1955).

[7] *E. g., United States v. Mansfield* [67-1 USTC ¶ 9586], 381 F. 2d 961 (7th Cir. 1967), certiorari denied, 389 U. S. 1015; *Muse v. United States* [69-1 USTC ¶ 9133], 405 F. 2d 40 (8th Cir. 1968); *United States v. Mackiewicz* [68-2 USTC ¶ 9461], 401 F. 2d 219 (2d Cir. 1968); *United States v. Squeri* [68-2 USTC ¶ 9493], 398 F. 2d 785 (2d Cir. 1968); *Spinney v. United States* [67-2 USTC ¶ 9738], 385 F. 2d 908 (1st Cir. 1967), certiorari denied, 390 U. S. 921; *United States v. Maius* [67-2 USTC ¶ 9521], 378 F. 2d 716 (6th Cir. 1967), certiorari denied, 389 U. S. 905; *Morgan v. United States* [67-1 USTC ¶ 9449], 377 F. 2d 507 (1st Cir. 1967).

[8] *E. g., United States v. Mancuso* [67-2 USTC ¶ 9487], 378 F. 2d 612 (4th Cir. 1967), certiorari denied, 390 U. S. 955; *United States v. Fidanzi*, No. 16984 (7th Cir. June 23, 1969) [69-2 USTC ¶ 9487].

[9] *E. g., Hensley v. United States* [69-1 USTC ¶ 9146], 406 F. 2d 481 (10th Cir. 1968); *Cohen v. United States* [69-1 USTC ¶ 9132], 405 F. 2d 34 (8th Cir. 1968), certiorari denied, 394 U. S. 943; *Morgan v. United States, supra*, note 7; *Spahr v. United States* [69-1 USTC ¶ 9315], 1969 CCH Tax Cas. ¶ 9316 (5th Cir. April 2, 1969).

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purpose of criminal prosecution and conviction."

Nor can the *Kohatsu* rationale, once accepted, be limited to investigations in the tax area. Such a rationale would apply to most white collar crimes and any other crimes where the identity of the suspected lawbreaker is not in issue. This category might include unauthorized practice of law, attempted bribery, impersonation of a federal officer, refusal to report for induction, violations of Section 5 of the Securities Act, the Landrum-Griffin Act, and the Sherman Act, among others. No principled distinction has been suggested which would carve out such exceptions to the policies expressed in *Miranda*.

Such a distinction cannot survive the Supreme Court's decision in *Mathis v. United States* [68-1 USTC ¶ 9357], 391 U. S. 1, where the Government sought to escape the application of *Miranda* to an interrogation of a taxpayer incarcerated for an unrelated offense because the questions were asked as a part of a routine tax investigation where criminal proceedings might never be brought. Noting that "tax investigations frequently lead to criminal prosecutions, just as the one here did," (391 U. S. at p. 4), the Court rejected any such distinction as "too minor and shadowy" to warrant a departure from *Miranda*.

[*Warning Must Be Given*]

The Government argues that the absence of custodial detention and other indicia of criminal prosecution in the tax fraud investigation negatives any possibility of coercion or overbearing of the taxpayer's will. But it is the very fact that the taxpayer is not informed of the pendency of a criminal investigation which aggravates the dilemma in which he finds himself. Unaware of the possible consequences of his cooperation with the agents, he may nevertheless believe that he is obligated to supply the necessary information in order to satisfy any possible tax deficiency which he may owe. As the district judge observed (291 F. Supp. at pp. 636-637):

"It would seem to us that the average citizen, faced with repeated questioning by two government agents is in an ominous situation to say the least. The Government suggests that the defendant was in no way physically restrained but we doubt that he really felt free to walk out on the investigators from the Internal Revenue Service. In the absence of sufficient warnings and the assistance of counsel, there are innumerable factors which act on the taxpayer's mind compelling him to 'co-operate' with the federal authorities."

Only the rare taxpayer would be likely to know that he could refuse to produce his records to IRS agents. Nor would he be likely to make any distinction between revenue agents and special agents without some explanation as to the different functions of these two offices. As noted in Lipton, "Constitutional Rights in Criminal Tax Investigations," 45 F. R. D. 323, 336 (1968), the pressures on the uninformed taxpayer to cooperate with the agents are considerable:

"First there is always the fear of incurring a civil tax liability that hopefully might be avoided by cooperation. Also, a taxpayer may conclude that lack of cooperation will result in unwanted publicity about a tax liability. *The average citizen, moreover, believes the government prosecutes only the recalcitrant, uncooperative individual who is unwilling to pay what he owes.* Who would believe the ironic truth that the cooperative taxpayer fares much worse than the individual who relies upon his constitutional rights!" (Emphasis supplied.)

Incriminating statements elicited in reliance upon the taxpayer's misapprehension as to the nature of the inquiry, his obligation to respond, and the possible consequences of doing so must be regarded as equally violative of constitutional protections as a custodial confession extracted without proper warnings. *Cf. Gouled v. United States*, 255 U. S. 298, 305-306; *United States v. Guerrina* [53-1 USTC ¶ 9369], 112 F. Supp. 126 (E. D. Pa. 1953), modified, [55-1 USTC ¶ 9143] 126 F. Supp. 609 (E. D. Pa. 1955); Comment, "Constitutional Rights of the Taxpayer in a Tax Fraud Investigation," 42 Tul. L. Rev. 862, 864-865 (1968).

Under such circumstances it is imperative that the taxpayer be advised that he is the subject of a criminal investigation and that he need not answer questions put to him by the agents. "For those unaware of the privilege, the warning is needed simply to make them aware of it—the threshold requirement for an intelligent decision as to its exercise." *Miranda v. Arizona*, 364 U. S. 436, 468. The rationale behind the warning as to the consequences of waiving the right to remain silent, as expressed in *Miranda*, is particularly apt to the present situation, for "this warning may serve to make the individual more acutely aware that he is faced with a phase of the adversary system —that he is not in the presence of persons

acting solely in his interest." 384 U. S. at p. 469. As in *Miranda*, we deem advice as to the right to have counsel present a valuable adjunct to the protections of the Fifth Amendment prescribed above.

Our conclusion is that *Miranda* warnings must be given to the taxpayer by either the revenue agent[10] or the special agent at the inception of the first contact with the taxpayer after the case has been transferred to the Intelligence Division.[11] We have reached this conclusion on the basis of our examination of the circumstances surrounding criminal tax investigations generally, and we find that the objective circumstances of such confrontations with government authority warrant the above warnings without regard to the individual taxpayer's subjective state of mind.[12] Absent such warnings, the motion to suppress in the present case was properly granted.

In recognition of the fact that this holding represents a departure from the present state of the law,[13] and a new implementation of the *Miranda* policy, and in accordance with the criteria set forth in *Stovall v. Denno*, 388 U. S. 293, 297, we have determined that this decision should be given a prospective application. In *Johnson v. New Jersey*, 384 U. S. 719, *Miranda* was applied only to cases in which the trial began after the date of the *Miranda* decision. However, as the Court noted in a more recent case involving a special aspect of the retroactivity of *Miranda*, the approach of the Court to prospective decision-making has undergone some modification since *Johnson* was decided. See *Jenkins v. Delaware*, ..., 37 U. S. L. W. 4458 (June 2, 1969). In conformity with the more recent practice as developed in *Stovall*, *supra*, and *Desist v. United States*, 394 U. S. 244, we have determined to apply our holding to interrogations taking place after the date of this decision. See Schaefer, "The Control of 'Sunbursts': Techniques of Prospective Overruling," 42 N. Y. U. L. Rev. 631, 646 (1967); Fairchild, "Limitation of New Judge-Made Law to Prospective Effect Only: 'Prospective Overruling' or Sunbursting," 51 Marq. L. Rev. 255, 265 (1968). The defendant in the companion *Habig* case, which was argued together with the instant case, will also be entitled to the benefit of today's holding. However, it is not our intent to disturb previously ordered suppressions of evidence anticipating our holding today. See *Desist v. United States*, 394 U. S. 244, 259 (HARLAN J., dissenting).

AFFIRMED.

[Dissenting Opinion]

FAIRCHILD, Circuit Judge (dissenting): The *Miranda*[1] equation is that official questioning of one who is in custody or deprived of his freedom of action in any significant way equals compulsion to answer unless the *Miranda* warnings or other effective means are used to insure absence of compulsion. Underlying its pronouncement were years of judicial experience with the frustrations of case by case decision as to the voluntariness of statements given by persons in police custody (most often state or local). *Mathis*[2] and *Orozco*[3] decide that the equation is valid in the particular situations considered, but do not suggest that compulsion to answer is to

[10] In *Mathis*, the Supreme Court required a revenue agent to give the warnings upon first questioning the taxpayer, even though no "full-fledged criminal investigation" was begun until eight days later. See 391 U. S. at p. 4. There the suspect was in custody for an unrelated offense. Mindful of the disruptive effect which a blanket requirement of warnings might have if applied to all civil investigations, we have determined that the inception of the first contact with the taxpayer after referral to the Intelligence Division is the appropriate point at which to require the *Miranda*-type warnings outlined above.

[11] See Andrews, "The Right to Counsel in Criminal Tax Investigations Under Escobedo and Miranda: The 'Critical Stage,'" 53 Iowa L. Rev. 1074, 1035-1037, 1111, 1116-1117 (1968); Comment, "Constitutional Rights of the Taxpayer in a Tax Fraud Investigation," 42 Tul. L. Rev. 862, 870 (1968).

[12] Thus there is no conflict in this respect with *United States v. Spomar* [65-1 USTC ¶ 9141], 339 F. 2d 941 (7th Cir. 1964), certiorari denied, 380 U. S. 75, on which the Government has so heavily relied. Moreover, that was a pre-*Miranda* case, and the defendant did not contend that revenue agents had the duty to advise him of his right to refuse to furnish the requested information (339 F. 2d at p. 942).

[13] We are informed that since May 1967 the Internal Revenue Service has required special agents to give a modification of the *Miranda* warnings to taxpayers at the first interview. See *United States v. Turzynski* [67-2 USTC ¶ 9489], 268 F. Supp. 847, 854 (N. D. Ill. 1967). The November 1967 instructions to special agents are reproduced in *United States v. Wainright* [68-1 USTC ¶ 9311], 284 F. Supp. 129, 133 (D. Colo. 1968). These instructions were somewhat amplified in November 1968 according to *IRS News Release* IR-949 (1969 CCH Fed. Tax Rptr., ¶ 6946).

This recent administrative practice, characterized as an act of grace at oral argument, diminishes the impact of our holding today, but does not, in our view, obviate the responsibility of this Court to render judgment in accordance with our understanding of the intendment of *Miranda*.

[1] *Miranda v. Arizona* (1966), 384 U. S. 436.

[2] *Mathis v. United States* [68-1 USTC ¶ 9357] (1968), 391 U. S. 1.

[3] *Orozco v. Texas* (1969), 394 U. S. 324.

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[Dissenting Opinion]

be presumed in situations where the person is not in custody or deprived of freedom of action.

It is compulsion to answer which offends against the fifth amendment provision that no person shall be compelled in any criminal case to be a witness against himself. *Miranda* decided that one in custody or deprived of freedom of action and questioned by an officer is subjected to such pressure to answer that the warnings are required in every instance.

This court is now deciding, essentially, that the official character of the revenue agent makes compulsion to answer his questions so probable that the warnings are required to prevent it. Yet the court distinguishes between the revenue agent before IRS has internally decided to consider prosecution and the revenue agent or special agent after such decision.

If a violation of the fifth amendment is really involved, I assume there are types of state agents as well as other types of federal agents who will be reached by this decision.

I think that candor on the part of a special agent who is seeking incriminating evidence is good governmental policy, and, as noted in Judge Cummings' able opinion, the IRS has decided as a matter of policy that warnings should be given. It may well lie within federal judicial power to decide to exclude evidence obtained without such candor. But I do not believe the fifth amendment requires it.

[¶ 9557] United States of America, Plaintiff-Appellant v. Arnold F. Habig and Jerome M. Schroering, Defendants-Appellees.

U. S. Court of Appeals, 7th Circuit, No. 17409, 7/28/69.

[*Code Secs. 7201 and 7206*]

Crimes: Attempt to evade tax: Criminal tax investigation: Pre-custodial interview: Right to warning.—Since it was not clear whether the evidence was obtained by the government before the IRS agents first contacted the taxpayer, the case was remanded for a determination of the precise order of events with instructions to apply the *Dickerson* standards. Back references: ¶ 5709.09 and 5709.1134.

K. Edwin Applegate, United States Attorney, Indianapolis, Ind., Johnnie M. Walters, Joseph M. Howard, Department of Justice, Washington, D. C. 20530, for appellant. Fred P. Bamberger, 708 Hulman Bldg., Evansville, Ind., John W. Houghton, 1313 Merchants Bank Bldg., Indianapolis, Ind., for appellee.

Before FAIRCHILD and CUMMINGS, Circuit Judges, and GRANT, District Judge.[1]

CUMMINGS, Circuit Judge: This case arises on the Government's appeal under 18 U. S. C. § 3731 from an order suppressing certain evidence. In August 1966, defendants were indicted for attempting to evade the income taxes of four corporations and for aiding and assisting in the preparation of a fifth corporation's[2] false income tax return, in violation of Sections 7201 and 7206(2) of the Internal Revenue Code. Two years after the filing of the indictment, the defendants filed a motion to suppress the records of the five corporations that "were photocopied by agents of the Internal Revenue Service during the investigation by them of possible criminal violations of federal income tax laws by the defendants," and seeking the return of the photocopies. The ground for the motion was that the items were "illegally seized without search warrant, summons or subpoena being served upon or against either defendant." The supporting affidavits of each defendant asserted that:

> "approximately two years prior to the [August 12, 1966] date of the return of the indictments in this cause, agents of the Internal Revenue Service were seeking to obtain evidence for the purpose of criminally prosecuting him, but at no time was he ever informed or advised by any such agent that he was being investigated for criminal violations of the federal tax laws."

The Government denied the first of these allegations and also filed an affidavit of Revenue Agent Charles E. Lawrence. This

[1] Chief Judge Grant is sitting by designation from the United States District Court for the Northern District of Indiana.

[2] The five corporations known as the Jasper Group, were the W. W. Kimball Company, Evansville Veneer & Lumber Co., Inc., The Jasper Corporation, Borden Cabinet Corporation and Lafayette Manufacturing Co., Inc.

[¶ 9554] United States of America, Plaintiff v. Walter Tarlowski, Defendant.

U. S. District Court, East. Dist. N. Y., 68-CR-278, 7/22/69.

[*Code Sec. 7203*]

Crimes: Tax evasion: Failure to file returns or pay tax: Motion to suppress evidence: Pre-custodial interviews: Exclusion of accountant from interviews: Violation of due process.—At a pre-custodial interview attended by the taxpayer and his accountant, an IRS special agent, although he informed the taxpayer of his right to counsel, requested and succeeded in having the accountant leave the room while the interview was in process. The taxpayer then made damaging admissions at this interview. At a later meeting, held in the driveway outside the taxpayer's house, the agent (who at this time was contemplating criminal prosecution of the taxpayer), obtained books and records over the taxpayer's expressed intention that he wanted to consult with his accountant. At this interview, the agent advised the taxpayer of his right to remain silent and to retain counsel. Motion to suppress evidence granted. Both interviews from which the taxpayer's accountant-advisors were excluded violated his rights guaranteed by the due process clause of the Fifth Amendment. Back reference: ¶ 5709.1134.

Vincent T. McCarthy, United States Attorney, Stuart B. Stillman, 225 Cadman Plaza East, Brooklyn, N. Y., for plaintiff. William Esbitt, 122 E. 42nd St., New York, N. Y., for defendant.

Memorandum and Order

WEINSTEIN, District Judge: In this prosecution for failure to file income tax returns (26 U. S. C. § 7203), defendant Walter Tarlowski seeks to suppress certain statements and records obtained from him during the course of an investigation by agents of the Internal Revenue Service (IRS). For the reasons stated below, the motion is granted.

I. *Facts*

On January 4, 1965, Special Agent John Trager, accompanied by an IRS Revenue Agent, interviewed the defendant at the home-office of his accountant, Michael Coppins. This interview with the two agents lasted slightly over one-half hour, and was preceded by a separate, shorter interview with Coppins. In his interview, the defendant made several damaging admissions.

Although the testimony of Special Agent Trager is self-contradictory on this point, it seems likely, and this Court finds, that he requested Coppins to leave the room while Tarlowski was being interrogated. This finding is buttressed by the uncontroverted facts that Coppins did leave, and that he had no other apparent reason to leave the room in which the questioning took place: his records and papers were kept in that room; he was obviously accustomed to working in that room; his client, in whom he had a natural interest, with whose difficulties he was familiar, and for whom he had arranged the interview at the request of Agent Trager, was being interviewed in that room.

It is clear that before proceeding with the questioning, the Special Agent gave Tarlowski some of the warnings required by *Miranda v. Arizona*, 384 U. S. 436, 86 S. Ct. 1602 (1966), including the warning of the right to counsel. Yet, while he was informing the prospective defendant of his right to counsel, he was simultaneously requesting that the defendant's accountant leave during the interrogation. In effect, the investigator informed Tarlowski that he might have his attorney present, but not his accountant.

After this meeting, there were no further contacts between the defendant and Trager until July 31, 1967. At about that time, the Special Agent was informed by Coppins, who had continued negotiations for Tarlowski, that his client had engaged another accountant, John Dolan. Wishing to secure copies of worksheets for Tarlowski's 1963 and 1964 tax returns, as well as his ledger book, Trager waited outside the defendant's home until his return in the early evening of July 31. When Tarlowski arrived, Trager and another Special Agent spoke with him in the driveway outside his home. Trager was again informed that Dolan was to be the defendant's accountant, and that Tar-

lowski intended to meet with Dolan that evening or the next to turn over all his materials and discuss the matter. Special Agent Trager then requested that the defendant turn over his work sheets and ledger book and informed him of his rights to silence and counsel. Tarlowski gave Trager the requested materials. Although he had "almost made [his] mind up to recommend criminal prosecution," the Special Agent did not then inform Tarlowski of this possibility.

Again, in effect, by proceeding when the defendant had expressed his desire to consult with his accountant, the Special Agent denied him the right to the assistance of anyone other than his attorney. Although Tarlowski had specifically expressed his intention to seek advice, the agent informed him of his rights in the same formalistic manner, brushed aside the defendant's attempts at an explanation, and proceeded with his inquiries, thereby conveying the impression that the right to seek advice was not available except through an attorney. This conclusion takes on added weight in view of the facts that defendant is a man of limited education, and that the Special Agent was aware of the defendant's background.

The questions presented in this case are troublesome. Putting to one side the situation where there is statutory authorization, may a representative of the federal government, at his own behest, limit the right of an individual to demand the presence of others at an interrogation? May such a representative, contemplating a criminal prosecution, demand the presence of an individual for questioning, but, at the same time, refuse that person the right to be accompanied by another in whom he reposes trust and confidence? The answers to these questions are no; there is no authority for a federal official's so limiting freedom. This conclusion is compelled by general constitutional principles as well as by the specific command of the Fifth Amendment that no person shall be deprived of liberty without due process of law. Two elements must be considered in this context: what constitutes an infringement upon constitutionally guaranteed liberties; and what is the due process of law which will permit such an infringement?

II. *Constitutionally Protected Liberty*

Certain fundamental liberties, not expressly enumerated in the Constitution or Bill of Rights, are, nonetheless, guaranteed to the individual by the requirement of due process. See, *e.g., Loving v. Virginia,* 388 U. S. 1, 12, 87 S. Ct. 1817, 1824 (1967) (right to marry); *Griswold v. Connecticut,* 381 U. S. 479, 85 S. Ct. 1678 (1965) (right to privacy in intimate marital relationship); *Aptheker v. Secretary of State,* 378 U. S. 500, 84 S. Ct. 1659 (1964) (right to travel); *Kent v. Dulles,* 357 U. S. 116, 78 S. Ct. 1113 (1958) (same); *Pierce v. Society of Sisters,* 268 U. S. 510, 45 S. Ct. 571 (1925) (rights to conduct and attend private schools); *Meyer v. Nebraska,* 262 U. S. 390, 43 S. Ct. 625 (1923) (rights to teach and learn foreign languages). *Cf. United States v. Carolene Products Co.,* 304 U. S. 144, 152, n. 4, 58 S. Ct. 778, 783, n. 4 (1938). In order to determine the existence and extent of those rights, not expressly enumerated, that are encompassed in the term "liberty" some source of content for the term must be sought.

The standards of interpretation of the Fifth Amendment are threefold. First, a fruitful source of inquiry may be "the common and statute law of England prior to the emigration of our ancestors, and . . . the laws of many of the states at the time of the adoption of this amendment. . . ." *Murray's Lessee v. Hoboken Improvement Co.,* 18 How. (59 U. S.) 272, 280 (1855). Another source of interpretation is the entire Bill of Rights (and, too, provisions in the body of the Constitution enunciating basic protections of individuals). *Twining v. New Jersey,* 211 U. S. 78, 99, 29 S. Ct. 14, 19-20 (1908); *Griswold v. Connecticut,* 381 U. S. 479, 484, 85 S. Ct. 1678, 1681 (1965). A third field of inquiry is, of course, the intent of the Framers of the Constitution, to be ascertained by an examination of the document as a whole, as well as by an analysis of the legislative history. *McCulloch v. Maryland,* 4 Wheat. (17 U. S.) 316, 406-407 (1819); *United States v. Classic,* 313 U. S. 299, 315-16, 61 S. Ct. 1031, 1038 (1941). See also *People v. Fancher,* 50 N. Y. 288, 291-92 (1872) (on interpretation of constitutions generally).

A. *Pre-Adoption History*

Under the common law the powers of state agents were limited and the requirement for an arrest warrant was strictly enforced. 4 W. Blackstone, Commentaries *289-*295. See also 1 M. Hale, Pleas of the Crown 578-90 (1736); 4 E. Coke, Institutes 176 (1797 ed.). Searches, as part of the process of investigation, were also frowned upon. See 16 Hansard, Parl. Hist. Eng. 207-210 (1813) (debates 1766).

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In *Entick v. Carrington*, 19 How. St. Tr. 1030, 1044 (1765), Lord Chief Justice Camden, speaking for the court, noted that if the searcher admits the trespass,

> he is bound to show by way of justification, that some positive law has empowered or excused him. The justification is submitted to the judges who are to look into the books; and if such a justification can be maintained by the text of the statute law. If no such excuse can be found or produced, the silence of the books is authority against the defendant and the plaintiff must have judgment [in trespass]. *Id.* at 1066.

The fact that many would not challenge the wrongful exercise of power by a government official cannot, by prescription, validate improperly claimed authority. As Lord Chief Justice Camden pointed out in *Entick*:

> there has been a general submission of guilt and poverty to power and the terror of punishment. But it would be strange doctrine to assert that all the people of this land are bound to acknowledge that to be universal law, which a few criminal booksellers have been afraid to dispute. *Id.* at 1077.

We have found no exact precedent or close analogy to the question presented in this case at common law. This is not surprising in view of the radical changes which have taken place in the functions of peace officers, as well as in the nature of crimes in the near two centuries since the adoption of the Constitution. *United States v. Wade*, 388 U. S. 218, 224, 87 S. Ct. 1926, 1931 (1967) ("When the Bill of Rights was adopted, there were no organized police forces as we know them today. The accused confronted the prosecutor and the witnesses against him, and the evidence was marshalled, largely at the trial itself."). *See also* Moylan, Temple Bar to Megalopolis, 53 Judicature 22 (1969) (changing nature of crimes).

Some cases dealing with related issues do establish the right of individuals to be free of unauthorized actions by investigators. *Entick v. Carrington*, 19 How. St. Tr. 1044 (1765) dealt with a search by general warrant before arrest or trial—in what might be called the investigatory stage. One of the grounds relied upon in holding invalid the action of the officers involved was the violation of the right against self-incrimination which such a seizure entailed. In effect, the rights against warrantless searches and self-incrimination were held to run together at some point before the formal criminal processes were instituted, an additional limitation upon the investigatory power of the state.

In *Wilkes'* Case, 19 How. St. Tr. 981 (1763), the report of Mr. Serjeant Wilson indicates that a writ of habeas corpus was issued by the Court of Common Pleas upon receipt of the information that Wilkes was detained in his own home pending a search of the premises under a general warrant. Before that writ could be served, custody over Wilkes was transferred and a new writ was issued. It was upon this confinement that the decision of the case rested. The issuance of this first writ, however, would indicate the distaste felt for infringement of individual liberties in the course of an investigation. In the report of the case, the point was made that Wilkes was denied not only the right to see his attorney and friends, but "particularly his own brother . . . *ut audivi.*" *Id.* at 982.

That the term "liberty" referred to more than freedom from imprisonment can also be seen by the use of the word in the state constitutions adopted between 1776 and 1790. Article XXI of the Maryland Constitution of 1776 reads:

> that no freeman ought to be taken, or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the judgment of his peers, or by the law of the land." 1 Z. Chafee, Documents on Fundamental Human Rights 212 (1963).

To the same effect, that an express distinction is made between freedom from imprisonment and other invasions of individual freedom embodied in the word "liberty," *see also, e.g.*, South Carolina Constitution, Article IX(II)(1790); (*id.* at 233); Massachusetts Constitution, Article XII (1780) (*id.* at 240). *Cf.* New Hampshire Constitution, Article XV (1784) (see also Article XIX, which requires arrest warrants for both examination and trial). *Id.* at 222.

From this early history it seems clear that the right of an individual to be free of restraints upon his freedom to do as he willed—absent some common law or legislative inhibition—was recognized and jealously guarded. The laissez faire reaction to mercantilism was particularly strong in this country at the political levels—if not at the economic level—when the federal constitution was adopted. The clearest expression of this concept is perhaps in the Ninth Amendment: "The enumeration in the Constitution, of certain rights, shall not be con-

strued to deny or disparage others retained by the people."

It would seem likely, then, that the intentional exclusion of a witness to the interview conducted by the IRS Special Agents would have been thought to be a limitation of the rights of freemen and of the concept of liberty recognized when the Constitution was written.

B. Other Constitutional Provisions

Among the large number of individual rights guaranteed by the federal Constitution are those against unreasonable searches and seizures and self-incrimination and those affirming the right to counsel and habeas corpus. These rights have two characteristics in common: all extend to aid the individual in extra-judicial contact with government; all are directed to the preservation of the "right to be exempt from all unauthorized, arbitrary or unreasonable inquiries and disclosures in respect of [the people's] personal and private affairs." *Sinclair v. United States,* 279 U. S. 263, 293, 49 S. Ct. 268, 271 (1929). *See also Boyd v. United States,* 116 U. S. 616, 6 S. Ct. 524 (1886); *Brown v. Walker,* 161 U. S. 591, 596-597, 16 S. Ct. 644, 646-647 (1896); *Griswold v. Connecticut,* 381 U. S. 479, 85 S. Ct. 1678 (1965); *Katz v. United States,* 389 U. S. 347, 351, 88 S. Ct. 507, 511 (1967).

The Fifth Amendment right against self-incrimination is one of those basic and fundamental rights which may shed light upon the meaning of "liberty." It has long been held to be applicable to events before trial. *See, e.g., Brown v. Walker,* 161 U. S. 591, 16 S. Ct. 644 (1896) (grand jury investigation). *See also* E. Griswold, The Fifth Amendment Today 55 (1955). Compulsion in any form is strictly forbidden; only voluntary revelations may be used and then only where appropriate safeguards have been employed to guarantee voluntariness. *Miranda v. Arizona,* 380 U. S. 436, 86 S. Ct. 1602 (1966). This right to silence is absolute; even where the warnings required by *Miranda v. Arizona, supra,* are not mandated, the right may not be infringed. ALI, Model Code of Pre-Arraignment Procedure § 2.01(1) and comment at 28-29 (Tent. Draft No. 2, 1969). *See also Terry v. Ohio,* 392 U. S. 1, 34, 88 S. Ct. 1868, 1886 (1968) (White, J. concurring).

The purpose of this guarantee against compulsory self-incrimination was not only to secure uncoerced, and therefore more credible, testimony (*Jackson v. Denno,* 378 U. S. 368, 383, 84 S. Ct. 1774, 1784 (1964)); among the reasons which have been advanced are: to enable "the citizen to create a zone of privacy which government may not force him to surrender to his detriment" (*Griswold v. Connecticut,* 381 U. S. 479, 484, 85 S. Ct. 1678, 1681 (1965); *see also Tehan v. United States ex rel. Shott,* 382 U. S. 406, 416, 86 S. Ct. 459, 465 (1966)). *See,* for other bases of the rule, 8 Wigmore, Evidence § 2251 (McNaughton rev. 1961).

The Fourth Amendment prohibition against unreasonable searches and seizures is unique in that it clearly indicates that it is intended to operate on official conduct outside the scope of judicial or criminal proceedings. This amendment is designed to protect the right of the individual citizen from unwarranted intrusions by governmental agents. *Katz v. United States,* 389 U. S. 347, 350, 88 S. Ct. 507, 510 (1967).

The right to the assistance of counsel, guaranteed by the Sixth Amendment, is largely designed to secure to the accused a fair trial, "to assure that the accused's interests will be protected consistently with our adversary theory of criminal prosecution. *United States v. Wade,* 388 U. S. 218, 227, 87 S. Ct. 1926, 1932 (1967). But this is not the only purpose of that protection offered by the Constitution. One reason for the guarantee is to enable an individual "with the whole power of the state against him," to defend against the loss of personal liberty. *Powell v. Alabama,* 287 U. S. 45, 69, 72, 53 S. Ct. 55, 64, 65 (1932). Another is to insure that other fundamental rights secured to the individual will receive adequate and effective enforcement. *Id.; Miranda v. Arizona,* 384 U. S. 436, 86 S. Ct. 1602 (1966); *Escobedo v. Illinois,* 378 U. S. 478, 84 S. Ct. 1758 (1964).

Before extensive use was made of the right to counsel as an aid to the effective enforcement of the right against self-incrimination, several cases grounded a finding of involuntary self-incrimination upon the refusal of law enforcement officials to permit access to relatives or friends. *Haynes v. Washington,* 373 U. S. 503, 514, 83 S. Ct. 1336, 1343 (1963); *see also United States ex rel. Caminito v. Murphy,* 222 F. 2d 698, 701 (2d Cir. 1955); *cf. Fay v. Noia,* 372 U. S. 391, 396, n. 2, 83 S. Ct. 822, 825, n. 2 (1963).

A final element relevant in classifying those restraints upon individual liberty prohibited by the Fifth Amendment in the absence of due process of law, is the standard applied in determining whether there is cus-

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tody for purposes of the writ of habeas corpus under section 9 of Article 1 of the Constitution. 28 U. S. C. § 2241. The writ has been granted, or custody sufficient to justify the exercise of jurisdiction has been found, by courts in both the United States and England for restraints which constitute far less than the word "custody" ordinarily implies. *Jones v. Cunningham,* 371 U. S. 236, 237-240, 83 S. Ct. 373, 374-375 (1963) (petitioner on parole required to request permission "to leave the community, to change residence, or to own or operate a motor vehicle"); *United States v. Jung Ah Lung,* 124 U. S. 621, 8 S. Ct. 663 (1888) (alien refused permission to land in United States); *Nash v. Pardy,* 283 F. Supp. 837 (S. D. Fla. 1968) (petitioner's commitment stayed by state trial court); *Foster v. Gilbert,* 264 F. Supp. 209 (S. D. Fla. 1967) (petitioner released into custody of his own attorney); *Walker v. North Carolina,* 262 F. Supp. 102 (W. D. N. C. 1966), *aff'd on other grounds,* 372 F. 2d 129 (4th Cir.), *cert. denied,* 388 U. S. 917, 87 S. Ct. 2134 (1967) (sentence suspended on condition that petitioner comply with municipal housing codes constitutes a restraint not shared by public generally); *Varga v. Rosenberg,* 237 F. Supp. 282 (S. D. Calif. 1964) (petitioner free on bond pending deportation); *Reis v. United States Marshal,* 192 F. Supp. 79 (E. D. Pa. 1961) (petitioner released on bail pending habeas corpus determination); *Petition of Phillips,* 167 F. Supp. 139, 140 (S. D. Calif. 1958) (petitioner, an enlistee in Marine Corps, not "subjected to any disciplinary action of any kind, and . . . under no restraint except those which the usual requirements of military life may impose"); *United States ex rel. Altieri v. Flint,* 54 F. Supp. 889, 892 (D. Conn. 1943), *aff'd,* 142 F. 2d 62 (2d Cir. 1944) (inducted petitioner, not yet in active service, "subject to military call and hence subject to a restraint upon the otherwise unrestricted course of conduct open to him").

From this brief review of the decisions under the Fourth, Fifth and Sixth Amendments, as well as those under the habeas corpus provision of the Constitution, it can readily be seen that any significant interposition of state power against the individual, restricting his liberties, must be based upon clear authority. The guarantees of these provisions set up a system which assures to the individual that he will not be taken or desseised of his liberties without due process of law. Insofar as these provisions overlap, they provide a guarantee of the right of the individual to be let alone by the state, to do or not to do as he sees fit.

C. *Intent of the Framers*

These conclusions are reinforced by the obvious intent of the Framers of the Constitution. As originally drafted, the Constitution contained no guarantees of individual liberties. It was the belief of those who gathered in Philadelphia that no such guarantees were necessary because they were incorporated in the very marrow of the new federal government. The Federalist, No. 84, at 439 (Everyman's Lib. ed. 1961) (A Bill of Rights "would contain various exceptions to powers not granted; and, on this very account, would afford a colourable pretext to claim more than were granted."). Some, of course, disagreed with this view. *See, e.g.,* Col. George Mason of Virginia, 2 M. Farrand, Records of the Federal Convention of 1787, at 637 (1937).

The ratification debates centered, in part, around this very lack of a Bill of Rights. M. Kraus, the United States to 1865, at 260-63 (1959); *see also, e.g.,* 2 J. Elliot, Debates 102-03 (1888).

Madison, believing that the omission of a Bill of Rights was not "a material defect" expressed the opinion that such an addition might be acceptable, "provided it be so framed as not to imply powers not meant to be included in the enumeration." Letter from Madison to Jefferson, October 17, 1788, reprinted in 1 L. Pollack, The Constitution and the Supreme Court, 121 (1966). Jefferson replied shortly thereafter, urging the adoption of a Declaration of Rights as a bar against the unauthorized usurption of power by the executive and legislature. Letter from Jefferson to Madison, March 15, 1789, reprinted in *id.* at 123.

To overcome some of his—and others'—doubts, Madison not only introduced what later became the Bill of Rights in the First Congress, but also added the Ninth Amendment. In the debate, Madison referred to the objections raised in the Federalist and in his letter to Jefferson saying:

> "It has been objected also against a bill of rights, that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration; and it might follow by implication, that those rights which were not singled out, were intended to be assigned into the hands of the General Government, and were consequently insecure . . . but, I conceive, that it may

be guarded against. I have attempted it, as gentlemen may see by turning to the last clause of the fourth resolution [which later became the Ninth Amendment]." 1 Annals of Congress 456 (Debate June 8, 1789).

While the adoption debates indicate that the intention of the Framers of the Constitution was to reserve to the individual all rights which were not taken by the Constitution or by valid statute under the Constitution, these are not the only source of information on the intention of the draftsmen. Not only the pre-existing system in England, but also the then-current thoughts and attitudes must be taken into account. Perhaps one of the most influential legal or political theorists in the development of the political theory of the Eighteenth Century was John Locke. H. Cairns, Legal Philosophy from Plato to Hegel 336 (1949). In his Second Essay on Government the philosopher stated:

"The liberty of man in society is to be under no other legislative power but that established by consent in the commonwealth; nor under the dominion of any will or restraint of any law, but what the legislative shall enact according to the trust put in it." The English Philosophers from Bacon to Mill 411 (E. Burtt ed, 1939).

See also id. at 486:

"[W]hosoever in authority exceeds the power given him by the law, and makes use of the force he has under his command to compass that upon the subject which the law allows not, ceases in that to be a magistrate, and acting without authority may be opposed, as any other man who by force invades the right of another."

In his letter to the Sheriffs of Bristol, the conservative Edmund Burke, writing about the American Revolution, reflected the spirit of his times in part when he declared:

"Liberty, too, must be limited in order to be possessed. The degree of restraint it is impossible in any case to settle precisely. But it ought to be the constant aim of every wise public counsel to find out by cautious experiments, and rational, cool endeavors, with how little, not how much, of this restraint the community can subsist: for liberty is a good to be improved, and not an evil to be lessened. It is not only a private blessing of the first order, but the vital spring and energy of the state itself, which has just so much life and vigor as there is liberty in it." E. Burke, Selected Works 211 (W. J. Bate ed. 1960).

The concept of limited governmental action was at one of its peaks at the time of the adoption of the Constitution. A Westin, Privacy and Freedem 330 (1967). At a period less than forty years after the publication of Rousseau's *Contrat Social*, and less than fifteen after the ringing declaration of the rights of the individual in the Declaration of Independence, it is difficult to conceive of any interpretation of the first nine Amendments except in terms of limitations upon governmental authority. Given this historic background and design, the concluson seems inescapable that the right to associate with others of one's own choice at any time is one of the liberties protected by the Fifth Amendment.

III. Necessity for Authorization

While many rights of the individual, even —to some undefined but limited extent— those which come within the language of the Bill of Rights, may be overridden by statute if a clear necessity for such legislative action exists (*Brandenberg v. Ohio*, — U. S. —, —, 89 S. Ct. 1827, 1829 (1969); *United States v. O'Brien*, 391 U. S. 367, 88 S. Ct. 1673 (1968); *Zemel v. Rusk*, 381 U. S. 1, 14, 85 S. Ct. 1271, 1279 (1965)), it is axiomatic that no federal official may limit a person's freedom without authority either clearly specified in a statute or plainly implied from constitutional or recognized common law sources. See *Aptheker v. Secretary of State*, 378 U. S. 500, 518, 84 S. Ct. 1659, 1670 (1964) (Black, J. concurring) ("neither the Secretary of State nor any other government agent can deny people in this country their liberty to travel or their liberty to do anything else except in accordance with the 'law of the land' as declared by the Constitution or by valid laws made pursuant to it."); *see also* R. Pound, The Development of Constitutional Guarantees of Liberty 61 (1957); H. Black, A Constitutional Faith 32 (1968).

At a very early date it was recognized that:

"Every oppression against law, by colour of any usurped authority is a kind of destruction for, *guando aliquid prohibetur, prohibetur et omne, per quod devenitur ad illud:* and it is the worst oppression, that is done by colour of justice." 2 E. Coke, Institutes 48 (1656 ed).

In light of the subsequent discussion by Blackstone of the right of each individual against "destruction" by the state, this observation takes on added significance. *See*

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1 W. Blackstone, Commentaries *121-*134, especially at *133 ("Which words, *'aliquo modo destruatur,* [chapter 39 of Magna Carta]' according to Sir Edward Coke, include . . . every oppression by color of an illegal authority.").

Grants of police authority beyond that allowed by the common law in "border line" areas have been closely defined, and promulgated through specific legislative action. One example is the permission granted by New York (Code of Criminal Procedures, § 799) and other states to police officers executing search warrants enabling them to enter the premises to be searched without announcing themselves. *People v. De Lago,* 16 N. Y. 2d 289, 266 N. Y. S. 2d 353, 213 N. E. 2d 659 (1965), *cert. denied,* 383 U. S. 863, 86 S. Ct. 1235 (1966). Although the constitutional validity of state statutes authorizing temporary stops and examinations of individuals for weapons has been upheld, *Terry v. Ohio,* 392 U. S. 1, 88 S. Ct. 1868 (1968), stringent limitations have been placed upon the exercise of such powers. *Sibron v. New York,* 392 U. S. 40, 88 S. Ct. 1889 (1968). No case has upheld such an action by officers acting without express statutory authorization. Indeed, in *Sibron, supra,* the New York Court of Appeals upheld the constitutionality of the search there because it was authorized by statute, a fact noted by the Supreme Court in its opinion. *Id.* at 44 and 1893; *People v. Sibron,* 18 N. Y. 2d 603, 272 N. Y. S. 2d 374, 219 N. E. 2d 196 (1966). In *Terry,* it was suggested that "in the absence of state authority, policemen have no right to 'pat down' the outer-clothing of passers-by, or of persons to whom they address casual questions, than does any other citizen." *Terry v. Ohio,* 392 U. S. 1, 32, 88 S. Ct. 1868, 1885 (1968) (Harlan, J. concurring).

The refusal of the Supreme Court to countenance unauthorized wiretapping, *Katz v. United States,* 389 U. S. 347, 88 S. Ct. 507 (1967), has resulted in the passage of legislation authorizing such activities in national security investigations, 18 U. S. C. § 2511(3), and otherwise strictly limiting police authorities in their use of electronic surveillance devices. 18 U. S. C. §§ 2511(1), 2515-2519. See also *Alderman v. United States,* — U. S. —, 89 S. Ct. 961 (1969). Other infringements upon the freedoms of individuals without statutory authorization have also been rejected. See, *e.g., Union Pacific Ry. Co. v. Botsford,* 141 U. S. 250, 251, 11 S. Ct. 1000, 1001 (1891) (district court order for physical examination of party in civil action held invalid in absence of authorization; "No right is held more sacred, or is more commonly guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.").

No statutory authorization provides the basis for the decision of the Special Agent to exclude the defendant's accountant from his interviews with the defendant. Basically, a Special Agent of the IRS is a peace officer, and in the exercise of his duties is subject to the same limitations imposed upon all peace officers by the Constitution and federal statutes. The only Congressional action which treats of the powers of IRS officers is section 7608 of title 26 of the United States Code. The relevant functions of the ordinary Special Agent, not charged with enforcement of the narcotics tax laws, are threefold: to search and arrest pursuant to warrant and issue subpoenas and summonses; to arrest without warrants in certain circumstances; and to seize property forfeitable under the internal revenue laws. In the absence of applicable federal statutes, the extent of an agent's authority depends largely upon the statute or common law of the state. *Miller v. United States,* 357 U. S. 301, 78 S. Ct. 1190 (1958); *United States v. Di Re,* 332 U. S. 581, 68 S. Ct. 222 (1948). The duties of an agent include the powers to investigate and arrest. *United States v. Viale,* 312 F. 2d 595 (2d Cir. 1963), *cert. denied,* 373 U. S. 903, 83 S. Ct. 1291 (1964); *see* ALI, Model Code of Pre-Arraignment Procedure, §§ 2.01, 2.02, 3.01, and comment at 28-29, 54-66 (Tent. Draft No. 2, 1969). But, as noted above, the extent to which the common law limited these powers was great. These limitations certainly continue in the absence of state statutes. We have found no such statute.

The only conclusion that may be reached is that such an invasion of the individual's right to determine the conditions under which he will deal with agents of the federal government when under criminal investigation as is present here can be considered to be nothing less than a denial of liberty without due process of law. When an agent of the IRS or any administrative body acts on his own authority to set the limits of an individual's power to associate, this constitutes an invasion of the liberties guaranteed by the due process clause. "Liberty" and "due process" do not mean solely freedom from imprisonment or mere procedural regu-

larity after a conviction has been assured by extra-judicial activity. R. Pound, The Development of Constitutional Gaurantees of Liberty 109 (1957). An invasion of these other liberties, underlying and pre-existing the Constitution, must also be condemned, and the fruits of such an invasion must be excluded.

This conclusion is reinforced by a consideration of the functions of accountants retained by people seeking aid in their relationship with tax collectors. To many laymen like the defendant, an account is relied upon for legal advice and protection. Suits involving unauthorized practice of law and claimed accountant-client privileges as well as the policies of the IRS itself are indicia of this dependence. See, *e.g.*, *In Re Bercu*, 273 App. Div. 524, 78 N. Y. S. 2d 209 (1st Dep't 1948), *aff'd*, 299 N. Y. 728, 87 N. E. 2d 451 (1949); *Lowe v. Presley*, 86 Ga. App. 328, 71 S. E. 2d 730 (1952); *State Bar Ass'n of Connecticut v. Connecticut Bank & Trust Co.*, 146 Conn. 536, 153 A. 2d 453 (1959); *Falsone v. United States* [53-2 USTC ¶ 9467], 205 F. 2d 734 (5th Cir. 1953); *Baird v. Koerner* [60-2 USTC ¶ 9527], 279 F. 2d 623 (9th Cir. 1960); *United States v. Kovel* [62-1 USTC ¶ 9111], 296 F. 2d 918 (2d Cir. 1961); 31 C. F. R. §§ 10.3, 10.7 (1969). *Cf.* Proposed Rules of Evidence for the United States District Courts and Magistrates, Rule 3-02(a)(2) (1969).

While in this circuit at least, a prospective defendant not in custody and in non-official surroundings needs no *Miranda* warning before being questioned, *United States v. Squeri* [68-2 USTC ¶ 9493], 398 F. 2d 785 (2d Cir. 1968), he cannot be told that he has no right to counsel or other witnesses to the interrogation. See *Haynes v. Washington*, 373 U. S. 503, 83 S. Ct. 1336 (1963). For a government official to mouth in a ritualistic way part of the warning about the right to counsel while excluding the person relied upon as counsel, is, in effect, to reverse the meaning of the words used. The communication was the act not the language. It said clearly: "I am a government official with badge and identification. Tell me and give me what I want. Do not have your adviser with you."

From the course of the investigation conducted by Special Agent Trager, outlined above, it is clear that a deliberate effort was made by the IRS to elicit information from the defendant while leaving him in ignorance of the status of the case. The defendant was lulled into false sense of security, and, at the same time, he was denied full assistance of his accountant when such assistance would have been most helpful to him in awakening him to his danger of prosecution. The numerous factors leading to this conclusion need not be rehearsed; suffice it to say that the defendant, a poorly educated individual laboring under the delusion that he was merely negotiating a civil claim, was continued in this belief by the actions of the IRS agents. At the time of his second meeting with the defendant, Agent Trager had almost made up his mind to recommend prosecution, yet, he continued the investigation on the same informal basis as he had in conducting the earlier interrogation more than two years before. Since the conduct of the investigators intentially lulled the defendant into a false sense of security, misleading him in his estimate of the intentions of the IRS, the motion to suppress must also be granted on this ground insofar as all documents and statements obtained at the second conference are concerned. *United States v. Prudden* [69-2 USTC ¶ 9513], — F. Supp. — (M. D. Fla. 1969); *United States v. Lipshitz* [55-1 USTC ¶ 9264], 132 F. Supp. 519 (E. D. N. Y. 1955); *Goodman v. United States* [68-1 USTC ¶ 9385], 285 F. Supp. 245 (C. D. Cal. 1968); see also *Gouled v. United States*, 255 U. S. 298, 305-06, 41 S. Ct. 261, 263-64 (1921); *United States v. Como*, 340 F. 2d 891 (2d Cir. 1965); *Alexander v. United States*, 390 F. 2d 101, 110 (5th Cir. 1969) ("Intimidation and deceit are not the norms of voluntarism. In order for the response to be free, the stimulus must be devoid of mendacity").

Both interviews of the defendant, from which his accountant-advisors were excluded, were in violation of the rights of the defendant guaranteed by the due process clause of the Fifth Amendment. When a federal official's interference with the right of free association takes the form of limiting the ability of a criminal suspect to consult with, and be accompanied by, a person upon whom he relies for advice and protection, he gravely transgresses. Evidence obtained as a result of such breach of national policy must be excluded. See *Jackson v. Denno*, 378 U. S. 368, 387, n. 14, 84 S. Ct. 1774, 1786, n. 14 (1964); *Weeks v. United States*, 232 U. S. 383, 34 S. Ct. 341 (1914); *Boyd v. United States*, 116 U. S. 616, 6 S. Ct. 524 (1886); *United States v. Sohnen*, 298 F. Supp. 51, 55-56 (E. D. N. Y. 1969), and cases cited.

For these reasons, the motion to suppress must be granted.

So ordered.

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The Minneapolis Tribune

MINNEAPOLIS, MINN., SUNDAY, NOVEMBER 23, 1969

Army

Again on Trial in Massacre Probe

From The Tribune's Wire Services

Shaken by the Green Beret case, the Army is again on trial before U.S. and world public opinion because of charges that some of its soldiers committed mass murder of civilians in Vietnam.

The Army has weathered some rough times on and off the battlefield in its 194-year history, but rarely has the country's confidence in its conduct and integrity been so buffeted as in recent months.

Military and civilian officials fear the alleged slaughter of somewhere between 100 and 567 Vietnamese civilian men, women and children in the Viet Cong-controlled hamlet of Song My, in March 1968, may intensify "get-the-troops-home-now" pressure and antimilitary sentiment in this country.

"In the present climate, people are liable to become convinced that all American soldiers go around killing innocent civilians," said one worried general who led a division in Vietnam.



Haeberle Ridenhour Bernhardt West

All claim to have witnessed or have information about the alleged slayings

To the obvious surprise of the Pentagon, the South Vietnamese Defense Ministry in a statement Friday said reports of a wholesale killing of Vietnamese civilians were completely inaccurate.

It said only about 20 civilians were killed in the action in quesstion and they were victims of tactical air strikes and supporting artillery fire during the fighting.

U.S. officials declined to comment on the Saigon report.

The Viet Cong delegation at the Paris peace talks has lost no time seizing on the reported massacre as a propaganda wedge to put the United States at a negotiating disadvantage. The Viet Cong claim the Americans are guilty of thousands of atrocities.

Robert E. Jordan III, the general counsel for the Army, said at a Pentagon news conference Friday that about nine persons who are currently in the Army and about 15 former servicemen are being investigated in connection with the alleged massacre.

Two other soldiers have already been charged in the case.

Jordan also said that six Army criminal investigators were working full-time on the case in this country, in addition to a staff of investigators working on the case full-time in Vietnam.

The Army has charged 1st Lt. William L. Calley Jr., 26, of Waynesville, N.C., with "the premeditated murder of approximately 100 Vietnamese civilians." Calley, holder of the Bronze Star and Purple Heart medals, was charged Sept. 5, a day before he was due to be released from active service.

Earlier this month, the Army also charged Staff Sgt. David Mitchell, 29, of St. Francisville, La., with assault with intent to commit murder. Mitchell was a member of Calley's platoon in Vietnam, part of C Company, 1st Battalion, 11th Light Infantry Brigade.

A copyrighted report in the Chicago Sun-Times Saturday quoted Charles A. West, a former serviceman, as saying he participated in an attack on the South Vietnamese village of Song My and his unit was ordered to destroy the village and everything in it.

The newspaper quoted West, 23, as saying that some of his fellow soldiers "went crazy" and slaughtered wounded villagers, including women and children. He said he did not see Calley shoot anyone.

"I never saw him do it, and I'll say that in court," the Sun-Times quoted West.

Calley's present commanding general at Ft. Benning, Ga., is expected to decide soon whether the lieutenant will be tried by court-martial.

The investigation of Mitchell's case is still going on. He is at Ft. Hood, Texas.

So far, the Army has done little to allay growing public alarm and revulsion over the reported blood rampage of American infantrymen at Song My, a string of six hamlets designoted My Lai Nos. 1-6.

Hardly conducive to public confidence is the Army's acknowledgement that 11th Brigade officers, in April 1968, investigated allegations involving that operation but as the Army put it, "developed nothing to indicate any disciplinary action or to warrant further investigation."

Informants said that a field check was undertaken after Viet Cong propaganda leaflets claimed Americans were killing civilians.

It wasn't until a year later, when a discharged soldier reported his suspicions in letters to some 30 officials, that the Army began the major probe that is still going on.

Over-all, the Army has furnished few details to the public, contending it is trying to protect the legal rights of the accused.

It was only after soldiers, former soldiers and Vietnamese civilians gave reporters their versions — claiming up to 567 slayings — that the Army reported officially there were possibly 100 victims and that the additional 24 U.S. soldiers and former soldiers are under investigatino. Calley's platoon numbered about 30 to 35 men.

Calley himself has refused interviews, as has Capt. Ernest L. Medina, 33, a native of Springer, N.M., who commanded C Company.

There is general agreement that the hanlet had been controlled by the Viet Cong before the March 1968 incident and that the Viet Cong regained control of the area after the operation in question.

Shooting
Continue don Page 12A

Army informants and some of those soldiers and ex-soldiers who spoke with reporters also generally agree that units in Task Force Barker, of which C Company was part, had taken casualties from mines and booby traps during a sweep of the Batangan Peninsula, northeast of the city of Quang Ngai in the northern most I Corps of South Vietnam.

"Charlie" Company also had come under sniping fire from Song My. The village, which stood some nine miles northeast of Quang Ngai, was burned during the operation, informants said, and its surviving population moved about 3 miles away where some of them have been interviewed by Army criminal investigation division agents.



BOY SAYS HE ESCAPED
Hid under bodies of victims



ROBERT E. JORDAN III
Army general counsel

According to some accounts the men in Charlie Company were upset emotionally, particularly by the death of a popular sergeant before the foray against Son My, called "Pinkville" by the GIs.

The first detailed account of the alleged massacre was spelled out by Ronald Lee Ridenhour, 23, a former soldier attached to headquarters of the 11th Brigade during the episode. Ridenhour now is a student at Claremont Mens College, Pomona, Calif.

In a letter dated last March 29 and addressed to "The Congress of the United States," Ridenhour told of suspicions that "something rather dark and bloody did indeed occur sometime in March 1968" in a Vietnamese village.

He asked for a congressional investigation, and quoted eyewitness reports given to him by five soldiers.

The letter told this story:

"One morning in the latter part of March, Task Force Barker moved out from its fire base headed for 'Pinkville.' Its mission: Destroy the trouble spot and all its inhabitants.

"When (a witness) told me this I didn't quite believe that what he was telling me was true, but he assured me that it was and went on to describe what had happened.

"The other two companies that made up Task Force Barker cordoned off the village so that 'Charlie' Company could move through to destroy the structures and kill the inhabitants. Any villagers who ran from Charlie Company were stopped by the encircling companies.

"I asked . . . several times if all the people were killed. He said that he thought they were, men, women and children.

Ridenhour said he was told that one soldier "put a burst" of rifle fire into a child and that "it was so bad . . . that one of the men . . . shot himself in the foot in order to be medivac-d out of the area so that he would not have to participate in the slaughter."

Ridenhour wrote he also was told that the people of Song My were rounded up into groups, and that three such groups, totaling about 90 people in all, were machine-gunned.

The former soldier said that if his informants could be believed "then not only had Charlie Company received orders to slaughter all the inhabitants of the village, but those orders had come" from up the chain of command.

An Army spokesman said Lt. Col. Frank A. Barker Jr., who was the task force commander, was "clean as a whistle." Barker was killed in action about three months after the Song My incident.

Another soldier, still in the Army, corroborated Ridenhour's charges.

In a telephone interview Friday, Spec. 4 William F. Doherty of Boston, Mass., said he saw the bodies of "probably more than 100" villagers when his platoon passed through the village. He said women and children were among those who had been killed.

Doherty, who is now stationed at Fort Hood, Texas, said that he had just been summoned to talk with an investigating officer.

Sgt. Michael Bernhardt, 23, Hempstead, N.Y., said last week he saw soldiers kill hundreds of South Vietnamese men, women and children at Song My, including one group shot "at point blank range."

Saying he did not do any of the killing, Bernhardt told an interviewer that most of Charlie Company did kill. The understrengthened company numbered about 60 or 70 men, he said.

The sergeant, now at Ft. Dix, N.J., said he did not recall seeing either Calley or Mitchell in the village during the alleged mass slaying and that he did not see either one do any shooting.

Michael B. Terry, 22, of Orem, Utah, told The Associated Press he was in a clean-up platoon that followed Calley's outfit into the Song My area. Terry now is a student at Brigham Young University.

According to Terry, his comrades in Charlie Company were bitter because one-third of the unit had been killed in the previous four months.

A former Army combat photographer, Ronald L. Haeberle, 28, of Cleveland, furnished the Cleveland Plain Dealer with photographs purporting to show the bodies of slain South Vietnamese civilians gunned down by American soldiers in the Song My incident.

The Army has refused to release any photographs, contending that any pictures it has constitute possible evidence. Army informants claimed that the criminal investigation division has no pictures "of people actually shooting or actually killing."

In a copyrighted report accompanying the Haeberle pictures, the one-time Army photographer was quoted by the Plain Dealer as saying:

"There were some South Vietnamese people, maybe 15 of them, women and children included, walking on a dirt road maybe 100 yards away. All of a sudden the GIs just opened up with M16s. Besides the M16 fire, they were shooting at the people with M79 grenade launchers. I couldn't believe what I was seeing.

George W. Latimer, Calley's lawyer and a former judge on the Court of Military Appeals, contends that Calley is innocent. "Anyone familiar with the military knows it doesn't make sense to hold a platoon leader accountable for what happened in this situation," Latimer said.



LT. WILLIAM CALLEY JR.
Charged with murder of 100

The Miami Herald

Wednesday, November 19, 1969 No. 354 Member of The Inter-American Press Association

World Money Ring Makes Killing in Saigon

Senate Told How Cash Is Traded On Black Market

WASHINGTON — (AP) — A billion-dollar international racket in illegal money is centered in Saigon and has ties in banking circles throughout the world, a Senate subcommittee was told Tuesday.



Robert Parker
. . . details racket

Robert R. Parker, a U.S. Embassy staff member in Saigon, told the Senate investigations subcommittee the black market in money reaches more than $150 million a year in Vietnam.

Parker is chairman of the embassy's irregular practices committee, a group of embassy personnel set up by Ambassador Ellsworth Bunker in an effort to cut down black market activities.

Heading the international money racket, he said is a criminal syndicate of Muslim money changers from South India.

It operates through men of several nationalities from wealthy business to gangs of GI deserters, he added.

Parker described an elaborate transfer system by which dollars and South Vietnamese piasters are funneled into legitimate banking channels. He said that one common payee used by the ring was the "Prysumeen" account at the Manufacturers Hanover Trust in New York City.

"In 1968, traffic in this account was in excess of $1.5 million a month," Parker testified. He said Vietnamese, Koreans, Chinese and Americans — both soldiers and civilians — are involved in the currency manipulation scheme.

"AT THE TOP of the black market hierarchy, in a kind of executive position, are a small group of well organized Asian-Indians," Parker said. "Most of these are Muslims from the Madras area of South India.

"These men — and their elaborate and obscure family ties — constitute a syndicate in the most criminal and sinister sense of the word," Parker said.

Sen. Abraham A. Ribicoff (D., Conn.), chairman of the investigations subcommittee, said the currency manipulation racket is seriously hindering attempts to stabilize the South Vietnamese economy.

Ribicoff said other witnesses will detail the investigation of 13 bank accounts through which $360 million in illicit funds were allegedly funneled during the past five years.

"THIS IS ONE of the most sordid stories of how profiteers of tragedy undermine a war ravaged country," said Sen. Charles Percy (D. Ill).

Parker said the racket is based on the fact that it is impossible legally to transfer large amounts in South Vietnamese piasters out of the country. He said the money changers have the connections to make the transfers, and profit because of the large difference between the official and illegal exchange rates.

"If John Doe, an American living in Saigon, transferred $1,500 from his bank in Chicago in 1967 to the "Prysumeen" account in New York, the money changer might pay Mr. Doe as much as the legal equivalent of $2,200 in piasters," Parker said.

AND HE SAID that because the syndicate is so highly organized it has been nearly impossible for South Vietnamese authorities to put it out of business.

The racket would not be possible, he said, if Americans in South Vietnam did not write the checks or effect the bank transfers.

He said many different types of American citizens are engaged in the racket but he said they also include U.S. military deserters who sell their citizenship and contacts with the military for a price.

"It is one of many tragedies, brought on by this war, that this community of deserters exists in Saigon and other cities," Parker said.

"But it is there. It is able to exist in large measure because the black market suports it."

Vietnam Is Brutalizing America

By ANTHONY LEWIS
New York Times Service

London.

ONE reason given by President Nixon for keeping American troops in Vietnam until an unspecified day when the Thieu-Ky government can carry on alone is that otherwise, "our allies would lose confidence in America."

After the terrible news of last week, the proposition sounds like mockery. The reports of mass murder by American soldiers have been devastating in their effect on the British, long our closest ally.

Like anyone whose trust in a friend's honor is in doubt, they are bewildered. They meet Americans and ask: why? how?

EVEN before last week's allegations, our involvement in Vietnam was probably on balance lessening British confidence in the United States. The government gave official support, but privately many informed Britons expressed their urgent wish that the United States get out of Vietnam.

Their reason was not, mainly, sympathy for the Vietnamese; it was concern about the war's effect on the United States. They feared that disillusion with Vietnam might turn us to isolation.

More important, there was anxiety about the impact of the war on American society — the brutalization of young men, the bitter division of opinion, the signs of moral obtuseness.

THUS the affair of the Green Berets was deeply disturbing to British civil servants and politicians. They were not surprised at one murder in a war. What shocked them was President Nixon's decision to quash the prosecution of the suspected murderers in the interest of intelligence secrecy — and the evident American character that changed a man as devoted to the United States as Lord Harlech from a supporter to a resolute critic of U.S. policy in Vietnam. And David Harlech speaks from hard experience; as British ambassador and friend he stood close to President Kennedy in the Cuban missile crisis.

A WEEK ago, the Observer devoted four pages to condensation of Daniel Lang's horrifying New Yorker article, now a book, on how four American soldiers on patrol kidnapped, raped and killed a Vietnamese girl. Even at that the editors, perhaps making clear they were not anti-American, said their purpose was to show the effect of war "on any men and any country."

And then came the stories of American soldiers shooting down hundreds of unarmed old men, women and children in Songmy village.

In London memories of the Nazis were inevitably evoked. Songmy was compared with Lidice, the Czech village destroyed by the Germans in a 1942 rerisal. But the Nazis spared the women and children.

ONE OF the most awful visual images of the Nazis was that of a storm trooper leading a child who could barely walk into the gas chambers. It was the description of the children at Songmy that was most heartrending.

Sgt. Michael Bernhardt, in his account, spoke of a boy 3 or 4 years old holding a wounded arm while blood trickled between his fingers. "He just stood there with big eyes staring around, like he didn't understand; he didn't believe what was happening. Then the captain's radio operator put a burst of M16 fire into him."

Ronald Haeberle, the photographer, said he saw "two small children, one only 4 or 5 years old. A guy with an M16 rifle fired at the first boy. The older boy fell over to protect him . . . then they fired six more shots and just left them lie."

If that is even partially true, how can America ever be the same?

AND EVEN then the British friends of America found some hope. For unlike the Germans, they said, we had pointed to our own sin; it had taken 20 months, and the persistent effort of just one or two men, but now the conscience of America was aroused and the guilty would surely be punished.

But punishment cannot be so sure. In a guerrilla war with objectives unclear to those who fight it, there is bound to be moral ambiguity.

When a president takes us into war by stealth, when he orders more bombs dropped on a small agricultural country than fell on Europe in World War II, will the law surely overrule a soldier's plea that he was only following orders when he shot civilians?

An Englishman who greatly admires the United States tried recently to articulate his feelings about Vietnam. Finally he said:

"It is what you are doing to yourselves that matters."

Petitioner's Exhibit 51

STATE OF MINNESOTA 566224 DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

FAYE V. PETERSON,

PLAINTIFF,

AGAINST, JUDGMENT AND DECREE

PALMER A. PETERSON and AUGUST 19, 1964
PAUL L. HALVERSON
INDIVIDUALLY AND AS TRUSTEE,

DEFENDANTS.

The above entitled action having been regularly placed upon the calendar of the above named Court for the September A. D. 1962 General Term thereof, came on for trial before the Court on the 18th day of December, A. D. 1962; and the Court, after hearing the evidence adduced at said trial and being fully advised in the premises, did on the 17th day of August, 1964, duly make and file its findings and order for judgment herein.

Now, pursuant to said order and on motion of Messrs. JAMES P. RORRIS and ROBERT W. DYGERT, attorneys for the plaintiff, it is hereby adjudged and decreed:

1. That the bonds of matrimony heretofore existing between plaintiff and defendant be, and the same are hereby dissolved, and said parties absolutely divorced from each other.

2. That the permanent custody of the minor children of the parties, PALMER BRENT PETERSON, SHERI FAYE PETERSON and BRADFORD LEE PETERSON be, and hereby is granted to the plaintiff with reasonable visitation rights in defendant PALMER A. PETERSON, all subject to supervision of the Hennepin County Department of Court Services.

3. That defendant, PALMER A. PETERSON pay to plaintiff the sum of Three Hundred Fifty ($350.00) Dollars per month as permanent alimony.

4. That the Defendant, PALMER A. PETERSON pay to plaintiff as reasonable support for the children of plaintiff and defendant PALMER A. PETERSON the sum of Five Hundred ($500.00) Dollars per month.

5. That the plaintiff hereby have all right, title and interest in and to the homestead located at 5117 Luverne Avenue, Minneapolis, Minnesota, free and clear of any claim or interest therein by defendant PALMER A. PETERSON, the legal description as follows, to-wit:

> Lot 22, Block 3, Tarrymore Park, according to the plat on file and of record in the office of the Registrar of Titles, Hennepin County.

Respondent's Ex W 42174
2/12/70 ens

6. That the plaintiff hereby have title to the household goods and furnishings located in said house, free and clear of any claim or interest therein by said defendant, PALMER A. PETERSON.

7. That plaintiff hereby have the title to the 1950 Oldsmobile, and said defendant, PALMER A. PETERSON hereby have title to the 1962 Buick automobile.

8. That the defendant, PALMER A. PETERSON keep in full force and effect the two life insurance policies mentioned hereinabove, namely the Aid Association for Lutherans policy and the National Service Life Insurance policy; said defendant, PALMER A. PETERSON shall not revoke, terminate, modify or otherwise adversely affect the rights of plaintiff or the children of the parties under the trust created under the insurance trust agreement dated August 22, 1958.

9. That said defendant, PALMER A. PETERSON maintain in full force and effect the health and accident policy hereinabove mentioned.

10. That the plaintiff have and recover of the defendant, PALMER A. PETERSON, the sum of Three Thousand Three Hundred Ninety-five ($3,395.00.) Dollars.

11. That with respect to the accounts receivable as of December 31, 1963, in connection with defendant PALMER A. PETERSON's practice of medicine, the Court reserves jurisdiction to make a disposition of the amounts collected thereon, either by way of an allowance of additional alimony to plaintiff and additional support money for the children of the parties or by way of an award of property to plaintiff, or both.

12. That the Court reserves jurisdiction to make further orders concerning any other property which defendant PALMER A. PETERSON may own which was not proven at the trial of this matter.

13. That the Court makes no findings of fact, conclusions of law or order, but reserves jurisdiction, with respect to the following:

A. That the validity of the trust agreement entered into by defendant, PALMER A. PETERSON and defendant PAUL L. HALVERSON, mentioned hereinabove, and whether said trust agreement was executed with an intent to defraud plaintiff of her rights in the corpus of the trust created under said agreement.

B. The allowance of reasonable attorney fees for plaintiff.

STATE OF MINNESOTA, COUNTY OF HENNEPIN
Certified to be a true and correct copy of the original on file and of record in my office.
JAN - 6 1970
GERALD R. NELSON, Clerk of District Court
BY B Arthur Deputy

BY THE COURT:
PHILIP C. SCHMIDT
Clerk of District Court

By B Arthur Deputy

$ MYERS' FINANCE REVIEW $
1940 1969

903 LANCASTER BLDG., CALGARY 2, ALBERTA, CANADA TELEPHONE (403) 269-1103

No. 67 LET THE TRUTH BE TOLD May 27, 1969

This letter goes to all U.S. Senators and House of Reps; and all members of the Canadian House of Commons -- compliments of MFR. I consider this to be the biggest scoop I have ever had, or even seen in a lifetime of journalism. Lay you a silver dollar it will not be published by the W.S.J. or the N.Y.T.

THE MINNESOTA BOMBSHELL

U.S. COURT RULES

FEDERAL RESERVE NOTES ARE NOT MONEY

Under a TRIAL BY JURY a Federal Reserve Bank has foreclosed on a mortgage, but was unable to obtain possession of the property. The mortgage is null and void.

RESULT -- All mortgage paper held as a result of the creation of credit (money) by Federal Reserve banks are void. Bonds arbitrarily created by bookkeeping entries also are without legal consideration -- also null and void. As this works its way back up the system the results are beyond comprehension.



A U.S. court has refused to accept Federal Reserve notes as payment for fees for an appeal by a Federal Reserve Bank -- Declared the notes NOT MONEY under the constitution. Appeal denied.

RESULT -- The Federal Reserve Act #432 is unconstitutional -- null and void -- and U.S. paper currency is void.

Unless the Minnesota court is forced to break precedent and reopen the case, the reverberations will be interesting.

* * *

THE STORY

The story -- like all great stories -- is simple. On May of 1964 Jerome Daly, an attorney in Savage, Minnesota received $14,000, gave the bank a note, and secured the note with a mortgage on real property in Scott County, Minnesota. In Spring 1967 the mortgagee being in arrears $476, the bank foreclosed by advertisement and bought the property in at a sheriff's sale June 26, 1967. The mortgagee did not pay within the alloted 12 month period following the sale and so the bank brought action for the possession of the property.

> A confrontation exists between the Constitution of the United States and the Federal Reserve System. The confrontation crystallized when all gold and silver backing was withdrawn from U.S. money. The constitution forbids the settling of debts with fiat money. Continuation of fiat money nullifies the constitution of the United States of America.

Two justices were disqualified by affidavit of prejudice; the first by the mortgagee, the second by the bank. A third justice refused to have anything to do with the case. So it went to trial by jury before Martin V. Mahoney, Justice of the Peace, Credit River Township, Scott County, Minnesota.

On December 7th, 1968 the jury found both the note and the mortgage to be void for lack of a lawful consideration given by the bank. And the U.S. constitution plainly states that there must be a lawful consideration.

The bank applied for appeal to the big court -- the DISTRICT Court of Minnesota, and offered two $1 bills which the State of Minnesota turned over to Justice Mahoney as the required fee for the appeal. Justice Mahoney refused to accept the bills because they could not be converted as required under the U.S. constitution. Mahoney invited the bank to a hearing to "show cause" how they could consider the $1 bills as being money. The bank did not appear at this hearing. The appeal was denied. The time expired. Under the laws of the United States the case is closed.

THE JUDGMENT

The judgment was as straightforward as the story. Like all great judgments it was simple. In part it reads as follows:

"The issues tried to the jury were whether there was a lawful consideration... Mr. Morgan (president of the bank) admitted that all the money or credit which was used as a consideration was created upon their books, that this was standard banking

In the U.S. the constitution is SUPREME. The judiciary, the executive, and the Congress itself hold office only by virtue of and through the constitution. The first thing a new president swears is to UPHOLD THE CONSTITUTION -- not to change it, subvert it, evade it -- but to be the CHAMPION of the constitution. The Federal Reserve says that the fiat Federal Reserve notes must be accepted in settlement of debt. The constitution says "NO".

Respondents Ex CC 42174
2/13/70 lms

practice exercised by their bank in combination with the Federal Reserve Bank of Minneapolis...Further he (Mr. Morgan) knew of no United States Statute or Law that gave the plaintiff (the bank) the authority to do this.

"At 12:15 on December 7, 1968 the jury returned its unanimous verdict for the defendant.

"It is hereby ordered, adjudged and decreed:

(1) The plaintiff (the bank) is not entitled to recover possession of Lot 19 Fairview Beach...

(2) That because of failure of a lawful consideration the note and mortgage dated May 8, 1964 are null and void.

(3) The sheriff's sale of the above described premises held on June 26, 1967 is null and void, of no effect.

(4) That the plaintiff has no right, title or interest in said premises or lien thereon, as is above described."

The judgment was written on December 9, 1968 by Justice Martin V. Mahoney and followed by a memorandum:

"The bank admitted... that it did create the entire $14,000 in money or credit upon its own books by bookkeeping entry. That this was the consideration for the mortgage. The money and credit first came into existence when they created it. Mr. Morgan admitted that no United States Law or Statute existed which gave him the right to do this.

"Plaintiff's act of creating credit is not authorized by the constitution and laws of the United States, is unconstitutional and void, and is not a lawful consideration in the eyes of the law to support anything or upon which any lawful rights can be built.

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

"Note: It has never been doubted that a Note given on a consideration which is prohibited by law is void."

THE APPEAL

The bank then appealed the case to the District Court and offered two $1 Federal Reserve notes. Justice Mahoney wrote:

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

"U.S. Constitution Article 1 Section 10 provides 'No state shall make anything but gold and silver coin a tender in payment of debts.'

"These Federal Reserve notes are not lawful money within the contemplation of the constitution of the United States and are null and void. Further, the notes on their face are not redeemable in gold or silver coin nor is there a fund set aside anywhere for the redemption of said notes. The notes were without any lawful consideration and therefore void."

The court offered the plaintiff a full and complete hearing to present evidence why it considered that the Federal Reserve notes were lawful money. The defendant did not show up.

* * *

The defendant appealed to the District Court in the State of Minnesota, and the District Court ordered Justice Mahoney to appear to show cause why he should not file in the District Court a transcript of all the entries, etc. -- which he had refused to do.

In order to show cause Mahoney upon motion of Daly ordered a hearing for the purpose of making Findings of Fact and Conclusions of Law.

Citing the constitution of the United States Mahoney concluded 'This creation of money or credit upon the books of the bank constitutes the creation of fiat money by bookkeeping entry. The first time that money comes into existence is when they create it on their bank books. The banks create it out of nothing."

The Federal Reserve Bank of Minneapolis obtains Federal Reserve notes (your paper currency)... for the cost of printing of each note, which is less than 1¢. The Federal Reserve Bank must deposit with the Treasurer of the U.S. a like amount of bonds for the notes it receives. But the bonds are without lawful consideration too, as the Federal Reserve Bank created the money and credit upon their books by which they acquired the bond. With their bookkeeping creating credit National banks obtain these notes from the Federal Reserve Banks.

"The net effect of the entire transaction is that the Federal Reserve Bank... obtains Federal Reserve notes (your paper money) for the cost of printing only.

"The Federal Reserve notes in question are unlawful and void on the following grounds:

"(a) Said notes are fiat money...There is no mode provided for the enforcement of the payment of the notes in anything of value.

(b) "The notes are obviously not gold or silver coin.

(c) "The sole consideration paid for the notes is in the neighbourhood of 9/10ths of 1¢, and therefore, there is no lawful consideration behind said notes.

(d) ..."Title 31USC Section 462 which attempts to make Federal Reserve notes... a legal tender for all debts, public and private, is unconstitutional and void in contrary to Article 1 Section 10 of the constitution."

THE CONSTITUTION

Some other pertinent observations by Justice Mahoney were as follows:

Justice Mahoney claimed that the Federal Reserve money, even if backed by an Act of Congress is in violation. He says:

"An Act of Congress in violation of the constitution confers no rights or privileges. See 16AM JUR 2D ' Constitutional Law' Sections 177 through 179."

Also he cites 36AMER JUR on money. Section 9 ..."When the inability of a bank to redeem its notes is openly avowed they instantly lose their character as money and their circulation as currency ceases."

* * *

Of the activities of the Federal Reserve banks Justice Mahoney states:

"No state can make these notes a legal tender. Congress is incompetent to authorize a state to make these notes a legal tender.

"The constitution is the supreme law of the land. Section 432 (requiring creditors to accept paper money as lawful payment) is unconstitutional and void and I so hold.

"The two Federal Reserve notes are not a valid deposit of $2.00 with the Clerk of the District Court for the purpose of effecting an appeal from this court to the District Court.

"The common law requires a lawful consideration for any contract or note."

The Justice contended that whenever there is not a lawful consideration -- that is someone gave up something to make a contract -- there is no contract. Since the Federal Reserve Bank gave up nothing in creating $14,000, it had no contract. He says:

"The Federal Reserves notes are acquired through the use of unconstitutional statutes and fraud."

Justice Mahoney also branded as illegal the silver sandwich coins quoting the constitution to state that only Congress has the authority to coin money, regulate the value thereof, and fix the standard of weights and measures. The last time the Congress did this was on February 28, 1878 when it fixed the silver $ at 412.5 grains troy weight of silver. "The Congress cannot abdicate or delegate these legislative powers." Usurpation by the executive or his agents is void. Thus the silver clad coins are a debasing of the coin when once the standard has been fixed. They also are not a legal tender and are unconstitutional and void.

Justice Mahoney says that the question whether the U.S. government has the power to incorporate a bank is immaterial to the issue in any case.

"Such a corporation certainly cannot have any more rights than a natural person. The emission of bills of credit upon their books, without consideration and the issuance of Federal Reserve notes without consideration, to circulate as a legal tender for the payment of debts is not permitted, expressly or implied by the constitution of the United States."

THE MEANING

Regardless of what pro and con arguments there may be about jury theory, we have here a precedent of fact. A bank has a mortgage. The person who borrowed the money has not paid it back. The bank is not able to get it back. The bank is not able to seize the property. Why?

* * *

Because the bank gave up nothing in the first place except some ink. And this is against the constitution. And there is no law anywhere in the United States which gives the bank the right to make money out of nothing and then to seize a man's property because he does not pay that money back.

Can this be changed? Only by an ammendment to the constitution. This can be done as follows:

The ammendment which would allow fiat money and which would allow people to take over rights without giving up anything is in its face ridiculous. But even if it were not, it would have to pass both Houses of Congress by a two-thirds majority. After that it would have to receive the approval of the legislatures of three-quarters of the states of the United States of America.

Meanwhile the constitution of the United States is in direct conflict with Federal Reserve Law.

If you have a rule book, and if someone can break a rule in the rule book for the convenience and what seems to be common sense, then you must conclude that any other rule in the rule book can be broken -- and that you must throw the whole rule book away -- because there is not one rule which you can depend upon.

If this part of the constitution can be negated by the judiciary, by the executive, or by anyone, then any part of the constitution of the United States can be broken when deemed advisable by the judiciary or the executive.

If this part of the constitution can be breached there is no constitution in the United States of America. All is lip service. Guaranteed rights, privileges, and freedoms are a forgotten dream.

Mr. Nixon and the judiciary have sworn to UPHOLD the constitution. Let's see if they will.

DISTRIBUTION

Besides the legislators already mentioned, this letter is going out to the following:

IN CANADA -- Prime Minister Trudeau, Foreign Min. Sharpe, Fin. Min. Benson -- to the financial editors of the Calgary Albertan, Toronto Globe and Mail, Financial Post, Toronto Star, Montreal Gazette, Ottawa Citizen, Winnipeg Free Press, Vancouver Sun, and others.

IN THE U.S. -- Financial editors of the Wall Street Journal, New York Times, Time Magazine, U.S. News & World Report, Newsweek, Readers Digest, Business Week, Los Angeles Times, San Francisco Chronicle, Seattle Post, Denver Post, Washington Post, Houston Chronicle, Chicago Tribune. Secretary Kennedy, McChesney Martin, Jr.

ABROAD -- It goes to Rt. Hon. Harold Wilson, Edward Heath, Enoch Powell, and the finance ministers Strauss of Germany, Belgium, Netherlands, Italy, France. To Blessing of the Bundesbank and to the presidents of the Swiss Big Three -- Swiss Credit, Union and Swiss Bank Corp. It goes to S.A. Finance Minister Diederichs and to the financial editors of London Financial Times, La Monde and N.Y. Herald Tribune in Paris.

* * *

For a full reproduction of the judgment, Findings of Fact, Precedent, etc. these are contained in a publication called The Daly Eagle, Savage,Minnesota, at $2.00 per copy. This information is offered without either approval or disapproval by the Daly Eagle.

THE BIG PICTURE

If the banks cannot collect real property on their mortgages, their mortgage paper becomes worthless. However, their obligations to their depositors remain the same. What happens to your cash money deposited with these banks?

The question is too big for me and I leave it as an exercise for your imagination.

If you don't have to accept Federal Reserve notes in payment of debt -- and the constitution says you don't -- and if you demand gold or silver, how many debts will be paid? Can you demand real property?

I don't know any of these answers. But I know that the Federal Reserve law came into confrontation with the constitution when Johnson and Fowler persuaded Congress to take all backing from behind the American $ so that gold could be paid out to foreigners.

THAT MADE U.S. MONEY ILLEGAL AND THAT IS WHY JEROME DALY STILL HAS HIS PROPERTY IN MINNESOTA AND THE BANK CANNOT COLLECT IT.

Does this mean you don't have to pay your mortgage? Again, I don't know. One man didn't.

The thing for you to recognize is that the U.S. money system is in DEEP, DEEP trouble.

SILVER-Going-Going-GONE

In 1941 the U.S. Treasury had 3000 mm oz.
In 1961 the U.S. Treasury had 1900 mm oz.
In 1969 the U.S. Treasury has 1 mm oz? NO.
One-sixth of 1 mm oz.
Last year U.S. industry used 145 mm oz. U.S.

produced 35 mm oz. Did that mean imports of 110 mm oz? It did not. The U.S. was a net exporter.

The U.S. exported the entire 35 mm oz. it produced. It exported 20 mm oz. besides that; and the entire 145 mm oz. used by industry came out of the shrinking Treasury storehouse.

Today with approximately NOTHING left the sales go on. Indeed they are accelerating. Because now coinage can be melted into bars and shipped out of the country.

In 1968 net silver export was about equal to the net export of the previous three years combined. Now the Treasury has thrown open its meagre resources for the world to bid on.

YET the U.S. Navy must be rebuilt as a nuclear fleet which means strategic use of a small mountain of silver.

The world uses 200 mm oz. more each year than it produces. There is NO storehouse of silver anywhere.

THE SILVER PRICE

Handy & Harman last week estimated publicly that the break even point for coinage holders -- considering transporation, refining, etc. -- would be $1.65 to $1.75 per oz. Recognizing the source as the greatest of all silver bears it seems reasonable to accept this price range as an absolute FLOOR. One might quite reasonably call $1.75 the absolute floor.

This confirms my opinion expressed in the last month or so that we are at the bottom of the silver market and that there is really no foreseeable circumstances under which we can decline from the $1.70 to the $1.80 range. People don't sell to break even.

THEREFORE it seems to me that the downside risk on silver from here on is nil and the upside potential is unknown, unlimited, and in the wide blue yonder.

If the constitution is to hold -- or even if the question of the legality of paper money increases -- the scramble for silver and gold will be unimaginable. There are only a few ounces left of silver for each of the people of the U.S., and there is no gold.

When fiat money once comes into serious and widespread doubt we are at the eve of the end. The doubt at this time is serious but as yet is not widespread.

HERE WE STAND

In the first issue of MFR on March 3, 1967 I said: "The monetary systems of the world are directly over a time bomb -- which is at this moment ticking in Washington." I recommended heavy purchases of silver and predicted the Treasury would be forced to surrender the silver price of $1.29 per oz. It did surrender on May 17th.

In November of 1967 I stated "It is now time to buy gold and gold stocks." In March of 1968 the world gold pool fell apart.

This is the ONLY letter which has consistently recommended 100% investment in gold and silver and gold and silver stocks. Not 10%; not 20%; not 30% -- BUT 100%.

I am at a considerable loss of patience with those letters which continually point out the weakness of the monetary system, the strength of gold and the strength of silver, and predict a stock market debacle -- and at the same time recommend 20% investment in gold and silver.

Why should we take an 80% risk?

All of the silver stocks and all of the gold stocks combined come nowhere near total capital of one big company on the New York board -- IBM or GM. Imagine then the indescribable scramble for silver and gold if paper currency crumbles.

But 99% of the public still crowd the board rooms, still talk of a great new bull market, still see no danger in the paper money system. That is the reason why no big move has until this time developed in silver, gold or the stock market.

Your full appreciation of this letter will only arrive when the stampede begins. And you must imagine this stampede yourself because I am not going to try to envision it for you.

This letter has stood and still stands on this simple dictum: 100% investment in gold and silver and gold and silver stocks -- out of the stock market completely -- bonds may be good but may be worthless. A debt moratorium enters the picture for the first time as a possibility.

CASH

Until now I felt that the next best thing to gold and silver was cash. This case in Minnesota casts grave doubts. I do not know if cash will lose its value but I KNOW that gold and silver and gold and silver stocks will not.

You are privileged to be ahead of the big stampede. To avoid it you have to be early.

THE CURRENCIES

The U.S. suffered its greatest quarterly loss since 1950. France on May 14th suffered its second greatest weekly loss since the big strike in May 1968. The Lb. has seen no revival -- no remedy is in sight. Germany took in between $4 and $5 billion, and $3 billion has stayed tight.

The June 1st French election is near. Keisinger of Germany visited Japan last week. Strauss, economic minister, visited Harold Wilson.

S. Africa has disposed of nearly $150 million in gold -- whether on the free market or to monetary authorities we do not know.

The currencies are vulnerable to tidal events which will come in a series. If the upcoming tide in June does not sweep them away, the next one will.

This is enough for you to know. You can't expect to pinpoint timing of this historical development to the day or the week, and you can't expect an $80 a year letter to tell you which day you should buy silver so it will go up the next. Or an $8000 letter either.

I have told you to buy silver and gold. When you look back in a year or two whether you bought on the high or the low will be of little consequence. Whether you sold out of the stock market at D.J. 890 or 950 will be of little consequence.

What will count is that this was a matter of financial life or death. The big thing will be that you did it.

RECOMMENDATIONS

If you have not done so, by all means go and do it now.

OFFER

Resulting from new doubts about paper money MFR makes this offer -- 50% of the subscription price for any term if delivered in U.S. silver coinage.

C. V. Myers,
Editor.

PUBLISHED AND DISTRIBUTED BY CV RANCH LTD. (ALBERTA INCORPORATED 1965)
24 ISSUES $85. 12 ISSUES $50. TRIAL 5 ISSUES $20. 903 LANCASTER BUILDING, CALGARY 2, ALBERTA, CANADA

$ MYERS' FINANCE REVIEW $ 1969

RESPONDENT'S EXHIBIT N
2///70 42174

NUSCHELERSTRASSE 31, 8001 ZURICH, SWITZERLAND

No. 74 LET THE TRUTH BE TOLD September 5, 1969

(This letter goes to U.S. Senators, to 174 U.S. metropolitan newspapers, and the cabinets of Canada, England, Germany, Italy, Belgium and the Netherlands.)

OUTLOOK

SEPTEMBER 4, 1969

GROWING DANGER Russia will drop nuclear bomb on China's nuclear sites to forestall China from aiming missiles at Russian cities -- This is greatest war threat since 1939.

Second casualty would be stock market -- SDR'S -- bloated credit -- another run from paper into gold -- silver -- tangibility.

Continuing doubt about U.S. money as the "ILLEGALITY" of the Fed gets talked around the nation -- banks -- judges -- brokerage houses -- Congress itself. Only the news media are silent.

SDR'S -- due for adoption Sept. 29 -- Introduction of unbacked printing press money on a WORLD scale. Gold demand will gradually increase as INTANGIBILITY of all money looms into view.

GOLD PRICE being held now by S. Africa selling ALL its gold on free market and digging into its reserves for half as much again to supply mkt. at present level.

SILVER -- in a new uptrend -- Expect gradual rise, but subject to acceleration by "Eisenhower $" -- return to Canadian coinage -- heavy buying at GSA sales -- these unknowns represent background strength.

STOCK MARKET -- Rally is weak on low volume and unrelieved preponderance of new lows over new highs every single day -- Top of the rally is 837 or nearby.

THE QUIET CORNER

JUSTICE MAHONEY IS DEAD



He is dead. But his voice thunders louder than when he lived.

"Federal Reserve notes are not lawful money within the contemplation of the Constitution of the United States and are null and void. Further, the notes on their face are not redeemable in gold and silver coin nor is there a fund set aside anywhere for the redemption of said notes. The notes are without any lawful consideration and therefore void."

"Plaintiff's act of creating credit is not authorized by the Constitution and laws of the United States, -- is unconstitutional and void,-- and is not a lawful consideration..."

"Title 31USC Section 462 which attempts to make Federal Reserve notes... a legal tender for all debts.. is unconstitutional and void and contrary to Article I Section 10 of the Constitution."

"When the inability of a bank to redeem its notes is openly avowed they instantly lose their character as money and their circulation as currency ceases... Congress is incompetent to authorize a State to make these notes a legal tender."

Speaking of the Federal Reserve System... "Such a corporation certainly cannot have any more rights than a natural person. The emission of bills of credit upon their books, without consideration and the issuance of Federal Reserve notes without consideration, to circulate as a legal tender for the payment of debts is not permitted, expressly or implied by the Constitution of the United States."

"Justice was rendered completely and without denial, promptly and without delay, freely and without purchase, comfortable to the laws in this court on December 7, 1968."

Justice Mahoney is dead. But his voice will ring down through the halls of history as the first courageous legal voice on money; the first in 56 years to challenge and denounce the Federal Reserve System of the United States, where international bankers operate the screws. For in essence he said this:

Fiat money and the Constitution of the United States cannot co-exist. If the one lives, the other must die.

The day before the death of this independent patriot, the MINNEAPOLIS TRIBUNE to its eternal discredit applied the typical

CONTINUED ON PAGE 2, COLUMN 2

THE YELLOW PERIL

People are taking the Russo-Chinese dispute too lightly. The most serious threat of a big war since Hitler's dispute with the Sudetenland. Behind it all, there is a frightening reason.

THE CHINESE HAVE NOTHING TO LOSE -- and the Chinese have the H-bomb!

At first glance it appears that Chinese ambitions against Russia are a laugh. In truth, they are a nightmare. If China can produce a delivery system for even half a dozen bombs, the great Russian strength becomes handcuffed. Deliverable missiles, aimed at Moscow, Leningrad, Keiv and a few others, could in one night deal out MASSIVE death throughout the Soviet -- set it back 100 years.

At first thought one is tempted to respond: Look at the overwhelming nuclear superiority of Russia. Think again. How much use is it?

If Russia were to undertake to destroy China with H-bombs, the fallout would wipe out Russia. Chinese nuclear weapons cause cold shivers to play a tune on the Russian spine.

The clashes are occuring on the border of the province of China which contains its nuclear striking force. If this force -- this province -- could be wiped out now....? Before the missiles can be delivered to Russian cities....?

These border clashes are not taking place for the sake of exercise, or a little excitement before breakfast. They are the opening phases of world conflict.

If Russia were to invade she might well be sucked into a trap in the interior of China as fateful and disastrous as the Viet Nam trap is to the U.S.A.

If Russia does not go in and wipe out the nuclear striking force, it is almost certain to face nuclear blackmail.

China wants the natural resources, the wealth, the room. China doesn't care if 100 million -- 200 million are lost in this struggle. China has nothing to lose. H-bombs in the hands of such a people constitute a shuddering prospect.

(For further background see MFR #63, April 11, "The Changing Panorama", page 1, and "The Superpowers".)

TIMING

The most fearsome aspect of this potential conflict is the URGENCY. Unless Russia knocks out the Chinese nuclear strength before China has developed delivery -- it will be too late! How far are the Chinese along now? They have been consistently ahead of U.S. predictions. Are some of the launching sites nearly complete? Will it take a year?

The actions of the Russians lately, the urgency of their words: the fact that their best divisions are on the Chinese border; indicates that they may fear that Chinese delivery capability is imminent.

The logical prospect seems to be a Russian nuclear strike at the Chinese nuclear strength.

This would be presaged by a storm of propaganda -- whipping up the temper of the Russian people, just as Hitler's propaganda prepared the German people for a Holy war of prevention.

The signals are ominous.

If such a decision has been taken we should not be surprised to witness its execution in less than six months.

THE QUIET CORNER - CONTINUED FROM PAGE 1,

smear tactics of the orchestrated, big money press. It started out:

"A rural justice who holds court in a drafty barn has locked horns with the Minnesota Supreme Court.

"He uses a horseshoe for a gavel and sits on an inverted milk can in his bib and coveralls. Swallows fly in and out of the barn in profusion."

But do swallows prejudice justice? Is the wind corrupt? Is justice better served with fancy chair, long hair, and fat paycheques from the Federal Reserve? Is the Constitution of the United States only valid in marble halls under artificial light? Or was it drawn to be understood and dispensed for men who work 'neath the swallow's wings; in chilly drafts; perchance in barns?

Justice Mahoney was a simple man, and he read the great Constitution of the United States of America in direct and simple language; and he had sworn to uphold what it said. And that he did. That he did in the face of the power of all the billionaires in America; in the face of the fury of the Federal Reserve; in the face of the hypocrisy of the judiciary; in the face of the slander of the Minneapolis Tribune. He simply read the Constitution and he simply dispensed the law.

Have not indeed most great human truths sprung from simple men? Was there not another barn 1969 years ago? Was it drafty; and did the swallows fly? Would it have too been smeared by the Minneapolis Tribune? I think, for sure it would!

Justice Mahoney is dead. But in history he has only commenced to live!

* *

THE RESULTS OF SUCH A CONFLICT

Would the rest of the world be drawn in? Only recently the Russians advertised this danger. This may be the best reason for seeing it as solely a Russian danger.

Does it sound logical that the U.S. should jump into this war to protect Russia against China? To protect China against Russia?

Does it sound reasonable that European countries should pitch in on the side of either China or Russia in either nuclear or conventional slaughter? It does not sound reasonable to me.

Here would come the opportunity for the resurgiance of Europe, the reunification of Germany, the liberation of Czechoslovakia and Hungry, the breakup of the Russian Empire. Nevertheless, the end product of all this would be still to face THE YELLOW PERIL -- later.

That is much too far for us to try to foresee. It is enough to recognize this danger, to see it as a possible solution to the reunification of Germany; the emergence of Western Europe as the leading balance of power.

THE MEANING

The meaning of all this can only be to make us more prudent than ever. In time of war all countries quickly recognize once again the value of gold and silver. Gold will buy them military planes even from the friends of their enemies. It will buy them secrets. It will buy them prisoners. It will buy anything imaginable. It is an absolute compelling necessity.

This bodes ill for the Special Drawing Rights, for the mountains of paper $'s, for the bloated credit.

This should make us more confident than before that our assets should be translated into REALITY. The first and foremost important reality is gold, and secondly silver and silver coinage. The next realities are your home, your property, your appliances. Anything that will be in great demand and that is safe and that really EXISTS!

To think along these lines is not being sensational. You are not guilty of being an alarmist. This is a practical, hard-headed and open-minded approach.

* * *

The first casualty of a Russian nuclear strike would be China. Second by hours would be the stock market -- paper gold -- the bloated credit balloon -- the U.S. $ -- which in REALITY amounts to nothing; other than some misplaced confidence.

MAHONEY DIES

Martin V. Mahoney, Justice of the Peace, Scott County, Minnesota, age 54, died of a heart attack Thursday, Aug. 21.

That was the day he had been ordered by the Minnesota Supreme Court to appear on a charge of contempt.

The Supreme Court had ordered Mahoney not to rule in a monetary judgment case. Mahoney held that the court's order was without foundation of law on three counts: (1) It was not issued through a clerk. (2) He was not involved directly in the proceedings. (3) That he could be cited for criminal contempt, not civil contempt.

Mahoney had accepted to hear a case where the state bank in Minnesota had been unable to make payment "in specie" against a cheque.

The bank was to appear before Mahoney Aug. 19. The bank filed a notice of removal to another court. Mahoney would not allow the removal, maintaining that his court had full jurisdiction. The bank then asked for permission to go to the Minnesota Supreme Court and asked for an order to Stay Proceedings. Mahoney gave the permission. The Supreme Court is now studying whether Mahoney was correct in not sending this matter to a municipal court.

Meanwhile, of course, Mahoney is dead.

Mahoney was also in the midst of an involvement over the legality of fiat money under the Constitution of the U.S. -- the only Justice of the entire nation of 200 million people who had dared to cite the Constitution of America against the Federal Reserve Board of bankers who create the money in the U.S.A.

Mahoney was found dead in his bed at his Credit River farm. The coroner issued an autopsy, giving as the reason:

"Unusual circumstances at the death scene and the controversy he was involved with at the time."

A memorium to Mahoney said: "A carpenter and farmer, he was reviled like another carpenter long ago for he had confronted the moneychangers in their temples, and it shook his faith, but not his courage."

Newspapers ridiculed Mahoney for his lack of formal education.

AN ANSWER FROM WM. McCHESNEY MARTIN

Please refer to MFR #72, page 2.

Senator Talmadge answers in part as follows:

"Dear Mr. Myers:

"Thank you very much for your recent letter in which you make reference to my recent correspondence with Mr. William E. Johnson of Rome, Georgia.

"Upon receipt of your letter, I contacted the Board of Governors of the Federal Reserve System concerning this matter, and with the thought that you might find it of interest, I am enclosing herewith a copy of the response I received.

Sincerely,

(Signed) Herman E. Talmadge."

The letter which Senator Talmadge enclosed was signed by Wm. McChesney Martin, Jr. Mr. Martin reviewed the case of the First National Bank of Montgomery v. Jerome Daly, and stated further:

"On June 20, 1969, in connection with Joyce v. Northwestern State Bank of Appleton, U.S.D.C. Minn. file number 3-68 Civ. 32, the Court issued a permanent injunction against Mr. Daly 'continuing, commencing or prosecuting any suit, action or proceeding, either in this Court or in any court, state or federal, upon any claim arising out of... any claims regarding unlawful creation of money and credit.' *

"On the substantive legal questions involved, it should be noted that the Constitutional authority of the Congress to enact a law making Treasury notes legal tender was upheld in 1884 in the Legal Tender Case (U.S. Reports, volume 110, page 421). The most recent legislation in this area is the Coinage Act of 1965, which provides that 'All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations), regardless of when coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties and dues' (United States Code title 31, section 392). We feel confident that the Supreme Court would hold this Act of Congress constitutional for reasons similar to those it found persuasive in the Legal Tender Case."

* * *

All MFR subscribers will recognize that Mr. Martin's reply contains the same false implications as all previous replies. At the risk of boring Senator Talmadge, and now at the risk of boring MFR readers, I had to make a reply because these explanations came from the CHAIRMAN OF THE FED himself. I wrote to Senator Talmadge as follows:

*Underlines are MFR.

"Dear Senator Talmadge:

It was extremely good of you to take the trouble to go further with reference to the matter brought up by Mr. William E. Johnson. Normally one would not expect so much consideration from a busy U.S. Senator; and I appreciate it.

However, upon reading the reply of Chairman Wm. McChesney Martin, Jr., I cannot see where he has done anything to answer the questions posed by Mr. Johnson.

Mr. Martin tells us that the court has issued a permanent injunction against U.S. citizen Daly from pursuing 'any claims regarding unlawful creation of money and credit.'

This is almost unbelievable. How will such a ruling ever square with the world-wide impression of 'FREEDOM' in the U.S.A.

Apart from this bit of news, Mr. Martin advises us once again of the 1884 Supreme Court decision which confirmed the 'Constitutional authority of the Congress to enact a law making Treasury notes legal tender.'

We have all been over this ground before. U.S. Treasury notes are not the same as Federal Reserve notes. Federal Reserve notes were not invented until nearly 30 years after the case of 1884. In my opinion Mr. Martin has given us no answer at all.

Mr. Martin then refers to recent legislation, the Coinage Act of 1965. But it is fully recognized that an act of Congress is null and void if it is against the Constitution. Mr. Martin says he believes the Supreme Court would uphold the Coinage Act of 1965. How the Supreme Court could uphold that Act while reading Article I Section 10 of the Constitution in the unyielding brilliance of its clarity is not explained.

I think we must sadly admit these answers are not answers at all. They are only evasions. It appears that it will be fruitless for anyone to try to get a clear answer, squaring Article I Section 10 with the Federal Reserve. There is no answer.

Nevertheless, it must be heartening for U.S. citizens to see that a Senator will take these questions to the very highest source; expend his best effort to get at the truth. If all the elected representatives in your country and mine were to similarly carry out their responsibilities to their people, such questions would soon cease to exist.

Yours very truly,
(Signed) C. V. Myers"

BLIND ALLEY

Above you see the ultimate in an effort to get an answer on Federal Reserve money. As stated to Senator Talmadge I believe you will be wasting your time in pursuing the matter. It is a blind alley.

No one has yet dared to bring this subject before the Supreme Court. Hardly a lawyer in the U.S. has the courage to do it. When Jerome Daly tried he was faced with a permanent injunction. So how can Senators or House of Reps advise you out of this straitjacket?

There is about only one way they can make progress. That is to pursue the motion still in existence -- to impeach the Board of Governors of the Federal Reserve System for criminal conspiracy as proposed by Congressman McFadden, head of the Banking Committee 35 years ago.

Incidentally, soon after McFadden made his memorable speech to the Congress he suffered an assassination attempt by firearms. Two bullets missed him. Shortly thereafter he was taken violently ill at a state dinner and only the presence of a doctor and immediate application of a stomach pump saved his life. His end came with the official diagnosis of "heart attack", but there was strong evidence of poisoning.

Perhaps all Senators and House of Reps are cognizant of this and well they might pause before thinking of trying to stop the Federal Reserve, an acknowledged private institution -- owned privately -- printing the money of the U.S. and collecting billions of $'s of interest from U.S. citizens.

There is no use in you and I going any further. We know that the money is -- intangible -- and we know the universal fate of FIAT.

Having this knowledge you are armed to protect yourself in the conversion of your bonds and your cash into something real, and by moving part of your assets out of the country, until such time as the private counterfeiters who are the Federal Reserve are swept away as a result of revolution or concerted action by the Congress of the U.S.

ISAACS GETS MAD

Special Asst. to the Treasurer Isaacs is getting mad. In a letter of August 19th he wrote an MFR subscriber as follows:

"I see no point in conducting a running argument by letter on whether or not the Federal Reserve Act is constitutional and whether Congress has the right to delegate certain of its powers. The Act has been on the books for nearly fifty-six years, and I don't think your and my opinions about it are binding."

Isaacs says further:

"I suggest you may wish to test the constitutionality of the Federal Reserve Act through the proper court procedure."

But how can Mr. Isaacs' suggestion be carried out if the courts are going to prohibit the matter from coming to court? The Supreme Court of Minnesota has issued a permanent injunction against Jerome Daly "pursuing any claims regarding unlawful creation of money and credit."

Isaacs is getting very cranky about this whole thing. And I don't blame him. People keep writing him with distasteful quotations from the U.S. Constitution. And he doesn't have an answer. Wouldn't you be cranky too?

SEPTEMBER 29th PAPER GOLD

The world has a new date to watch for. It is the Washington meeting of the I.M.F. Sept. 29th; the meeting which is to ratify paper gold and thus cure all the ills of the world.

A month ago the highest ministers of the group of ten said: Member governments of the group ten, which includes the U.S., Britain, Japan, Switzerland, Canada, and all Common Market nations -- are due to approve the accord in a few days.

We have to this date had no news that a single government has given the final seal of approval. What's going on?

The Sept. I.M.F. meeting is a staged show. Everything has to be agreed on ahead of time. At this meeting the press are called in. The prepared speeches are made. The cut and dried arrangements are splashed across the world. Finalizations should all be in by now.

The lack of news in the last 30 days smells like trouble.

RUSSIA AND SDR'S

We hear now that Russia wants to join the I.M.F. And why not? Money will be made right and left by writing figures in a book and dishing it out like pieces of pie at a Sunday School picnic. Wouldn't you like to join the I.M.F? I'm sure I'd like to join the I.M.F. Of course, what I'd do, would be to take this paper and at once turn it into gold, or land, something real. It would be so hot, I would be among the first to convert it.

If Russia could join the I.M.F. and get some of the free pie, why not?

It was denied that Russia had made overtures to join the I.M.F.

Incidentally, the question no one has answered yet is what happens to all this I.M.F. money and all this paper gold in the event of war among the partners of the I.M.F. Do they still keep a friendly, collective and cooperative banking arrangement with one another?

If the I.M.F. paper gold is approved Sept. 29th, you can be sure it will be the first money nations will spend. Secondly, they will spend currencies. Lastly, they will spend gold. No nation today spends any gold whatsoever unless its back is right up against the wall. Do we need to know anything else to know which of the three is the REAL Mr. Money?

THE BELGIUM FRANC

Belgium has been losing scores of millions of $'s each week. Now the U.S. has offered Belgium $200 million to continue the stupid policy of resisting an adjustment to the French franc. France is Belgium's biggest trading partner. Nearly two dozen African countries devalued, following the franc. If Belgium devalues another dozen countries go. Can Belgium hold out?

I said in the beginning that the devaluation of the French franc was INEVITABLE! For purposes of pride, or for obliging the U.S., the French government held out. Counting their borrowed money they employed the unbelievable unimaginable amount of nearly $10 billion in this losing battle -- ALL TO NO AVAIL!

France was one of the strongest monetary powers. The delay nearly ruined France. Belgium is a small country. France held out a year. It is unthinkable that little Belgium can go anywhere near that long. The last MFR said it should happen in 15 days. The 15 days have passed. Now the borrowing starts. Belgium must devalue. How ruinous a debt is she willing to take on for the sake of NOTHING? She has $1.5 bil. gold. Will it go too?

THE BRITISH LB.

The Lb. is taking repeated and grievious blows following the devaluation of the franc. Here again we have an example of utter futility and persevering stupidity. The Lb. has been consistently below its normal intervention level. Each week it is sicker. The reserves of the Bank of England are rushing out through a hole in the barrel. This time, who will help England? But don't expect the English to devalue until they are utterly helpless. They haven't the sense. Had the first devaluation dropped the Lb. from $2.80 to $2.00 Britain would have had a cure. At the insistence of the U.S., they did half a job. Now it is doubtful that even a drop to $2.00 will produce the cure.

I repeat: The Belgium franc must go! THE LB. WILL COLLAPSE FOLLOWING DEVALUATION OF BELGIUM. This, when it happens, will produce the collapse of the world money system. Whether it happens in a week, a month, or six months, the results will be the same.

THE STOCK MARKET

You have seen a rally which has carried from the July 28 low of 788 to 837 Sept. 3. Examination reveals it to be a very strange phenomenon. The rally in fact creates suspicions of artificiality, and manipulation. The reason for this statement is rather startling:

In all this period and every single day, new LOWS exceeded new highs. Here is the tabulation on market days from July 28 to the present -- new lows against new highs: 732-0; 663-2; 131-2; 56-2; 48-6; 32-5; 50-13; 48-8; 64-7; 70-1; 93-3; 117-3; 56-13; 51-27; 47-24; 30-29; 41-12; 41-18; 46-24; 50-17; 66-3; 60-6; 51-12; 32-15; 29-14; 58-4, Sept. 3.

On Sept. 2 the market rose 8 points. Nevertheless, there were 32 new lows; only 15 new highs.

Here is a reading of the sickness of the market. Overall it has suffered a broad attack of waning confidence. Moreover, throughout this selective rally volume has remained suspiciously thin -- showing that the public has refused to follow the upbidding. Unless a rally can attract a following, its days are numbered.

We know that the Federal Reserve has the power to enter the securities market and buy stocks. We must ask ourselves at this point, is there an organized effort once more to fool the people by bidding up the stocks that form the D.J. averages -- the figures that everybody looks at?

Whether we attribute the rise of the D.J. to optimism or to manipulation we cannot escape the ominous implications of unrelieved preponderance of new lows over new highs each and every day without let up.

This is in substantiation of the stock market analysis of MFR #71, July 18th.

A NEW DAY FOR SILVER

The long dark night is over. It lasted from July 1968 to July 1969. Spot silver dropped from $2.50 per oz. to a little better than $1.50 per oz. All the while the Treasury was feeding the market with coins which it had secretly collected and melted. Organized manipulators, buying this silver from the Treasury, had the backing they needed to sell silver futures short which they did with a vengeance. Between the Treasury and the manipulators the price declined $1 an oz. during the time when world supplies were vanishing like magic.

That picture has turned around.

The Treasury claims as of July 31st, 93 mm oz. You have to deduct from this as follows: 7 mm oz. sold since then; 12 mm oz. reserved for half $'s; 23 mm oz. mixed with gold. That leaves them 51 mm oz. or about 34 weeks at present rate of sales.

If the Eisenhower $ legislation should pass, the Treasury will have to halt sales immediately. Seems fairly safe to say that sales will be halted sometime between the vote on the Eisenhower $ at the nearest, and 34 weeks at the longest which would put us at the end of April. Even now the artificially low price is quickly discernable.

At the GSA auction, users and coin dealers were paying almost $1.65 an oz. Total bids ran to 9 mm oz. with only 1.5 mm oz. available. The cost of handling and refining this silver has to be at least 12¢ an oz., perhaps 15¢. Whoever buys it must make a profit. With interest rates as they are, that profit would have to be at least 10%. So we arrive at $1.65 plus 12¢, plus $17.7¢ or $1.95.

The people who are buying silver from the GSA are paying at least $1.77 on the basis of .999 and they can't sell it under $1.95. At the same time .999 silver was selling on the NYSE at $1.65. Why?

The more you buy on the NYSE, the higher you put the price. Much better to bid for a known large quantity on government auction.

Nevertheless, some 5000 contracts of Sept. silver were absorbed. The bulk of it was taken in delivery of real silver. The price never trembled.

I would not say that we cannot have reversals. The events, however, would seem to confirm once again the view taken July 18, MFR #71: "I am calling the breakthrough at $1.60 the beginning of an uptrend in silver... the bottom stood at $1.51 and we are at the beginning of a reversal -- THE END OF THE BEAR."

* * *

If this analysis is indeed true we are now in prospect of an uptrending market which will surpass the highs of the old market of 1968. We are looking at a minimum potential of $1 rise in the price of silver. This rise will be healthy if it is slow and steady for the time being. After $2 I would expect fast increases because of three dominating elements:

(1) The huge short interest still in this market.

(2) The spreading knowledge that the last of the U.S. Treasury silver is in sight.

(3) The prospect of the minting of Eisenhower $.

SIGNIFICANT FINANCIAL EVENTS
AUGUST 14 TO SEPTEMBER 4, 1969

Suggestion: Clip and File.

D.J. rose from 813 Aug. 14 to 825.30 Sept. 4.
Spot Silver fell from $1.69 Aug. 14 to $166.50 Sept. 4.
Gold fell from $41.32 Aug. 14 to $40.925 Sept. 4.
Aug. 15 -- U.S. 2nd qtr. b.o.p. deficit $3.8 billion.
Aug. 16 -- 1st heart transplant Blaiberg dies.
Aug. 21 -- Justice Mahoney dies.
Aug. 23 -- July consumer prices still rise at 6%.
Aug. 26 -- U.S. capital spending up 12.6% 2nd qtr.
Aug. 31 -- Japan raises discount rate to 6.25%.
Sept. 2 -- U.S. considering crawling peg exchange.
Sept. 3 -- Ho Chi Minh dies.

Watch out for the Eisenhower coin legislation. It could catch you off guard. If it looks like it is going through, the price of silver would rise sharply. If then by chance, the Bill were defeated, the price would drop just as sharply.

SLUG COINS IN TROUBLE

Strong signs that silver will be put back in Canada's coinage. Worthless 3¢ British coins work in all coin machines. They are being imported in growing volume. Silver is non-magnetic. Slugs are not. Machines cannot be made with enough brains to tell one kind of slug from another kind of slug.

U.S. coinage will soon run into similar trouble. What a coinage manufacturing machine can produce for the government, it can also produce outside of government. There is some reason to believe that already "counterfeit quarters" are in the U.S. coinage stream. If they are not now, they will be. Costing about 2¢ each to produce, private manufacturers in Mexico, Beirut or other lands, can make quarters and remain beyond the reach of Uncle Sam. They cannot be touched. Only danger is crossing the border. Once inside the country, millions of such coins can go undetected in the normal flow of business.

It will be fiat money yet that brings down the crooks in Washington, who have stolen the substance from behind the PEOPLE'S money and sold it, leaving their PEOPLE with worthless paper. So that now all U.S. money is counterfeit. If the private bankers of the Fed can make it -- why not any good, honest ordinary citizen?

"Confidence" is all that matters, according to the Washington money managers. So as long as a private $20 bill looks exactly the same as a Fed $20 bill, it must command the same "confidence" -- Therefore it must be just as good.

Same intrinsic value. (Zero). Same confidence. It is as good.

When it is all over, history will show that it was Justice Mahoney in his barn who wielded the ax that cut the timbers from beneath the platform where U.S. DECEIVERS, Lyndon Johnson, Henry Fowler, David Kennedy and Richard Nixon sold their people out.

RECOMMENDATIONS -- Read over the old ones.

C.M. Myers,
Editor.

DISTRIBUTED BY THE INTERPUBLISHING CO. LTD., Nuschelerstrasse 31, 8001 Zurich, Switzerland
Mailed from 903 Lancaster Building, Calgary 2, Alberta, Canada
24 ISSUES $85. 12 ISSUES $50. TRIAL 5 ISSUES $20.

$ MYERS' FINANCE REVIEW $

1940 1970

NUSCHELERSTRASSE 31, 8001 ZURICH, SWITZERLAND

No. 84 LET THE TRUTH BE TOLD January 16, 1970

This letter goes to ½ Cdn. MP's; Cabinets of Can, Germany, Switz, Belg, Nthrlnds, Italy; U.S. Senators.

SUMMARY

JANUARY 15TH, 1970

EUROPEAN resistance to U.S. money masters crumbled when Wm. McChesney Martin, Jr. joined Basel bankers who were planning a European POOL, to use some of their $'s to buy gold on free market.

But REVOLTagainst U.S. mandate to force world to keep hot-air $'s is growing. Swiss influence begins to emerge.

U.S. domination of Canada -- Latest figures show U.S. deficit $'s, claiming bigger investment share.

LATEST EXAMPLE -- Imp. Oil today made reputed $1 bil. discovery in McKenzie River Delta. Major ownership vested with Standard of N.J. means U.S. title to new oil area bigger than some small countries -- exploration paid for with unconvertible printing press money. (See page 3.)

U.S. 1969 DEFICIT of many billions means world has supplied U.S. with goods and services to that amount -- Poorer countries contribute to hold up living standard of "supposedly" rich benefactor.

GERMANY begins paying price of up-valuation to oblige U.S. unconvertible $. Rash of large wage hikes and strikes start to fan inflation, as money hemorrhage continues. Brandt heading into rough water.

1970 is emerging as the year when the TYRANNY of U.S. money managers begins to become apparent to all world peoples.

GOLD continues under short term domination of U.S. influence helped by acquisition of $500 mil. German gold.

SILVER -- In strong position but at $1.86 is subject to 5 or 8¢ correction. Then to advance again.

THE QUIET CORNER



THE RIGHT TO PRIVATE PROPERTY

It springs from the Ten Commandments. It is a basic human right. "Thou Shalt Not Steal" -- "Thou Shalt Not Covet Thy Neighbour's Goods."

It is the cornerstone of the American Constitution -- "Life, Liberty and Property." Chief Justice Edward W. White said of them: "They are individually united, and one cannot be destroyed without the other."

The Communist manifesto is in strict conflict with the U.S. Constitution. It openly advocates the abolition of private property. That means the State takes over. It destroys private property, but it does so honestly.

Atomized in the cornerstones of the U.S. Constitution is the right of ownership. So much so that even slavery was upheld until the Constitution was amended. Paul Blakewell, in his book "Curious Errors About Money" recounts that Dred Scott, a slave and the property of an owner, fled to Missouri, which had passed a law against slavery. But the Supreme Court of the U.S. stated that as long as the Constitution recognized a slave as private property, any law nullifying that right was void. The slave had to be returned to his owner. The court said "The only power conferred on govt. is 'the power coupled with the duty of guarding and protecting the owner of his rights."

Now if the U.S. Constitution should be amended to prohibit the ownership of gold, the courts would uphold that prohibition. Until it is so amended, it is the duty of the Federal Govt. and the Congress, and all Federal agencies to protect the right of private property. That is a U.S. Supreme Court precedent.

If the court would not allow Congress to take away the right of a man to own his slave, will it allow Congress to take away the right of a man to own whatever he has; wheat, copper, lead or gold?

Blakewell points out that the Constitution does not give the govt. any power over such metals, or any commodity. Those federal powers not expressly given in the Constitution are expressly forbidden. If the Congress did not have the power to deprive a man of the right to own a slave back in 1856, or the power to deprive him of lead, copper or gold, then how can an executive -- ONE MAN -- have the power? Unless that executive has taken unto himself dictatorial powers?

Certainly the government has the power to make any regulation on coins -- the coin of the realm. But gold has been expelled legally from coinship. The govt. has not one shred of power to prohibit the ownership of bullion metal within the U.S., let alone anywhere in the world.

Eisenhower's encroachment of American rights abroad was the second invasion of liberty. He could have with equal justification made it a criminal offense for any American to cohabit with a red-headed girl in France. Remember the sequence -- the destruction of first, private property; second, liberty; the next is life.

The self-appointed rulers in Washington know full well of this ille-

CONTINUED ON PAGE 2, COLUMN 2

Respondent's ex JJJ 42174
emb 2/18/70

ELECTED REPS HAVE NO CONTROL OVER U.S. MONEY

Arthur Burns will be Chairman of the Federal Reserve Jan. 31st. On Dec. 15, 1969 Mr. Burns wrote Mr. H. Magnuson:

"The administration has no direct control over monetary policy. This is the responsibility of the Federal Reserve Board which has an independent status in our government scheme."

Roosevelt extended the terms of the governors of the Fed to 14 yrs. Thus a president -- the supreme representative of the sovereign people -- if he meets with a Board hostile to the ideas of the people remains impotent. He can only change one governor in a term.

FEDERAL RESERVE MYSTERY

An MFR subscriber wrote to Senator Murphy, quoting MFR and asking two questions:

(1) Was it true, as stated by MFR, that Congress could buy back the F.R.S. for $450 mil. as provided by law?

(2) If this happened, who would get the cheque?

Senator Murphy wrote the Fed and received a reply from McChesney Martin, Jr. He said:

"Nor is there any provision by law authorizing the govt. to 'buy back' the F.R.S. Congress could, of course, amend the F.R. Act to retire the stock... At the end of last year the total stock outstanding was about $630 mil."

But Senator Russell B. Long, Chairman of the Senate Finance Committee, wrote to a Russell Norburn, Dec. 20, 1966:

"Specifically, in Senate Report 473 of the 69th Congress, it is stated:

'... Section 30 of the F.R. Act expressly reserves to Congress the right to amend, alter or repeal the Act.'

"I am advised that if the F.R.S. were terminated, the govt. would probably repurchase the capital stock in the F.R. banks now owned by the member banks."

signed -- Russell Long, Chairman

Well, I believe the MFR statement is essentially correct. The truth is that there is provision for Congress to buy back the F.R.S. The price would now be $630 mil.

With regard to the other question, Mr. Martin says: "It is impossible, of course, to supply a list of the names of individuals who own the stock in the Reserve Banks because no individual owns such stocks. The stock is held by the member banks of which there are approx. 6000."

Just a minute. But who owns the member banks?

I believe it is true that the bulk of the Fed stock is in the hands of a few powerful banks. If, for example, the Chase Manhattan Bank gets the first $50 mil. off the top of the pie, we may enquire what individuals or billionaire families control the Chase Manhattan.

But subscriber stock is a minor asset. The big PLUM comes from the interest charged and paid by the PEOPLE, on billions of $'s issued by the Federal Reserve on the credit of those people.

Mr. Martin says in his letter that surplus earnings of the Reserve Banks are paid into the Treasury

THE QUIET CORNER - CONTINUED FROM PAGE 1

gal trespass. When a gold owner won in a court case his right to hold gold, the Treasury dropped the case rather than take it to the Supreme Court. These imposters are powerless in the face of the Constitution.

This diabolical cancerous clique which is the U.S. Treasury, would now enlarge its tyranny to prohibit free sovereign nations from buying gold. The next step would be to force them to deny their people the right to own gold, or anything else that might be expedient for Washington bureaucrats.

But this is not the most amazing thing. The most amazing thing is that 200 million American sheep will lie down for it.

****

and that they paid $2.4 bil. in 1968. Not disputed.

But the Banking Act of 1933 legislated that all the earnings of the F.R. Banks must by law go to the banks.

It has also been authoritatively stated that the assets of the F.R. Banks increased from $143 mil. in 1913 to $45 bil. in 1949. I don't know what they are now, but just how did they get so big except by interest?

* * *

I do not pretend to know the intricacies of the F.R.S., but the astounding fact is that nobody seems to know. We are confronted with half-truths that always lead into an inexplicable maze. Mr. Martin says: "The Board of Governors is required by law to make an annual report to Congress..."

But this is different from an AUDIT. Congressman McFadden, 12 years Chairman of the House Committee on Banking & Currency, was formerly president of the FIRST NATIONAL BANK, Canton, Pa. He should have known what he was talking about. He said there never had been an audit. He introduced a resolution for an audit of the Fed. I believe this still has never taken place.

Congressman McFadden died mysteriously after two unsuccessful attempts on his life.

THE TRUTH AT LAST

(1) CONGRESS CAN BUY BACK THE FED -- for $630 mil. The U.S. can issue its own money as Lincoln issued greenbacks -- interest free. The $15 bil. paid annually through millions of hours of productive labour will not be needed in the next budget. Fiat money is a very bad thing. But since there is nothing behind the U.S. $ now anyway, the fiat money might as well be interest free. This flourishing interest is a parasite on the host. It accelerates as the square of its size, until the host dies. (Graph p.3).

(2) THE BANKS OWN THE FED. Surely the acid test of ownership is who gets the cheque upon liquidation. So Mr. Martin has nailed the banks. Yet Fed Chairman Eccels stated in Comm. Hearings 1942: "The government in effect... owns the Federal Reserve Banks." Mr. Martin stated in 1956: "The banks do not own the Federal Reserve System."

Reluctantly, the TRUTH is this: Billionaire families and foreign banking interests controlling the huge N.Y. banks, which are the dominant group in the Fed, do by virtue of Mr. Martin's statement OWN the Fed, and that the govt. has no control (according to Burns) over monetary policy made by these people.

MFR AND THE FED

I hope to end discussions of the Federal Reserve with this letter. I think during the course of the last several months subscribers will agree that we have arrived at all of the essential truth.

The details do not matter. The identities of people do not matter. There is no reason to continue the discussion any further.

SUPPORT

MFR subscribers are aware that for some months I have been saying that the final answer to the ludicrous debt situation is not a mere devaluation but a collapse of all money and a new U.S. paper $ in exchange for several old ones. FRANZ PICK, international currency authority in New York is, to my knowledge, the first to support this belief. In his Nov. issue he said: "The only open door will be to change the official gold value of the MINI-$ or to exchange 3 or 4 present $ bills for 1 new one."

In his Dec. issue Pick says: 'Should we finally exchange 5 greenbacks for 1 new one, it would have to be 175 new $'s for 1 oz. of the metal (gold). No demonetization of gold will help, nor will the arrogance of Treasury delegates prevent the inevitable from happening. Non-citizens of the U.S. have a magnificent opportunity to buy more gold and to escape the consequences of the American recession."

You will recall that I have suggested that we missed the point for $100 gold when Nixon failed to act last Jan., and that now the minimum would be $175, and might range up to $350 per oz.

This will depend on how much longer the farce of the hot air $ is allowed to continue.

WASHINGTON SCHEME NOW

Since Washington cannot kick the dope, it wants everyone else to become an addict.

Washington refused to devalue the $. Germany succumbed to up-valuation. Within weeks the sickness has struck with great impact. Interest rates are going up. Prices are going up. Huge subsidies are being paid to farmers. Germany is losing markets. There is a money hemorrhage out of Germany. The mark shrinks as the gold leaves the country.

So the Washington scheme is apparent. Make all the other countries inflate to the limit so that the U.S. inflation becomes reasonable.

Japan is now fighting off the dope (up-valuation) but Washington is tightening the screws. Sooner or later Japan must give in -- if the $ is to stand. If Japan goes, how can the pressure be resisted by Switzerland, Netherlands; Belgium, etc.

Today you turn everything upside down. Productive people are ridiculed and are said to have a problem. Now $40 to $50 billion Euro-$'s -- uncontrolled by any bank, stalk the money markets of the world, like raiders in the night, spreading terror wherever they go.

WHO WILL BELL THE CAT? Unfortunately, no one -- yet.

U.S. FEDERAL DEBT

This is the U.S. federal debt, 1870 to 1967, printed from a graph in the book by Wilfrid C. Krug, "What's Happening to Our Money?", Herald Press, Windsor, Canada.

Adding 1968 and 1969 would put us through the top of the page.

The graph speaks for itself. Such a massive trend can't be reversed.

As interest is piled on compound interest, the acceleration increases. Since this is the reserve currency, acceleration spreads throughout the world, and interest rates unavoidably accelerate too.

Inflation rushes on, via galloping interest rates in a fantastic unending spiral toward the destruction of the capital.

THE END is the collapse of the structure, meaning a repudiation of debt, the disinheritance of bonds, and the demise of the currency.

INFLATION 1970

Regardless of all the political pronouncements, no power can halt the inflationary spiral. They may check it, but only temporarily, until the primordial forces burst forth once again. This is happening every week, every month -- accummulating.

So the inflation will continue in the U.S. in 1970. And it will continue in Canada. Prospects are that we shall have a recession in the midst of the inflation, and then the printing presses will be turned on to avoid a social upheaval. This then fans the flames of the inflation, again burning up the purchasing power. At the end of this process all prices will be sky high, maybe at least twice the present. The end will be the repudiation of debts, bonds, and one new $ for several old.

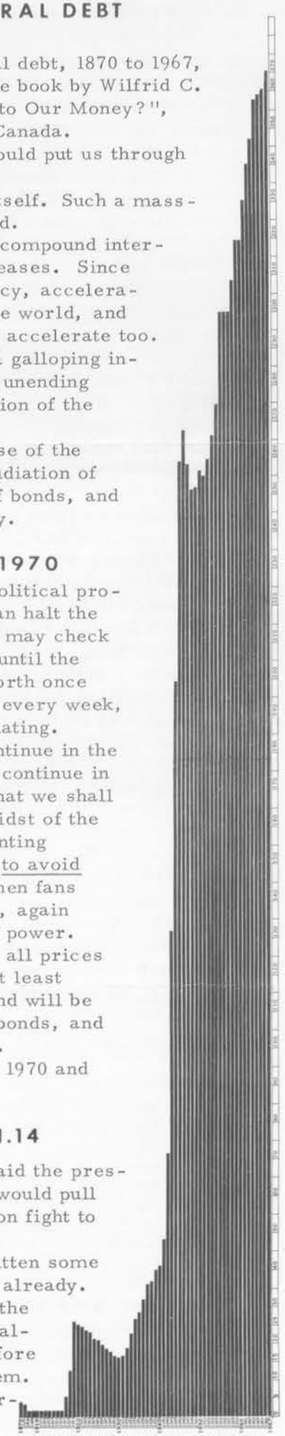
This is our outlook for 1970 and beyond.

NIXON JAN.14

Jan. 14, Nixon aides said the president hated inflation, but would pull back from his anti-inflation fight to prevent recession.

The above stories written some days ago are coming true already. Govt. simply cannot face the social consequences of dealing with inflation. Therefore inflation will deal with them.

This graph will accelerate like a Saturn rocket, which it resembles.



FEDERAL DEBT OF THE UNITED STATES IN BILLIONS OF DOLLARS FOR THE FISCAL YEARS ENDING JUNE 30.

SPECIAL DRAWING RIGHTS

If anyone can understand SPECIAL DRAWING RIGHTS, I do wish he would explain them to me. Over the New Year I came across a feature in the London Financial Times so entitled. I thought: "At last, I shall know all the details. The rights have been allotted. Here is the low down!"

I quote you a few exerpts from this newspaper which is regarded as a bulwark of financial insight.

"For the first time in its history the world will start to use an international currency which is...not backed by gold or any other precious metal -- (though it has a nominal gold value guarantee).

"The most remarkable characteristic of SDR's is that they are almost entirely imaginary, a sort of international Monopoly money for an exclusive use of Central Banks. Indeed they are even more abstract than Monopoly money.

"Their only existence will be in the form of entries in a special account managed by the International Monetary Fund.

"They cannot be spent on goods and services and it cannot even be used like gold and foreign exchange for the direct settlement of balance of payments.

"Normally a country can only use SDR's if it runs into a payments deficit..!! The managing director of the Fund will designate another country... to take the deficit SDR's.

"Any country ought to be glad to hold SDR's, for they have a gold guarantee and at the same time earn a small amount of interest.

"There are limits on the amount of SDR's that any one country may be forced to accept."

This learned dissertation on SDR's leaves me flabbergasted.

* * *

These hybrids have been introduced with a view to replace gold. The only new liquidity is planned to be on SDR's. The Times says:

"The world is no doubt on the $ standard. Since the gold convertibility of the $ has now become nothing more than a polite fiction, the creditor countries have little choice but to accept $'s.

"But the time must come when a continued U.S. deficit will be regarded as intolerable by the rest of the world."

In the midst of the above learned discussion we come to the shocking realization that while SDR's have been allotted they are not yet in effect. They don't know just how much each country will get --"the precise figure will not be available until it is known exactly how many of the IMF members have decided to participate in the scheme."

Later on we find the gold contributions totalling $800 million have not yet been made.

THE IMPACT

It is possible that the SDR's (if activated) may artificially stimulate the economies, just as the first shots of inflation always stimulate. But it cannot be for long, because the amount is so small. The U.S. will get $840 million, but the 1969 deficit is about $8 bil. This last needle of dope could give us a "kick" for about 3 months. When this shot wears off, the heroine addict will be going crazy for more. Next year they get another $3 billion.

SDR's were devised to kick gold out the back door. But that effort failed when the U.S. condoned the $35 monetary floor -- once again enthroning gold as KING.

GERMANY THE GOAT?

On Jan. 8th the U.S. bought $500 mil. gold from Germany. German gold reserves dropped to $4 bil. It was amusing to see how the newspapers congratulated themselves all over the page on this great accomplishment. Gold must be a very mysterious metal. When the other fellow has it, it is barbaric, outmoded, and a disadvantage to the whole world. When the U.S. acquires it, it immediately changes its character to become something highly desirable.

No one knows the destiny of this gold or the background of the purchase. Germany, with well over $1 bil. in exchange didn't have to sell it.

This transaction of $.5 bil. is one of two things: (a) A gimmick -- and the gold will find its way back to Germany, or (b) a sellout of the German nation by Willy Brandt (alias Frahm).

* * *

If this gold is for SDR purposes, it is $300 million short of requirements. One would expect that a large part of the balance would be forthcoming shortly from S. Africa.

All of which tends to support the above story that SDR's, in spite of newspaper banners, are as of today still not an activated reality.

* * *

Quote from MFR #76, Oct. 2, 1969: "If Willy Brandt is indeed Washington's boy, he will place the German hard-won gold at the disposal of Washington; and for 6 months or so we may see a general money revival, and a depressed price of gold on the free market."

BASEL MEETING

The Basel bankers met Jan. 11. Wm. McChesney Martin, Jr. was there. Switzerland, Netherlands & Belgium spearheaded a plan to buy gold on the free market at the $35 price, when available, and to distribute this gold among European countries according to IMF quotas. This new pool , as it was termed, would place a floor on free market gold but no ceiling. N.Y. Times Farnsworth reported from Basel that the Swiss banks were very unhappy about any price below $35. Gold was a large part of their assets and they disliked writing down their assets even for a day. Farnsworth reported that it was also rumored that a very large sale by S.A., perhaps $500 mil., to monetary authorities was imminent.

Neither the W.S.J. or the D.J. wire service (in Canada at least) carried any hint of this development. Apparently Farnsworth's scoop got through on a late Friday night, and the WSJ decided that this was not a good story for Americans to read.

Mon. & Tues. passed, and there was no word. The probability is that McChesney Martin went home to see if Washington could not devise some new scheme to stall this move.

The Washington boys with their blacksnakes are having to go to Europe oftener and oftener. Soon they will need a shuttle service as Europeans become ever more restless and rebellious.

It was reported that Martin couldn't get home on Monday on account of the weather, but I rather think that the lashing had not proved sufficient and that on Monday he was still wielding the blacksnake.

The gold price through the first half of this week has ranged about 15¢ below $35, a figure at which S.A. may sell large quantities to Central Banks. Next week we will probably find out this has been going on.

Since S.A. only has $1100 million gold, a sale of $500 million would take all their surplus off the market. Since industrial users absorb all the newly mined gold each year, the price would be vulnerable to an upward sweep whenever the next monetary crisis should occur.

WHERE WOULD MONEY GO?

In 1968 monetary uncertainties resulted in the destruction of the world gold pool. After that, uncertainties resulted in upsetting one currency after another. People were afraid to invest in gold because they thought it just might go below $35. If the European bankers have their way on free market gold, the stage is set for a repeat of March 1968. In every respect gold will have been re-established as KING of all money and the next monetary crisis would sweep it to new high levels.

This very situation has the U.S. scared silly.

That is why Mr. Martin had to go over and apply the whip. Did it succeed? I don't know. But how much more of the U.S. blacksnake are the European countries prepared to endure?

* * *

I think we are working up to a new gold crisis and we should see a result of the presently contesting forces within the next 2 months. I believe the chances are strong that we will see a new breakout in the gold price in the neighbourhood of between $40 and $50 within 100 days.

PROHIBITION OF GOLD

Some very important man said it, I forget who -- "In 1932, if two men walked down Broadway, one with a bottle of whiskey and one with a pocketful of gold, the man with the whiskey would be thrown in jail and the man with the gold would be considered an honest citizen. Today, the man with the gold would be thrown in jail, and the man with the whiskey considered an honest citizen."

It was Roosevelt who made it illegal for Americans to own gold in the U.S. It was Eisenhower who made it illegal for Americans to own gold anywhere in the world. Americans are not prohibited from owning gold by the Congress of the U.S.A., but by executive order. The sovereign people have never been consulted. The descendents of those who fled from Europe to build a country of new freedom are now subject to a worse autocratic tyranny than their overseas cousins.

A man's money is his life's blood, his sweat -- is in fact the substance of his life and his family. What he earns is his. He can throw it into the river -- make a bonfire out of it, give it to the poor, or lose it in Las Vegas. To say that he cannot spend it on gold is contrary to the entire spirit of the U.S. Constitution and the whole concept of the American nation. It is the ultimate contradiction, debasement and degradation of the spirit and Constitution of the U.S. It is law without permission of the PEOPLE and it is enforced by bureaucrats who never received a vote in their life from any American citizen.

I WILL SELL GOLD

I have gold and I will sell gold. And better than any bank, I will show it to you at any time you want to see it. I will sell it for you at any time you want to sell it.

I have gold for sale, and I will sell gold, and I do not care who you are. You put the money on the desk and I will sell you gold. I don't care whether you are white, black or yellow; Protestant, Jewish or Buddist; or whether you come from Tasmania, Bulgaria or California. And I will not tell anyone to whom I have sold my gold, because it is none of their cotton-pickin business.

The storage costs will be negligible.

Here is what I will charge you. Six percent on the first $1,000 of bar gold held here physically in a bank vault -- 3% for each succeeding $1,000 of gold -- a 1% charge on the sale of the gold whenever you shall order it. If you prefer to come and pick it up physically, so much the better.

I will sell you gold on the day of the arrival of your money either by cheque or in person at the official quoted price of that day if it has been received before 3:00 p.m. And if not, at the officially quoted price of the following day. Have no fear that it won't be here if you come to see it. Failure to produce would be an airtight case of embezzlement and imprisonment. I like my freedom and I like to fool around with horses. I understand they don't have any horses in the jails.

Only an MFR subscriber will be eligible to buy my gold. No trial subscribers. Telephone calls on this subject -- $25.

Bar sizes are 16 oz., 20 oz., 32 oz. and 40 oz.

SILVER

The following are the officially listed Treasury supplies of silver, Nov. 30, 1969:

Unrefined	24.5 mm oz. **
.999+	6.5 mm oz. *
.999	4.3 mm oz. *
.996-.998	4.6 mm oz.
.830-.995	6.2 mm oz.
.400	6.0 mm oz.
Coin silver	22.7 mm oz.
TOTAL	74.8 mm oz.

Treasury lists * as not available and ** as unrefined, being refined at 3 mm oz. per year. Deduct the total of these items 35.3 mm oz. -- Treasury AVAILABLE Nov. 30, 1969 was 39.5 mm oz.

Coinage is listed at 45.7 mm oz. plus or minus 10 mm oz. Total available 85.2 mm oz.

During Dec. GSA sold 6 mm oz., reducing the sup-

ply to 79.2 mm oz.

Treasury is still obliged to mint 15 mm oz. Kennedy halves reducing supply to 64.2 mm oz. as of Jan. 1, 1970. With weekly sales at 1.5 mm oz. this supply would last 43 weeks to Oct. 30, 1970. This is the longest time sales can last under present rate of sales and present availability.

WHAT MAY HAPPEN

It is my belief that there will have to be a compromise on the Eisenhower silver $. The Senate cannot take a 100% defeat from the House. A compromise to mint 100 mil. Eisenhower $'s would consume 30 mm oz. If they discontinued Kennedy halves, an additional requisition of 15 mm oz. would do the trick. We should get this answer late in Jan. or early Feb.

This would reduce sales by 10 weeks. The Treasury would run out in mid-August 1970.

Facing this early date, GSA sales beginning in Feb. would likely be cut back to 1 mm oz. per week, I think. They could then continue sales for 50 weeks into Dec. 1970.

If the estimated coinage is 10 mm oz. "plus", sales would go thru Feb. 1971. If the estimated coinage is 10 mm oz. "minus", sales would stop Sept. 30, 1970.

In any case Treasury would only make up half the world's annual shortage of 100 mm oz. If a monetary crisis absorbed only a modest amount (100 mm oz), the Treasury sales would be doubly offset. Users would have to bid up to where silver would come out of India.

The $3 price by Dec. 30, 1970 is in my opinion a modest expectation.

Any movement to mint the Eisenhower $, or to curtail GSA sales would, I believe, cause an intermediate silver move to the $2.25 area.

Heavy bidding by bullion dealers in London, Swiss Credit Bank, and other foreigners is indicative of a continuing strong silver market.

Barring an unforeseen market disaster, I believe the spot silver price floor is now $1.79.

THE DEFENCE

See "Inflation 1970", page 3.

I have been saying all this for sometime. One of the biggest advisory letters is coming to the same viewpoint. After predicting more inflation, Indicator Digest says that this will be followed by deflation; fantastic debt burdens; the fear of social disturbances: "There is only one thing the govt. can do... it will have to resort to printing money... The deficits could be run and money supply increased at rates that would seem utterly fantastic today."

Those who have agreed with MFR must now agree with the Indicator Digest.

THE ANSWER TO THIS SITUATION IS PLAIN.

BUY THINGS THAT ARE REAL. BUY THINGS THAT WILL KEEP. Indicator recommends metals, and I am in favor of buying anything that is durable and real. So you could buy copper, lead, zinc, iron -- real property.

PRESERVATION is the watchword, not speculative profit. The bond holders will all go down the drain. Their assets have already leaked 20 - 50%.

INFLATION is the watchword. PRESERVATION is the salvation. REAL VALUE is the answer.

FROM MFR

Two Years Ago--Jan. 19, 1968--LBJ aspirins will have no effect on the basic disease, which is ruinous balance of payments.

One Year Ago -- Jan. 21, 1969 -- We are entering the second phase of the bear market.

One Month Ago -- Dec. 19, 1969 -- Market crash into the 500 area. Every rally is a trap.

SIGNIFICANT FINANCIAL EVENTS

DECEMBER 30TH, 1969 TO JANUARY 15TH, 1970

Suggestion: Clip and File.

D.J. fell from 794 Dec. 30 to 785 Jan. 15th.
Spot Silver rose from $1.78 Dec. 30 to $1.86 Jan. 15.
Gold fell from $35.22 Dec. 30 to $34.80 Jan. 15
Jan. 1 -- Commerce Dept. figures suggest recession started in 4th quarter 1969.
Jan. 5 -- Fed made Oct. plans to ease money in '70.
Jan. 6 -- Dec. auto sales fell 9%; impts. up 10%.
Jan. 8 -- U.S. invest. curbs plunged Tokyo market.
Jan. 8 -- U.S. buys $500 mil. gold from Germany.
Jan. 11 -- Baselbankers discuss European gold pool.
Jan. 11 -- Martin joins bankers -- gold pool shelved.

RECOMMENDATIONS

Free State Geduld -- world's richest gold mine -- 15 to 20 yrs. of life, selling at around $13, paid a 1969 dividend of $1.96. West Driefontein -- world's largest gold mine -- over 30 yrs. of life, and temporarily operating at only part capacity because of a fire last year, nevertheless paid $1.26 dividend, selling around $13. FSG yielding 13%, and West Drie. over 7%. These are not earnings; these are net payments. Compare with NYSE stocks. Then compare the outlook. Even at $35 gold they won't go down much. G.M. selling at $75, paid $2.80 for 9 months.

These golds can never be bought better. Other S. A. blue-chips listed in previous letters.

The American golds are not even in the same ball park. Also most are heavily diluted with industrials.

Continue to accummulate silver coinage up to 35% premium. Buy gold and silver bars. Hold gold and silver stocks.

The stock market seems to be heading for its test of 740. Avoid it like the plague. Sell all bonds and convert into real property.

For a flyer -- a speculative silver with several successful drill holes in Mexico -- Pure Silver. Soon will finish hole #10. If it hits, stock will rise. If it misses, look for a loss. Repeat: Speculative. Probably the best of the junior silvers. Now at about $3.50. Potential seems good.

C. V. Myers,
Editor.

DISTRIBUTED BY THE INTERPUBLISHING CO. LTD., Nuschelerstrasse 31, 8001 Zurich, Switzerland
Mailed from 903 Lancaster Building, Calgary 2, Alberta, Canada
24 ISSUES $85. 12 ISSUES $50. TRIAL 5 ISSUES $20.

$ MYERS' FINANCE REVIEW $

1940 1969

NUSCHELERSTRASSE 31, 8001 ZURICH, SWITZERLAND

No. 74 LET THE TRUTH BE TOLD September 5, 1969

(This letter goes to U.S. Senators, to 174 U.S. metropolitan newspapers, and the cabinets of Canada, England, Germany, Italy, Belgium and the Netherlands.)

OUTLOOK

SEPTEMBER 4, 1969

GROWING DANGER Russia will drop nuclear bomb on China's nuclear sites to forestall China from aiming missiles at Russian cities -- This is greatest war threat since 1939.

Second casualty would be stock market -- SDR'S -- bloated credit -- another run from paper into gold -- silver -- tangibility.

Continuing doubt about U.S. money as the "ILLEGALITY" of the Fed gets talked around the nation -- banks -- judges -- brokerage houses -- Congress itself. Only the news media are silent.

SDR'S -- due for adoption Sept. 29 -- Introduction of unbacked printing press money on a WORLD scale. Gold demand will gradually increase as INTANGIBILITY of all money looms into view.

GOLD PRICE being held now by S. Africa selling ALL its gold on free market and digging into its reserves for half as much again to supply mkt. at present level.

SILVER -- in a new uptrend -- Expect gradual rise, but subject to acceleration by "Eisenhower $" -- return to Canadian coinage -- heavy buying at GSA sales -- these unknowns represent background strength.

STOCK MARKET -- Rally is weak on low volume and unrelieved preponderance of new lows over new highs every single day -- Top of the rally is 837 or nearby.

THE QUIET CORNER

JUSTICE MAHONEY IS DEAD



He is dead. But his voice thunders louder than when he lived.

"Federal Reserve notes are not lawful money within the contemplation of the Constitution of the United States and are null and void. Further, the notes on their face are not redeemable in gold and silver coin nor is there a fund set aside anywhere for the redemption of said notes. The notes are without any lawful consideration and therefore void."

"Plaintiff's act of creating credit is not authorized by the Constitution and laws of the United States, -- is unconstitutional and void,-- and is not a lawful consideration..."

"Title 31USC Section 462 which attempts to make Federal Reserve notes... a legal tender for all debts.. is unconstitutional and void and contrary to Article I Section 10 of the Constitution."

"When the inability of a bank to redeem its notes is openly avowed they instantly lose their character as money and their circulation as currency ceases... Congress is incompetent to authorize a State to make these notes a legal tender."

Speaking of the Federal Reserve System... "Such a corporation certainly cannot have any more rights than a natural person. The emission of bills of credit upon their books, without consideration and the issuance of Federal Reserve notes without consideration, to circulate as a legal tender for the payment of debts is not permitted, expressly or implied by the Constitution of the United States."

"Justice was rendered completely and without denial, promptly and without delay, freely and without purchase, comfortable to the laws in this court on December 7, 1968."

Justice Mahoney is dead. But his voice will ring down through the halls of history as the first courageous legal voice on money; the first in 56 years to challenge and denounce the Federal Reserve System of the United States, where international bankers operate the screws. For in essence he said this:

Fiat money and the Constitution of the United States cannot co-exist. If the one lives, the other must die.

The day before the death of this independent patriot, the MINNEAPOLIS TRIBUNE to its eternal discredit applied the typical

CONTINUED ON PAGE 2, COLUMN 2

Respondents' Exh AA 42174
emb 2/13/70

THE YELLOW PERIL

People are taking the Russo-Chinese dispute too lightly. The most serious threat of a big war since Hitler's dispute with the Sudetenland. Behind it all, there is a frightening reason.

THE CHINESE HAVE NOTHING TO LOSE -- and the Chinese have the H-bomb!

At first glance it appears that Chinese ambitions against Russia are a laugh. In truth, they are a nightmare. If China can produce a delivery system for even half a dozen bombs, the great Russian strength becomes handcuffed. Deliverable missiles, aimed at Moscow, Leningrad, Keiv and a few others, could in one night deal out MASSIVE death throughout the Soviet -- set it back 100 years.

At first thought one is tempted to respond: Look at the overwhelming nuclear superiority of Russia. Think again. How much use is it?

If Russia were to undertake to destroy China with H-bombs, the fallout would wipe out Russia. Chinese nuclear weapons cause cold shivers to play a tune on the Russian spine.

The clashes are occuring on the border of the province of China which contains its nuclear striking force. If this force -- this province -- could be wiped out now....? Before the missiles can be delivered to Russian cities....?

These border clashes are not taking place for the sake of exercise, or a little excitement before breakfast. They are the opening phases of world conflict.

If Russia were to invade she might well be sucked into a trap in the interior of China as fateful and disastrous as the Viet Nam trap is to the U.S.A.

If Russia does not go in and wipe out the nuclear striking force, it is almost certain to face nuclear blackmail.

China wants the natural resources, the wealth, the room. China doesn't care if 100 million -- 200 million are lost in this struggle. China has nothing to lose. H-bombs in the hands of such a people constitute a shuddering prospect.

(For further background see MFR #63, April 11, "The Changing Panorama", page 1, and "The Superpowers".)

TIMING

The most fearsome aspect of this potential conflict is the URGENCY. Unless Russia knocks out the Chinese nuclear strength before China has developed delivery -- it will be too late! How far are the Chinese along now? They have been consistently ahead of U.S. predictions. Are some of the launching sites nearly complete? Will it take a year?

The actions of the Russians lately, the urgency of their words: the fact that their best divisions are on the Chinese border; indicates that they may fear that Chinese delivery capability is imminent.

The logical prospect seems to be a Russian nuclear strike at the Chinese nuclear strength.

This would be presaged by a storm of propaganda -- whipping up the temper of the Russian people, just as Hitler's propaganda prepared the German people for a Holy war of prevention.

The signals are ominous.

If such a decision has been taken we should not be surprised to witness its execution in less than six months.

THE QUIET CORNER - CONTINUED FROM PAGE 1,

smear tactics of the orchestrated, big money press. It started out:

"A rural justice who holds court in a drafty barn has locked horns with the Minnesota Supreme Court.

"He uses a horseshoe for a gavel and sits on an inverted milk can in his bib and coveralls. Swallows fly in and out of the barn in profusion."

But do swallows prejudice justice? Is the wind corrupt? Is justice better served with fancy chair, long hair, and fat paycheques from the Federal Reserve? Is the Constitution of the United States only valid in marble halls under artificial light? Or was it drawn to be understood and dispensed for men who work 'neath the swallow's wings; in chilly drafts; perchance in barns?

Justice Mahoney was a simple man, and he read the great Constitution of the United States of America in direct and simple language; and he had sworn to uphold what it said. And that he did. That he did in the face of the power of all the billionaires in America; in the face of the fury of the Federal Reserve; in the face of the hypocrisy of the judiciary; in the face of the slander of the Minneapolis Tribune. He simply read the Constitution and he simply dispensed the law.

Have not indeed most great human truths sprung from simple men? Was there not another barn 1969 years ago? Was it drafty; and did the swallows fly? Would it have too been smeared by the Minneapolis Tribune? I think, for sure it would!

Justice Mahoney is dead. But in history he has only commenced to live!

* *

THE RESULTS OF SUCH A CONFLICT

Would the rest of the world be drawn in? Only recently the Russians advertised this danger. This may be the best reason for seeing it as solely a Russian danger.

Does it sound logical that the U.S. should jump into this war to protect Russia against China? To protect China against Russia?

Does it sound reasonable that European countries should pitch in on the side of either China or Russia in either nuclear or conventional slaughter? It does not sound reasonable to me.

Here would come the opportunity for the resurgiance of Europe, the reunification of Germany, the liberation of Czechoslovakia and Hungry, the breakup of the Russian Empire. Nevertheless, the end product of all this would be still to face THE YELLOW PERIL -- later.

That is much too far for us to try to foresee. It is enough to recognize this danger, to see it as a possible solution to the reunification of Germany; the emergence of Western Europe as the leading balance of power.

THE MEANING

The meaning of all this can only be to make us more prudent than ever. In time of war all countries quickly recognize once again the value of gold and silver. Gold will buy them military planes even from the friends of their enemies. It will buy them secrets. It will buy them prisoners. It will buy anything imaginable. It is an absolute compelling necessity.

This bodes ill for the Special Drawing Rights, for the mountains of paper $'s, for the bloated credit.

This should make us more confident than before that our assets should be translated into REALITY. The first and foremost important reality is gold, and secondly silver and silver coinage. The next realities are your home, your property, your appliances. Anything that will be in great demand and that is safe and that really EXISTS!

To think along these lines is not being sensational. You are not guilty of being an alarmist. This is a practical, hard-headed and open-minded approach.

* * *

The first casualty of a Russian nuclear strike would be China. Second by hours would be the stock market -- paper gold -- the bloated credit balloon -- the U.S. $ -- which in REALITY amounts to nothing; other than some misplaced confidence.

MAHONEY DIES

Martin V. Mahoney, Justice of the Peace, Scott County, Minnesota, age 54, died of a heart attack Thursday, Aug. 21.

That was the day he had been ordered by the Minnesota Supreme Court to appear on a charge of contempt.

The Supreme Court had ordered Mahoney not to rule in a monetary judgment case. Mahoney held that the court's order was without foundation of law on three counts: (1) It was not issued through a clerk. (2) He was not involved directly in the proceedings. (3) That he could be cited for criminal contempt, not civil contempt.

Mahoney had accepted to hear a case where the state bank in Minnesota had been unable to make payment "in specie" against a cheque.

The bank was to appear before Mahoney Aug. 19. The bank filed a notice of removal to another court. Mahoney would not allow the removal, maintaining that his court had full jurisdiction. The bank then asked for permission to go to the Minnesota Supreme Court and asked for an order to Stay Proceedings. Mahoney gave the permission. The Supreme Court is now studying whether Mahoney was correct in not sending this matter to a municipal court.

Meanwhile, of course, Mahoney is dead.

Mahoney was also in the midst of an involvement over the legality of fiat money under the Constitution of the U.S. -- the only Justice of the entire nation of 200 million people who had dared to cite the Constitution of America against the Federal Reserve Board of bankers who create the money in the U.S.A.

Mahoney was found dead in his bed at his Credit River farm. The coroner issued an autopsy, giving as the reason:

"Unusual circumstances at the death scene and the controversy he was involved with at the time."

A memorium to Mahoney said: "A carpenter and farmer, he was reviled like another carpenter long ago for he had confronted the moneychangers in their temples, and it shook his faith, but not his courage."

Newspapers ridiculed Mahoney for his lack of formal education.

AN ANSWER FROM WM. McCHESNEY MARTIN

Please refer to MFR #72, page 2.

Senator Talmadge answers in part as follows:

"Dear Mr. Myers:

"Thank you very much for your recent letter in which you make reference to my recent correspondence with Mr. William E. Johnson of Rome, Georgia.

"Upon receipt of your letter, I contacted the Board of Governors of the Federal Reserve System concerning this matter, and with the thought that you might find it of interest, I am enclosing herewith a copy of the response I received.

Sincerely,
(Signed) Herman E. Talmadge."

The letter which Senator Talmadge enclosed was signed by Wm. McChesney Martin, Jr. Mr. Martin reviewed the case of the First National Bank of Montgomery v. Jerome Daly, and stated further:

"On June 20, 1969, in connection with Joyce v. Northwestern State Bank of Appleton, U.S.D.C. Minn. file number 3-68 Civ. 32, the Court issued a permanent injunction against Mr. Daly 'continuing, commencing or prosecuting any suit, action or proceeding, either in this Court or in any court, state or federal, upon any claim arising out of... any claims regarding unlawful creation of money and credit.' *

"On the substantive legal questions involved, it should be noted that the Constitutional authority of the Congress to enact a law making Treasury notes legal tender was upheld in 1884 in the Legal Tender Case (U.S. Reports, volume 110, page 421). The most recent legislation in this area is the Coinage Act of 1965, which provides that 'All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations), regardless of when coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties and dues' (United States Code title 31, section 392). We feel confident that the Supreme Court would hold this Act of Congress constitutional for reasons similar to those it found persuasive in the Legal Tender Case."

* * *

All MFR subscribers will recognize that Mr. Martin's reply contains the same false implications as all previous replies. At the risk of boring Senator Talmadge, and now at the risk of boring MFR readers, I had to make a reply because these explanations came from the CHAIRMAN OF THE FED himself. I wrote to Senator Talmadge as follows:

*Underlines are MFR.

"Dear Senator Talmadge:

It was extremely good of you to take the trouble to go further with reference to the matter brought up by Mr. William E. Johnson. Normally one would not expect so much consideration from a busy U.S. Senator; and I appreciate it.

However, upon reading the reply of Chairman Wm. McChesney Martin, Jr., I cannot see where he has done anything to answer the questions posed by Mr. Johnson.

Mr. Martin tells us that the court has issued a permanent injunction against U.S. citizen Daly from pursuing 'any claims regarding unlawful creation of money and credit.'

This is almost unbelievable. How will such a ruling ever square with the world-wide impression of 'FREEDOM' in the U.S.A.

Apart from this bit of news, Mr. Martin advises us once again of the 1884 Supreme Court decision which confirmed the 'Constitutional authority of the Congress to enact a law making Treasury notes legal tender.'

We have all been over this ground before. U.S. Treasury notes are not the same as Federal Reserve notes. Federal Reserve notes were not invented until nearly 30 years after the case of 1884. In my opinion Mr. Martin has given us no answer at all.

Mr. Martin then refers to recent legislation, the Coinage Act of 1965. But it is fully recognized that an act of Congress is null and void if it is against the Constitution. Mr. Martin says he believes the Supreme Court would uphold the Coinage Act of 1965. How the Supreme Court could uphold that Act while reading Article I Section 10 of the Constitution in the unyielding brilliance of its clarity is not explained.

I think we must sadly admit these answers are not answers at all. They are only evasions. It appears that it will be fruitless for anyone to try to get a clear answer, squaring Article I Section 10 with the Federal Reserve. There is no answer.

Nevertheless, it must be heartening for U.S. citizens to see that a Senator will take these questions to the very highest source; expend his best effort to get at the truth. If all the elected representatives in your country and mine were to similarly carry out their responsibilities to their people, such questions would soon cease to exist.

Yours very truly,
(Signed) C. V. Myers"

BLIND ALLEY

Above you see the ultimate in an effort to get an answer on Federal Reserve money. As stated to Senator Talmadge I believe you will be wasting your time in pursuing the matter. It is a blind alley.

No one has yet dared to bring this subject before the Supreme Court. Hardly a lawyer in the U.S. has the courage to do it. When Jerome Daly tried he was faced with a permanent injunction. So how can Senators or House of Reps advise you out of this straitjacket?

There is about only one way they can make progress. That is to pursue the motion still in existence -- to impeach the Board of Governors of the Federal Reserve System for criminal conspiracy as proposed by Congressman McFadden, head of the Banking Committee 35 years ago.

Incidentally, soon after McFadden made his memorable speech to the Congress he suffered an assassination attempt by firearms. Two bullets missed him. Shortly thereafter he was taken violently ill at a state dinner and only the presence of a doctor and immediate application of a stomach pump saved his life. His end came with the official diagnosis of "heart attack", but there was strong evidence of poisoning.

Perhaps all Senators and House of Reps are cognizant of this and well they might pause before thinking of trying to stop the Federal Reserve, an acknowledged private institution -- owned privately -- printing the money of the U.S. and collecting billions of $'s of interest from U.S. citizens.

There is no use in you and I going any further. We know that the money is -- intangible -- and we know the universal fate of FIAT.

Having this knowledge you are armed to protect yourself in the conversion of your bonds and your cash into something real, and by moving part of your assets out of the country, until such time as the private counterfeiters who are the Federal Reserve are swept away as a result of revolution or concerted action by the Congress of the U.S.

ISAACS GETS MAD

Special Asst. to the Treasurer Isaacs is getting mad. In a letter of August 19th he wrote an MFR subscriber as follows:

"I see no point in conducting a running argument by letter on whether or not the Federal Reserve Act is constitutional and whether Congress has the right to delegate certain of its powers. The Act has been on the books for nearly fifty-six years, and I don't think your and my opinions about it are binding."

Isaacs says further:

"I suggest you may wish to test the constitutionality of the Federal Reserve Act through the proper court procedure."

But how can Mr. Isaacs' suggestion be carried out if the courts are going to prohibit the matter from coming to court? The Supreme Court of Minnesota has issued a permanent injunction against Jerome Daly "pursuing any claims regarding unlawful creation of money and credit."

Isaacs is getting very cranky about this whole thing. And I don't blame him. People keep writing him with distasteful quotations from the U.S. Constitution. And he doesn't have an answer. Wouldn't you be cranky too?

SEPTEMBER 29th PAPER GOLD

The world has a new date to watch for. It is the Washington meeting of the I.M.F. Sept. 29th; the meeting which is to ratify paper gold and thus cure all the ills of the world.

A month ago the highest ministers of the group of ten said: Member governments of the group ten, which includes the U.S., Britain, Japan, Switzerland, Canada, and all Common Market nations -- are due to approve the accord in a few days.

We have to this date had no news that a single government has given the final seal of approval. What's going on?

The Sept. I.M.F. meeting is a staged show. Everything has to be agreed on ahead of time. At this meeting the press are called in. The prepared speeches are made. The cut and dried arrangements are splashed across the world. Finalizations should all be in by now.

The lack of news in the last 30 days smells like trouble.

RUSSIA AND SDR'S

We hear now that Russia wants to join the I.M.F. And why not? Money will be made right and left by writing figures in a book and dishing it out like pieces of pie at a Sunday School picnic. Wouldn't you like to join the I.M.F? I'm sure I'd like to join the I.M.F. Of course, what I'd do, would be to take this paper and at once turn it into gold, or land, something real. It would be so hot, I would be among the first to convert it.

If Russia could join the I.M.F. and get some of the free pie, why not?

It was denied that Russia had made overtures to join the I.M.F.

Incidentally, the question no one has answered yet is what happens to all this I.M.F. money and all this paper gold in the event of war among the partners of the I.M.F. Do they still keep a friendly, collective and cooperative banking arrangement with one another?

If the I.M.F. paper gold is approved Sept. 29th, you can be sure it will be the first money nations will spend. Secondly, they will spend currencies. Lastly, they will spend gold. No nation today spends any gold whatsoever unless its back is right up against the wall. Do we need to know anything else to know which of the three is the REAL Mr. Money?

THE BELGIUM FRANC

Belgium has been losing scores of millions of $'s each week. Now the U.S. has offered Belgium $200 million to continue the stupid policy of resisting an adjustment to the French franc. France is Belgium's biggest trading partner. Nearly two dozen African countries devalued, following the franc. If Belgium devalues another dozen countries go. Can Belgium hold out?

I said in the beginning that the devaluation of the French franc was INEVITABLE! For purposes of pride, or for obliging the U.S., the French government held out. Counting their borrowed money they employed the unbelievable unimaginable amount of nearly $10 billion in this losing battle -- ALL TO NO AVAIL!

France was one of the strongest monetary powers. The delay nearly ruined France. Belgium is a small country. France held out a year. It is unthinkable that little Belgium can go anywhere near that long. The last MFR said it should happen in 15 days. The 15 days have passed. Now the borrowing starts. Belgium must devalue. How ruinous a debt is she willing to take on for the sake of NOTHING? She has $1.5 bil. gold. Will it go too?

THE BRITISH LB.

The Lb. is taking repeated and grievious blows following the devaluation of the franc. Here again we have an example of utter futility and persevering stupidity. The Lb. has been consistently below its normal intervention level. Each week it is sicker. The reserves of the Bank of England are rushing out through a hole in the barrel. This time, who will help England? But don't expect the English to devalue until they are utterly helpless. They haven't the sense. Had the first devaluation dropped the Lb. from $2.80 to $2.00 Britain would have had a cure. At the insistence of the U.S., they did half a job. Now it is doubtful that even a drop to $2.00 will produce the cure.

I repeat: The Belgium franc must go! THE LB. WILL COLLAPSE FOLLOWING DEVALUATION OF BELGIUM. This, when it happens, will produce the collapse of the world money system. Whether it happens in a week, a month, or six months, the results will be the same.

THE STOCK MARKET

You have seen a rally which has carried from the July 28 low of 788 to 837 Sept. 3. Examination reveals it to be a very strange phenomenon. The rally in fact creates suspicions of artificiality, and manipulation. The reason for this statement is rather startling:

In all this period and every single day, new LOWS exceeded new highs. Here is the tabulation on market days from July 28 to the present -- new lows against new highs: 732-0; 663-2; 131-2; 56-2; 48-6; 32-5; 50-13; 48-8; 64-7; 70-1; 93-3; 117-3; 56-13; 51-27; 47-24; 30-29; 41-12; 41-18; 46-24; 50-17; 66-3; 60-6; 51-12; 32-15; 29-14; 58-4, Sept. 3.

On Sept. 2 the market rose 8 points. Nevertheless, there were 32 new lows; only 15 new highs.

Here is a reading of the sickness of the market. Overall it has suffered a broad attack of waning confidence. Moreover, throughout this selective rally volume has remained suspiciously thin -- showing that the public has refused to follow the upbidding. Unless a rally can attract a following, its days are numbered.

We know that the Federal Reserve has the power to enter the securities market and buy stocks. We must ask ourselves at this point, is there an organized effort once more to fool the people by bidding up the stocks that form the D.J. averages -- the figures that everybody looks at?

Whether we attribute the rise of the D.J. to optimism or to manipulation we cannot escape the ominous implications of unrelieved preponderance of new lows over new highs each and every day without let up.

This is in substantiation of the stock market analysis of MFR #71, July 18th.

A NEW DAY FOR SILVER

The long dark night is over. It lasted from July 1968 to July 1969. Spot silver dropped from $2.50 per oz. to a little better than $1.50 per oz. All the while the Treasury was feeding the market with coins which it had secretly collected and melted. Organized manipulators, buying this silver from the Treasury, had the backing they needed to sell silver futures short which they did with a vengeance. Between the Treasury and the manipulators the price declined $1 an oz. during the time when world supplies were vanishing like magic.

That picture has turned around.

The Treasury claims as of July 31st, 93 mm oz. You have to deduct from this as follows: 7 mm oz. sold since then; 12 mm oz. reserved for half $'s; 23 mm oz. mixed with gold. That leaves them 51 mm oz. or about 34 weeks at present rate of sales.

If the Eisenhower $ legislation should pass, the Treasury will have to halt sales immediately. Seems fairly safe to say that sales will be halted sometime between the vote on the Eisenhower $ at the nearest, and 34 weeks at the longest which would put us at the end of April. Even now the artificially low price is quickly discernable.

At the GSA auction, users and coin dealers were paying almost $1.65 an oz. Total bids ran to 9 mm oz. with only 1.5 mm oz. available. The cost of handling and refining this silver has to be at least 12¢ an oz., perhaps 15¢. Whoever buys it must make a profit. With interest rates as they are, that profit would have to be at least 10%. So we arrive at $1.65 plus 12¢, plus $17.7¢ or $1.95.

The people who are buying silver from the GSA are paying at least $1.77 on the basis of .999 and they can't sell it under $1.95. At the same time .999 silver was selling on the NYSE at $1.65. Why?

The more you buy on the NYSE, the higher you put the price. Much better to bid for a known large quantity on government auction.

Nevertheless, some 5000 contracts of Sept. silver were absorbed. The bulk of it was taken in delivery of real silver. The price never trembled.

I would not say that we cannot have reversals. The events, however, would seem to confirm once again the view taken July 18, MFR #71: "I am calling the breakthrough at $1.60 the beginning of an uptrend in silver... the bottom stood at $1.51 and we are at the beginning of a reversal -- THE END OF THE BEAR."

* * *

If this analysis is indeed true we are now in prospect of an uptrending market which will surpass the highs of the old market of 1968. We are looking at a minimum potential of $1 rise in the price of silver. This rise will be healthy if it is slow and steady for the time being. After $2 I would expect fast increases because of three dominating elements:

(1) The huge short interest still in this market.

(2) The spreading knowledge that the last of the U.S. Treasury silver is in sight.

(3) The prospect of the minting of Eisenhower $.

SIGNIFICANT FINANCIAL EVENTS

AUGUST 14 TO SEPTEMBER 4, 1969

Suggestion: Clip and File.

D.J. rose from 813 Aug. 14 to 825.30 Sept. 4.
Spot Silver fell from $1.69 Aug. 14 to $166.50 Sept. 4.
Gold fell from $41.32 Aug. 14 to $40.925 Sept. 4.
Aug. 15 -- U.S. 2nd qtr. b.o.p. deficit $3.8 billion.
Aug. 16 -- 1st heart transplant Blaiberg dies.
Aug. 21 -- Justice Mahoney dies.
Aug. 23 -- July consumer prices still rise at 6%.
Aug. 26 -- U.S. capital spending up 12.6% 2nd qtr.
Aug. 31 -- Japan raises discount rate to 6.25%.
Sept. 2 -- U.S. considering crawling peg exchange.
Sept. 3 -- Ho Chi Minh dies.

Watch out for the Eisenhower coin legislation. It could catch you off guard. If it looks like it is going through, the price of silver would rise sharply. If then by chance, the Bill were defeated, the price would drop just as sharply.

SLUG COINS IN TROUBLE

Strong signs that silver will be put back in Canada's coinage. Worthless 3¢ British coins work in all coin machines. They are being imported in growing volume. Silver is non-magnetic. Slugs are not. Machines cannot be made with enough brains to tell one kind of slug from another kind of slug.

U.S. coinage will soon run into similar trouble. What a coinage manufacturing machine can produce for the government, it can also produce outside of government. There is some reason to believe that already "counterfeit quarters" are in the U.S. coinage stream. If they are not now, they will be. Costing about 2¢ each to produce, private manufacturers in Mexico, Beirut or other lands, can make quarters and remain beyond the reach of Uncle Sam. They cannot be touched. Only danger is crossing the border. Once inside the country, millions of such coins can go undetected in the normal flow of business.

It will be fiat money yet that brings down the crooks in Washington, who have stolen the substance from behind the PEOPLE'S money and sold it, leaving their PEOPLE with worthless paper. So that now all U.S. money is counterfeit. If the private bankers of the Fed can make it -- why not any good, honest ordinary citizen?

"Confidence" is all that matters, according to the Washington money managers. So as long as a private $20 bill looks exactly the same as a Fed $20 bill, it must command the same "confidence" -- Therefore it must be just as good.

Same intrinsic value. (Zero). Same confidence. It is as good.

When it is all over, history will show that it was Justice Mahoney in his barn who wielded the ax that cut the timbers from beneath the platform where U.S. DECEIVERS, Lyndon Johnson, Henry Fowler, David Kennedy and Richard Nixon sold their people out.

RECOMMENDATIONS -- Read over the old ones.

DISTRIBUTED BY THE INTERPUBLISHING CO. LTD., Nuschelerstrasse 31, 8001 Zurich, Switzerland
Mailed from 903 Lancaster Building, Calgary 2, Alberta, Canada
24 ISSUES $85. 12 ISSUES $50. TRIAL 5 ISSUES $20.

C. Myers,
Editor.

$ MYERS' FINANCE REVIEW $

1940 1969

NUSCHELERSTRASSE 31, 8001 ZURICH, SWITZERLAND

No. 75 LET THE TRUTH BE TOLD September 19, 1969

OUTLOOK

SEPTEMBER 18, 1969

SDR'S -- Big Washington SHOW Sept. 29 -- designed to make all people believe world currency troubles are solved. The magicians will make speeches -- pull out the rabbits -- The press will spread banner headlines around the world. The con men (world bankers) will hold grave sessions on the probability of FOOLING the people a little while longer.

Meanwhile there will remain only the sole little white rabbit the magicians brought with them, no matter how many it might appear they have made. When they go back to their banks the real money of the world will not have been increased by one red cent.

Possible Trouble -- No newspaper anywhere has printed final ratification by the German or French parliaments. Nor have I seen any story that Canada's reps have approved. Unless Germany ratifies the scheme will sink -- Germany is the only country with any real money -- the intended victim of the hungry debtors. If the SHEEP won't go in the pen there will be no meal. ALAS!

SILVER -- rising prices with only small setbacks to $2 as it becomes evident GSA sales will cease by year's end.

STOCK MARKET -- Working in narrow 820-840 range. Action is meaningless unless breaking 840 up or 800 down. Important move after IMF meet unless ---

NEW MONETARY CRISIS HITS. France is danger point again as social unrest increases with spreading strikes.

GOLD PRICE -- steady near $41 until after IMF but must breakupward March 1970 at latest.

Responded to ltr EE 3/13/70 ems

42174

THE QUIET CORNER



THE GARDEN OF EDEN

FIRST OF A SERIES

Whatever reservations one may have about the Bible (and I have many) it must be conceded to be the world's most fundamental book. It is the ultimate comprehension of the earthly animal known as MAN. It is the distilled product of all the truth about human nature.

It is the fundamental law book. When nations start out, they seek for these truths to establish a foundation from which their laws will be built. As these nations progress they move further and further away from these fundamental truths (their constitutions) until they build up a structure of artificiality which will then collapse.

It does not matter whether Bible stories are historically accurate, or even true. The value lies in their illumination of basic truth.

When Adam and Eve were thrown out of the garden, the Lord issued an edict which was to become a precondition for mankind forever: "BY THE SWEAT OF THY BROW, SHALT THOU EARN THY BREAD."

Most people regard this as punishment for Adam and Eve. I rather think the Lord saw that he had made a mistake; and that human nature and the conditions of the Garden of Eden were incompatible. Look at them -- Adam and Eve:

Here they are in the Garden. They have nothing to do. All of their wants are at hand for the taking. There is no work, so there can be no appreciation of leisure. There is no danger, so there can be no thrill of excitement. There is no hunger or thirst, so even the pleasure of food and drink is emaciated. There is no competition, so there is no satisfaction of victory. What an utterly boring existence -- and it was going to go on forever.

In this whole dreary place only one point of interest could be found. It was the apple. The forbidden apple. They must have spent months, years, eons thinking about that apple. What really would happen if they broke that solemn law? At last in desperation they said: "To hell with it, let's do it anyhow!"

The Lord saw his mistake. Human life could never satisfactorily exist in the Garden of Eden. Only through challenge could the human animal justify his existence to himself. So He threw them out -- to the great relief I daresay of Adam and Eve.

Governments ponder today what is wrong with the youth. If they will just open the first page of the Bible they will have their answer. When America started out, it built a constitution on fundamentals -- freedom, liberty, responsibility, challenge; victory, death if need be; but boredom NEVER.

The youth of our day have been placed in the Garden of Eden -- a proven flop. Their dissatisfaction matches the dissatisfaction of Adam and Eve. Responsible for nothing, facing the negative income

CONTINUED ON PAGE 6, COLUMN 1

GSA WILL BE FORCED TO STOP SILVER SALES BETWEEN OCT. 1 AND DEC. 31, 1969

This week we shall go into the silver picture at depth. The prognosis is almost identical with MFR about 18 months ago. The delay in timing was caused by an unsuspected development, namely secret collection by the Treasury of silver coinage many months before it was announced. Not being aware of this, not believing a nation would cannibalize its own money; not suspecting the deliberate arrangement between the U.S. Treasury and organized short selling -- being naive -- this letter made its prognosis. There is not the slightest reason to change the prognosis in any way. The difference is the 18 month time lag caused by the above unforeseen developments.

I shall now proceed to give a presentation of the total silver situation from the standpoint of (a) the total Treasury holdings and the net available; (b) the total Treasury coinage silver; (c) the melting program; (d) the current coinage crisis situation; and (e) rising pressures and demands.

TOTAL TREASURY SILVER

As of July 31st the Treasury claimed 92.7 mm oz. in silver made up as follows: .999 - 10.3 mm oz; .830-.998 - 12.8 mm oz; unrefined silver -- 22.5 mm oz; .400 silver - 12.2 mm oz. All of these categories are not available for sale.

According to Treasury information the first item of .999 silver is committed; according to a letter from Eva Adams the category of .830-.998 (12.8 mm oz.) is not authorized for sale; the 22.5 mm oz. is mixed with gold and cannot be sold; the 12.2 mm oz. is for Kennedy halves and has still not been released by Congress for sale. These categories together (10.3 & 12.8 & 22.5 & 12.2) total 57.8 mm oz. When you deduct this from 92.7 mm oz. you end up with 34 mm oz. available. But in the nine weeks through August & Sept. the GSA sales of 1.5 mm oz. per week will have consumed 13.5 mm oz. leaving slightly over 20 mm oz. The 13 weeks from Oct. 1 to Dec. 31st at 1.5 mm oz. per week will consume approximately 20 mm oz.

THEREFORE ALL OF THE AVAILABLE SILVER WILL HAVE BEEN EXHAUSTED BY DEC. 31.

TREASURY COINAGE SILVER

In addition to the above, a letter from Eva Adams of Aug. 21st written to Mr. H. F. Magnuson, estimates dimes and quarters to contain 64.6 mm oz. plus or minus 10 mm oz. Since the Treasury has always been on the low side, I am going to call this 54.6 mm oz. This coinage, if it were melted and available, would last 36 weeks beyond Jan. 1, 1970, but right here we run into a phenomenal coinage situation.

In April of this year Eva Adams predicted to Congress that the nation would run into a coinage crisis in fiscal 1970. If you examine the following table you will see how accurate her prediction was.

U.S. Coinage Inventory of Treasury and Fed Banks

FRACTIONAL COIN

Date	Total Coin Inventory	Decline (or Gain)
Dec. 1967	$1,004,588,673	$26,705,518
March 1968	966,350,322	54,071,620
June 1968	749,645,631	86,165,730
July 1968	689,242,328	60,403,303
Dec. 1968	470,490,705	56,118,090
March 1969	436,150,617	43,859,931
June 1969	315,145,600	48,624,938
July 1969	290,448,204	24,697,396

I ask you now to underline the item June 1969.

On Aug. 21st Eva Adams wrote a letter which advised that on June 30 the Treasury was holding an estimated 992 million dimes and 118 million quarters or $128 million. In dimes and quarters of all types and descriptions, including the slugs. So the June 1969 figure in excess of $128 million is nickels, pennies, 50¢ pieces -- ALL NON-SILVER.

Now this tells us (when you divide 1.38 into $128 million) that if all of the dimes and quarters held in inventory were made up of silver the Treasury would have 93 mm oz. of silver coinage.

The Treasury claims at least 54 mm oz. This would mean that 60% of all the coins held by the Treasury and Fed banks mixed bags would be running 60% silver. But the experience has been in a year of coin sorting that the bags of dimes and quarters have run on the average 12 to 15% silver. It is very difficult to understand the discrepancy. It is almost unbelievable that 60% of the coins are silver. There would seem to be a STRONG PROBABILITY that the Treasury does not have 54 mm oz. of coinage but even giving them benefit of the doubt less than half that much.

THE MELTING PROGRAM

Before getting down to the melt let us give the Treasury full credit for its claim of at least 54 mm oz. -- FULL CREDIT. You will notice that in July 1968 the coin inventory stood at $689 million but that by Dec. 1968 it had dropped to $470 million. This meant that $219 million had to be pushed out into the coinage stream for the Christmas rush.

You will notice that in July 1969 the total inventory was only $290 million. Much less than half of the inventory a year earlier. You will remember that

in the fall of 1968 the Treasury had to put back 30 mm oz. of silver into the coinage stream for Xmas. With the inventory now standing at a pitiful 40%, can we imagine that the Treasury will have to give up less silver than last year. Or should we assume that they may have to give it all up -- all of the whole shooting match of the 54 mm oz? (The whole $128 million quarters and dimes).

It seems to me absolutely unavoidable to conclude that the bulk of this silver will have to be released.

THE MELTING PROGRAM

Here is evidence that the Treasury shares this FEAR. I give you here the coin melt figures since the coin melting program started.

COIN MELT (Millions of ounces)

	Melt	Recirculated
July-Nov. 1968	40.6	28.7
Dec. 1968	10.9	1.5
Jan.-March 1969	29.6	10.0 (adjustment)
April 1969	18.3	
May 1969	14.3	
June 1969	11.0	
July 1969	1.0	

Please note that in July which is the beginning of the fiscal year the Treasury halted melting. While it had been melting over 10 mm oz. a month for a full year it cooled the pots; melted only 1 mm oz. in the month. In the month of August the Treasury melted no coinage whatsoever.

Why did the Treasury stop melting the silver coinage? Because Eva Adams' prediction of the coinage crisis was staring it in the face and it fully recognized that all of its coins would probably have to be thrown into the coinage stream between now and Xmas. Because it realized that it DARE NOT TOUCH the remaining coins at the cost of severe restriction in business in the coming months.

CURRENT COINAGE CRISIS

We are now in the midst of this coinage crisis. Reports from many parts of the U.S. say that dimes and quarters are once again appearing. This indicates that the unsorted bags of the $128 million of dimes and quarters which Eva Adams said were in storage in July -- that these unsorted bags are now coming out for the beginning of the fall and Xmas rush.

Whether these bags contain 15% silver or 60% silver becomes a secondary consideration. The Treasury must kiss goodbye to the most of all these coins. They will never come back.

When we have summarized the whole situation then we arrive back at the beginning; and now I would ask you to read the first story again -- "TOTAL TREASURY SILVER". Now you must conclude that the Treasury has enough to keep the GSA sales going only to Dec. 31st.

THE RISING PRESSURE AND DEMAND

Apart from the above factual and statistical information we have some imponderables. The legislation for the Eisenhower $ is very strong. It is understood that the support is growing.

Moreover, Vice-Adm. Rickover is demanding a stronger nuclear Navy; Adm. Moorer, Chief of Naval Operations, is intent on the addition of nuclear aircraft carriers. All these military requirements add up to millions of ounces of silver.

Balancing these factors, of course, is the possibility that the silver reserved for Kennedy halves can be released.

But when you add it all up it looks like we have run into the end of the supply and that the end of GSA sales might not come until Dec. 31st, but they might come sooner.. and that the Treasury does not have enough silver to make the Eisenhower $ anyway.

EVA ADAMS SAYS SO

From the testimony of Eva Adams, Director of the Mint:

"These studies show that the 7½ billion coins, budgeted for fiscal year 1970, will provide the economy with a 'bare bones' supply of coins and place our inventory position by the end of June, 1970, at critically low levels. During this past fiscal year, our inventories have dropped below a 6-week supply of coin requirements...

"The demand is so strong in some sections of the country that the practice of private production of slugs or tokens of approximately the same size as the 50¢ and $1 denominations has become widespread. The use of these coins is theoretically restricted to use within places of business, but in some cases they are accepted as legal tender."

WHO HOLDS THE PRICE OF GOLD?

The last bastion against an explosive rise in the price of gold is S. Africa. This is confirmed by two sources. First of all the actual statistics. Secondly, by Finance Minister Diederichs.

On Oct. 30, 1968 S.A. had $1.12 billion in gold reserves. On Sept. 8, 1969 S.A. had $1.114 billion gold reserves. Every ounce of gold produced had been sold. $1 billion had been absorbed. The price of gold at $41 stood $6 above the U.S. dictated price, and not a net oz. of gold had entered the monetary reserves of the world.

Sales have accelerated. Between Oct. 30, 1968 and April 23 of this year S.A. reserves rose from $1.12 billion to $1.38 billion -- an increase of $260 million in a period of 5 months.

But since the end of April S.A. has produced about $340 million worth of gold and the reserves have declined to $1.11 billion or $270 million for sales of $610 million.

Nobody seems to know where this gold has gone. It is a pretty fair bet that such volume has not been picked up by individual speculators. The odds are heavy that much has gone into the official monetary reserves and is not being talked about.

* * *

It seems obvious that S.A. is feeding enough gold on the open market to hold the price. Each week in addition to its production, it sells from its dwindling reserves. The last bastion is the S.A. Treasury.

It is doubtful that S.A. would want to go below 60% gold. Since she has total reserves of about $1400 million, that would mean she would want to hold $840 million gold. With $1.11 billion now that means $270

million more might be sold.

When you recall that the gold rush of 1968 absorbed $3 billion you see a pitifully small LAST DEFENCE.

Further confirmation of S.A. cooperation was contained in a news release by Finance Minister Diederichs last week. Diederichs told Dow Jones that S.A. intends to cooperate to prevent any major monetary calamity. He said there would only be a rise in the price of gold if such a calamity took place.

I think that what Diederichs was telling the world was this: We are going along all the way to prevent a world monetary collapse. We are selling out of our own reserves to hold the market price at $41. We will continue to do so as long as we can. If there is a monetary collapse anyway please don't blame us.

I think that's what Diederichs really said.

GOLD PRICE MUST BREAK BY MARCH

Assuming that S.A. will not go below 60% in its reserve stockpile it can sell its normal production plus $270 million. History shows that normal production is soaked up immediately. From July 4 to Sept. 8th S.A. devoted $120 million of its reserves to sales, or $60 million per month. With $270 million available S.A. reserves could buy 4½ months.

That means -- if the rate does not increase -- that S.A. would have to stop selling gold by the end of January. Let us give or take 30 days and we arrive at this conclusion.

S.A. GOLD SALES (over its steady production) WILL STOP BETWEEN DEC. 1 AND MARCH 1, 1970. At that point the defences against gold will be wiped out and it will reach its proper price on the free markets of the world.

* * *

Consider this: Suppose S.A. decides to hold 80% of its reserves in gold. You get a much earlier date. Figure it out.

THE MONEY HEMORRHAGE

The U.S. money hemorrhage continues. It started following the franc devaluation. It has never stopped.

Quoted figures are usually on the low side buteven the quoted figures paint a disturbing picture. In the last two weeks of August it was admitted that Germany absorbed $100 million. From Sept. 1 to Sept. 10 -- $450 million. The Friday of Sept. 12 is unknown but perhaps would amount to $200 million.

At the minimum the money absorbed approaches $1 billion.

People are inclined to brush this off with "So what?" It's not quite so simple. Here's what happens:

If you have $1 million of any currency -- lbs. francs, etc. and you transfer this currency into Germany; this currency is transferred immediately into $'s and these $'s are transferred into German marks and issued to your credit. What does this mean? It means that immediately the Bundesbank issues a claim on Washington for approximately one ton of gold. Against this claim is issued the German marks. The $'s go back to Washington.

So you see when Germany absorbs $1 billion of foreign currencies whether they are from the U.S. or other countries, this becomes a call on $1 billion of gold at Fort Knox.

This is issued against the $10 billion which the U.S. Treasury has publicized for a year as being the gold reserve of the U.S.

MFR has given a breakdown of this several times -- the $10 billion is really no more than about $7 billion. If $1 billion has been absorbed by Germany since the French devaluation the $7 billion becomes $6 billion.

Should another $2 or $3 billion reach Germany the Washington balance would be at an ALARMING low of perhaps $3 or $4 billion.

* * *

The U.S. is banking on this one wishful comfort. If the IMF meeting and its developments should reestablish confidence, those who have placed their money in Germany might be tempted to convert it back into $'s. The marks issued against it would be cancelled -- and Washington could tear up those gold guarantees.

But if the gamble fails --- ?

* * *

The alarm was so great that Friday, Sept. 5th it was announced that the world bankers would meet to find the solution. The meeting broke up. Not a word was said. The bankers said they expected a big increase in Euro-$ rates. Surprisingly by Thursday these rates had declined. Why?

Naturally no one knows for sure but here is what may turn out to be a fairly educated guess. Germany has issued marks for the money coming into the country and turned over the unwanted $'s to the Washington authorities. Washington has issued the gold certificates to Germany for the marks and should therefore destroy these $'s -- at least remove them from circulation. Has Washington just thrown them on the market, thus preventing a rise in the interest rates?

Then U.S. banks borrow these Euro-$'s.

* * *

In summary here is what may be going on. Huge amounts of currency seeking the safety of the German mark; Germany issuing claims on Washington for corresponding amounts of gold; Germany printing the marks on the basis of the gold; turning $'s back to Washington; Washington instead of removing them from the market (since they have already removed their gold) letting them continue to flow on the Euro-$ market. If this indeed turns out to be true they are heading for one dandy, bang-up finale.

* * *

Sept. 17: The rush into Germany started again today. The $ opened below the intervention level of 3.97 marks. The Bundesbank intervened throughout. Reports said Germany had absorbed $150 million today. This may be the beginning of the second sustained hemorrhage following the franc devaluation.

IMF SHORT OF FUNDS?

This revealing little story in the London Financial Times with respect to France's drawing of $985 million:

"The initial drawing, which is expected to be used before the end of this month will be of the order of $500 million with the balance to be drawn early next year. This appears to be a compromise solution, the French being hard-pressed to repay swap loans to central banks now, and the IMF rather short of funds itself."

This French withdrawal is hard to understand. If we are to believe published figures of France's reserves they are certainly not broke. Why then are they calling for almost $1 billion from the IMF now? Where will this put the IMF if Britain fails to make some of its repayments? It recently paid back $200 million and then turned right around and borrowed it back again. This is called REFINANCING.

If the IMF is short of funds now, what will happen in the case of another international currency crisis? Over a year ago MFR ran a story "IMF -- CANDIDATE FOR BANKRUPTCY."

INFLATION HITS APOLLO BOY

In 1891 a wealthy French widow willed $20,000 to be awarded to the first man to set foot on the moon. Last week Neil Armstrong got paid off -- $180.00.

THE LAND OF LIBERTY

Quoted from that great champion of freedom -- THE NEW YORK TIMES:

"A lawyer.. has been suspended from practice by the Minnesota Supreme Court. The Court... ordered a hearing that could result in his permanent disbarment. Suspension is effective Oct. 1. Mr. Daly, an attorney in Savage, Minn. has brought a series of actions... to prove that only gold or silver or their equivalent are legal tender in the U.S.

"Mr. Daly served one day in jail for contempt of court last April for attempting to raise the issue.

"A FEDERAL JUDGE IN 1968 HAD ORDERED MR. DALY NEVER TO LITIGATE THE MONEY QUESTION IN ANY COURT."

"TABOO" ON "MONEY"

Why is Daly suspended? He claims that Fednotes have nothing behind them but ink and that this is contrary to the U.S. Constitution. He dares to read out the Constitution of your great country. And the judges don't want to hear it.

The U.S. Supreme Ct. has never ruled on this issue.

The court has no dishonest or fraudulent charge against Daly. He only sin is that he disobeyed a federal judge who ordered him to shut up about money. So they take away his only means of livelihood.

Daly says that if they can suspend him from practice for this then they can suspend him in the midst of argument on behalf of a client because the judge may dislike the evidence.

Think about that. I believe that if Daly can be suspended because he brings up the subject of money, any attorney in the U.S. anywhere can be suspended for bringing up any subject whatsoever that the courts do not wish to hear.

This action strikes a mortal blow at justice.

Daly cannot fight this alone. If any of you feel like giving him a hand, why don't you write or call 890-2274, area code 612, Savage, Minn., Box 177, Savage, Minn., 55378. He needs some help.

WHAT MAKES IT ALL WORTHWHILE

Sometimes there is considerable strain involved in the exposures which you read in MFR. It would be so much easier not to tell the TRUTH. So much safer. But then when it is your masthead, your beacon light, your avowed purpose, there is no shrinking back. And wherever the truth leads -- there you have to go. It is letters like the following that makes the whole thing worthwhile.

"If God would only give us just one, only one C.V. Myers in our Congress and Senate with the same fearless vigor, and great financial knowledge like you -- we might save our Great Nation."

Neptune Beach, Fla.

"I want to congratulate you on your great work. In a world where fear and untruths seem to go hand in hand it takes real courage to speak the truth. It stands out like a beacon in the night. I salute you, for you are a soldier of truth with only courage for your shield."

Brunswick Hills, Ohio.

"What a welcome contrast your letter is to the propaganda we receive in the U.S.

"It was not until I began receiving your letters that I became aware of the severe and ominous debacle facing us in this monetary crisis.

"How impossible it is for us to hear the truth.

"We always look forward to the day when your letter is expected, and everything comes to a standstill, all other mail set aside, until we read what C. V. Myers has to say."

St. Petersburg, Fla.

"Your letters are excellent. You have done a magnificent job, exposing the Federal Reserve, a great service to the American people and the governments of the world, and we are very grateful to you, sir."

Santa Monica, Calif.

"People are hanging on to their old silver coins! You have helped many people to survive in H___ish days just ahead! Keep up the fight. God bless you."

Presho, S.D.

"We must each learn his lesson. The money I saved by allowing MFR to lapse is long gone. You know more about our Constitution and our present government than the average well-educated American."

San Bernardino, Calif.

"I read your reviews because they are like a breath of fresh air. So you missed some timing, so what. It is hard to judge the power of the 'secret government."

Tucson, Ariz.

"I wish to add appreciation for the excellent manner in which you are able to write so clearly and logically of your philosophy about the problems of our times. It is truly a God-given talent that you have and I am thankful that you share it with us.

"In my opinion your Quiet Corner essays are real masterpieces."

East Chicago, Ind.

"I did not realize that there was a person left in the world who could and would write in such a manner, with complete honesty of purpose, integrity, and

THE QUIET CORNER – CONTINUED FROM PAGE 1

tax and the perpetual GARDEN -- the meaning of life has disappeared. No sweat, no danger, no hunger -- licence in the satisfaction of all instincts without effort, or fear.

People don't think they want to work, but they do. If they dig a post hole and put in a post, they have proof that they are alive. If they plant a tree, or shovel a walk, they see a purpose and a result. Only through work, and through their own initiative and sweat can they come to believe in themselves.

This is fundamental to the molecular structure of man. If he is denied danger and challenge and work, he will bring the whole society smashing into ruins in order to get the FEEL of the meaning of existence. That's what Adam and Eve did. That's what is happening now.

The Garden of Eden turned out to be a flop right from the beginning. Today there isn't even the excitement of penalty -- not even an APPLE!

No GREAT SOCIETY can endure. Is not compatible with the nature of man.

* *

above all with moral solvency." Pomona, Calif.

"Each and every issue of MFR is eagerly awaited at my home. My wife has learned to give me your MFR after supper -- otherwise the family has to wait until I read your letter." Chicago, Ill.

"My acquaintance with your MFR's is recent. But it took me only the time to read my first half-dozen copies to realize what WISDOM you possess. I think that your feature of THE QUIET CORNER faces reality so intimately that every single issue deserves a Pulitzer Prize." Seattle, Wash.

"My thanks for your continuing fine work. It seems ever uncanny that anyone could deduce so much from the mere surface appearance of things without pipelines to finance ministers. Perhaps, genius is the development of common sense to a high degree." Fremont, Calif.

"I have learned more from your comments and findings in the past 22 letters than from 22 years of really intensive study and reading. Secondly, I am greatly amused at how the general tenor and philosophy of your thoughts are creeping into the writing of Indicator Digest, Dines and several others. Oh, they quote you, but beyond that they expound on ideas that you originate. Westminister, Calif.

"Your commentary on firearms registration/confiscation was brilliant! Your ability to grasp the very essence of a matter, and then distill it for your readers in a compact and most eloquent style is nothing short of amazing." Fairfax, Va.

"I like your Review. I'd hate like hell to oppose you on any issue you're sold on." Portland, Ore.

"You are a perfectly marvelous writer and I thoroughly delight in THE QUIET CORNER. It is men like yourself who are writing the truth courageously and boldly who are the greatest hope." Pasadena, Calif.

* * *

These are only a few. Believe me. I feel very guilty because I have had to scrap some perfectly good stories for this space. Still I think it may be of help to you to know that you are not alone in your evaluation of this letter. This space is a luxury for me. But it is a great delight. I thought maybe I would be entitled to it about once every six months. I hope you agree.

SIGNIFICANT FINANCIAL EVENTS

SEPT. 4TH TO SEPT. 18TH, 1969

Suggestion: Clip and File.

D.J. rose from 825 Sept. 4 to 831.5 Sept. 18.
Spot Silver rose from $1.66 Sept. 4 to $1.79 Sept. 18.
Gold stood still at $40.92 Sept. 4 to $40.85 Sept. 18
Sept. 10 -- S.A. survey shows ind. demand outstrips gold mines.
Sept. 11 -- G.M. price boost is a record.
Sept. 11 -- W. Germany disc. rate up 1% to 5%, highest in 18 yrs. following a 1% hike June 19.
Sept. 14 -- Swiss up disc. rate 3/4% to 3 3/4%.
Sept. 15 -- Record 9% for utility pipeline bonds.
Sept. 17 -- London raises bank rate ½% to 9%.
Sept. 17 -- Belgium ups disc. rate from 7 to 7½%.
Sept. 17 -- $150 million into Germany today.

RECOMMENDATIONS

Buy U.S. silver coinage. You can buy silver futures but I would like to see you back up your contracts with $3,000 each (rather than the $1,500 required). Take delivery of solid silver where possible. Buy silver in Switzerland or London through Swiss banks at about 1/3 margin. I have frequently before named banks. Buy the frequently recommended S. African gold stocks and N.A. silver stocks. Remain completely clear of the stock market. Convert cash and bonds into real assets except for liquidity requirements.

* * *

LATE ON SILVER -- On Sept. 2 bids for the GSA 1.5 mm oz. silver sale totalled 9 mm oz. Bids on Sept. 9 totalled 14 mm oz. Bids on Sept. 16 totalled 24 mm oz. Treasury withheld part of the 1.5 mm oz. The price was $1.74 per oz., which considering refining, etc. means buyers paid $1.84 per oz. -- 10¢ above the N.Y. spot price.

DANGER IN FRANCE

Late developments from France are not reassuring. $7 billion of solid assets built over a decade became a shambles to where only $1 billion was left. Now $400 million has come back. But the new upcoming unrest makes the franc look dangerous again. This time France couldn't last more than a matter of days if hit by a tidal wave. No amount of SDR's can save the franc.

C.V. Myers,
Editor.

DISTRIBUTED BY THE INTERPUBLISHING CO. LTD., Nuschelerstrasse 31, 8001 Zurich, Switzerland
Mailed from 903 Lancaster Building, Calgary 2, Alberta, Canada
24 ISSUES $85. 12 ISSUES $50. TRIAL 5 ISSUES $20.

$ MYERS' FINANCE REVIEW $

1940 1969

NUSCHELERSTRASSE 31, 8001 ZURICH, SWITZERLAND

No. 82 LET THE TRUTH BE TOLD December 19, 1969

This letter goes to Canadian MP's and U.S. Senators.

OUTLOOK FOR 1970

A EUROPEAN CURRENCY BASED ON GOLD -- Triggered by multi-billion $ U.S. deficits which would be increased by (a) falling stock market (b) relaxation of money supply. DEFICITS of $10 billion in 1969 not convertible into any THING -- rising deficit for '70 -- means U.S. buys up raw materials and labour of world countries with printing press money -- not redeemable -- reducing other nations to servants, to maintain U.S. living standard.

ECM REVOLT indicated in new Euro-Fund of $2 billion and notice that they will trade their U.S. $'s for gold at $35.

NEW GOLD FLOOR at $35 in 1970 places money situation right back where it was in March 1968 and throws doubt on successful implementation of SDR's. (S.A. sold $31 million gold last week.)

SILVER FLOOR PRICE of $1.70 seems creditable. Signs that GSA will not accept lower bids due to USERS' talk of critical shortage, and criticism from Congress.

STOCK MARKET FOR 1970 -- A crash into the 500 area or lower -- Every rally is a trap. MILLIONAIRE CLASS in grave danger.

TWO MONEY BLOCKS in prospect for 1970. Would mean huge deficit financing, accelerated inflation; shrinking trade. Alternative is U.S. increase in gold price -- unlikely. Gold at $35 indicates we are near the confrontation.

Future historians will rank 1970 with 1939, 1929, 1914 and 1776.

THE QUIET CORNER

MERRY CHRISTMAS



It has been a year of adversity for all true BELIEVERS. Those who are convinced that NOTHING can never match SOMETHING; that silver is better than paper; that gold is more valuable than printer's ink -- those who have dared to believe that intrinsic value surpasses promises, have all been punished by the enraged politicians and bankers. The silver people have been whipped, and the gold believers have been persecuted through manipulation. The hot-air artists and the shallow thinkers are boasting in the manner of Lord HA HA -- following the fall of France.

It is a common fault of the superficial to celebrate too soon. About 2000 years ago Christ was on the cross. The Christians were in disarray, and Christianity seemed to be finished. The bureaucrats of that day must have feasted and wined long into the night.

But the Christians knew their fundamentals -- knew the promise of their religion as related to humanity of that era. And KNOWING, they could not be shaken. What does history tell us about premature boasting? (The modern day Green Commodity Letter.)

Gold is down to $35. This is supposed to represent a victory for hot air and paper. But we know that paper can never be victorious because it is in itself worthless; its only value lies in the promise of its printers. But these promises are discredited by their own record, and by repeated repudiations on each and every promise.

So take heart. Have faith in what you KNOW. Let the bureaucrats crow. It is their last chance before the coming moment of their final disgrace.

Christmas has always been a time for the renewal of faith in FUNDAMENTAL TRUTH. Whether that truth is religious or economic, makes no difference. TRUTH is a rock that withstands all assaults, all the ravages of time, all the rantings of intellectual pygmies; all the tricks of hypocrites. TRUTH stands forever. Those who would smash truth will on the contrary smash out their own brains as they continue to bang their heads against it. They all will expire at the base of the ROCK OF TRUTH.

I wish you a happy Christmas, and a GOLDEN New Year. And I think you will have it.

Respondents' Ex III
Ims 2/18/70

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THE STOCK MARKET

The Dow Theory Letter published by Richard Russell -- certainly one of the best technical market analysts of our day -- pertinently points out the following sober facts:

(1) The Dec. 3rd D.J. close of 793 was the low for the year and the lowest since Jan. 4, 1967.

(2) The rail close of 180.4 was the low of the year and the lowest since Feb. 4, 1964.

(3) The utilities Dec. 3rd close of 107.7 was the lowest for the year and the lowest since June 1962.

(4) The D.J. 40 bond average close of 69.4 was the lowest since 1932.

(5) The advance/decline ratio of Dec. 3rd was the lowest since 1950.

As of time of writing, Dec. 17th, the above figures are even worse. D.J. 769.9; rail average 169.03; utilities 106.70.

Granville, another top technical analyst who places great reliance on the advance/decline line which has consistently been right in calling the market moves for several months, has this to say:

"While we await the fulfillment of the second prediction, the A-D line is looking much further ahead and is currently predicting something for the Dow far, far under the 744 level, something perhaps as low as (hold your hats) 161 to 276. The A-D line foresees such low extremes in its current plunge to the lowest recorded levels since 1951, a year which had a Dow range of 161 to 276.

"This then is the fantastic story being told in advance by the advance/decline line, an indicator which has totally collapsed in a fashion having only the 1929 experience as a parallel."

In addition, please observe that last week General Motors broke its 1966 low. This bellweather stock often considered to be a prime indicator itself -- almost as important as the D.J. -- fell through $66 with a thud. The fact that it recovered does not erase the signal that it gave. About half or more of the D.J. stocks have now broken the 1966 lows. Only the ficticious figure of the D.J. itself, artificially supported, remains above these disastrous ledges. Common sense seems to tell us that nothing in the world can save this market from going through the important platform at 745 -- a platform below which there is a complete void of 250 points.

Russell also points out in a graph that an uptrend line dating from 1932 remained masterfully intact for 47 years. But this critical uptrend line was broken in the market collapse from 860, and now the market is working well below the uptrend of nearly half a century.

Nothing could be more ominous than the consolidation of these facts into one picture.

VALIDITY SIGNAL

The strongest signals are those which are not readily apparent. The great wheat battle between the bull Cutten; and the Bear Livermore in 1929 was won by Livermore from an obscure signal. That was the price of rye.

Rye was a thin market. The wheat bulls always supported rye to keep the price high because this increased confidence in wheat. If rye was holding well, then naturally wheat would hold well. It didn't take huge capital to support rye. As the battle between the bulls and bears reached a crescendo, Livermore noticed a slight weakening in the price of rye. He sold more wheat. As Livermore continued to sell, the price of rye weakened further, although wheat did not weaken. But Livermore bet his fortune on this obscure indicator. To him it meant that the wheat bulls were running out of money and could no longer support both wheat and rye. He then sold literally hundreds of millions of bushels of wheat, and sure enough he was right. Wheat broke. The bulls collapsed, and Livermore took his millions.

The story is important when related to the above because the market weaknesses are prevalent on every indicator to a much higher degree than the important D.J. The mass public watches the D.J. But meanwhile the breadth of the collapse, the total sickness of the market is evident everywhere else.

As an example of this breadth, on Dec. 2nd the market rose 1/5 of a point. But there were 351 new lows and only one new high for the year.

The bulk of the billions in the stock market is made up of people whose experience dates back no further than 1940. And their conclusions are based on the behaviour of a bull market with bearish interruptions. They do not know that a massive tidal bear market can exist. When it arrives it sets its own rules, and all the conclusions based on the actions of a bull market become invalid.

What we are looking at is a tidal wave of continental breadth, sweeping in from the ocean; not yet frighteningly high, but frighteningly broad. When it strikes, the fury of its impact will spare no part of the continental line.

WHEN THE BREAK COMES

The credit situation has been so strained (proven by record high interest rates) that a large and sudden drop in the market will call for the immediate liquidation of billions of $'s. When G.M. is at $80, you can owe the broker $16,000. But with G.M. at $50, you can only owe the broker $10,000. How do you get this money? You sell bonds or you sell stocks, or you sell G.M. itself. But when everyone is selling, and no one has the cash to buy, you are headed into the panic. One liquidation triggers another. This brings a landslide.

Apart from the domestic implications we are looking at an international pandemonium unprecedented.

Never before has the Western world depended on any one currency. Today it all revolves around the $.

The U.S. foreign deficit for this year already looks like $10 billion. A deficit of less than half that helped bring on the 1966 crash. But if the stock market plunges now, Europeans will be dragging billions upon billions from the N.Y.S.E. Another $10 billion or $20 billion deficit in 1970 surely would collapse the money system based on the $. For these billions of deficit are not redeemable in any THING.

THE MILLIONAIRE CLASS

We are about to see the elimination of a CLASS in America. It is the millionaire class. Recently I travelled in the States. In my questions to individuals and to brokers, both there and in Canada, I get the same answer when I ask "Where do the millionaires have their money? The answer is this: Millionaires don't have money in cash. They have it either in stocks, bonds or property. The largest part of the bulk of the small millionaire is carried in paper. A collapse of the U.S. $ means a collapse of bonds and stocks. Thousands of millionaires would be wiped out in a brief period.

The growing psychology has been to trust the government and to believe that "blue-chips" is to be taken literally. Having based their investment policy on this trust they are vulnerable to bankruptcy -- if they have been wrong.

BIG WAGES AND POVERTY

From the Wall Street Journal, Dec. 9th, we learn of the plight of auto workers who are being cut back from overtime. The Journal cites the typical case of one worker who can't meet his bills on wages of $145 a week with take home pay -- get this -- of $87 per week.

Remember the good old days when Henry Ford gave every worker $5 a day -- the days of real free enterprise -- and every worker lived like a king. He had his car. He had his home. He had all he wanted to eat and his vacations. That $90 amounts to $30 in 1940 purchasing power. The great spenders have raised wages to undreamed of levels. But they have paid these wages in paper $'s which they print at will. Nothing can happen to this situation except that it will get worse.

These unions -- having lost overtime --will press for higher hourly rates. Who can blame them? These higher hourly rates will eliminate overtime altogether and cause lay-offs. Since the labour union contract says that they get 95% during a lay-off, this will mean that the auto company will make no money at all. It may also mean that they will have to raise the price on automobiles.

Last week cotten went up 3%. The week before nickel went up; copper went up. Strikes threaten to become more rampant than ever. As long as the strikes go on, the prices cannot go down.

THE FIGHT OF INFLATION IS A FLOP. They have gone too far down the road of inflation now to stop it by some monetary fanagling. No tinkering can withstand the flood of pressures piling up against 30 years of mistakes.

The WSJ story reinforces our contention that we will get worsening inflation with rising unemployment -- inflation in the midst of a depression. The monetary experts have lost their grip. They will keep on jumping from one foot to the other as the stove gets hotter and hotter.

BIGGEST MONETARY STORY 1969

From the back pages of the Wall Street Journal, Dec. 11th:

"PARIS -- THE COMMITTEE OF CENTRAL BANKERS OF THE EUROPEAN ECONOMIC COMMUNITY HAS WORKED OUT PLANS CALLING ON THE SIX MEMBER NATIONS TO EARMARK $2 BILLION IN 'SWAP' AGREEMENTS FOR A SPECIAL CURRENCY STABILIZATION FUND... WORKED OUT LAST WEEK IN BASEL.

"French Premier Chaban-Delmas said that the best solution to the current monetary problems and high interest rates was the creation of a European currency."

I now quote from MFR #65, May 7, 1969 -- "EUROPEAN CURRENCY -- based on gold, beginning with joint Franco/German mark, and being joined by others, is an increasing probability."

That same issue, #65, is highly pertinent this Dec. 18th. We said:

"While it is inconceivable that the sound European powers would agree to the demonetization of gold, it is equally obvious that a rise in the price of gold presents a near disaster to the U.S.A...

"We might very easily have an agreement between Germany and France for an adjustment of their parities and a falling-in of all other countries to this standard to something which might be called a EURO-MARK.

"If the $ and Lb. suffered a 20, 30 or 40% discount on the Euro-Mark, Americans could sell freely and their foreign trade would enjoy a ball BUT Americans would pay very dearly for oil, copper, aluminum, all imports. Further, the Europeans would not stand for this massive dumping and would throw up solid tariff barriers against American products. The dismal uncertainties would halt foreign trade and throw the whole world into a depression.

"On the other hand, if we wish to imagine paper money as being superior to the gold block currencies, then we would have the same situation in reverse with resulting mutual trade walls of the same crippling uncertainties and the same end product.

"So whether we have a higher gold price, a demonetization, or two divided world currencies, the finale remains the same."

* * *

I have used the above quotes from MFR, May 7, 1969, because I could not describe the situation more pertinently today.

Anyone who reads the statement by the French Premier about a European currency should see the handwriting on the wall because:

(1) If there is to be a European currency, it will have to be a gold-backed currency. The European countries have strong gold reserves. A deterioration in the price of gold would affect them more adversely than a deterioration in the price of the $. They cannot afford a lower gold price.

(2) At the same time the U.S. cannot afford a higher gold price.

(3) So we are looking straight in the face at two world currency blocks. One or the other will prove to be supreme.

* * *

We have already been through the paper $ business.

It could not hold the gold price. The IMF is based on the convertibility of the $ into gold; convertibility has collapsed. The IMF could not even pay Germany the money Germany has on deposit. This is like the banker being able only to give you a part of your cheque when you go to clear the account.

This obviously is the reason for the $2 billion fund now being set up in Brussels. So we have to admit whether we like it or not that:

(1) Current world monetary system has disintegrated, because convertibility has gone.

(2) That the IMF is unable to pay off.

(3) Had the IMF not failed, it would not have been necessary for the ECM countries to form the new fund.

MONETARY UNION

From the Financial Times of London, Dec. 11:

"If the Central Banks' plan is accepted by the Community Council of Ministers (next month) the commission is expected to make additional proposals next year for further steps toward monetary union. The six heads of government committed themselves to make rapid progress in this field at last week's Summit Conference in the Hague."

Thus the $2 billion reserve fund agreed to at Brussels becomes the first step toward monetary union. The logical outcome of monetary union is a common currency.

GOLD FLOOR AT $35

Also from the Financial Times, Dec. 13:

"Mr. David Kennedy, U.S. Treasury Secretary, made clear during his recent tour of European Finance Ministries that he would not oppose support of the free market gold price at $35 an oz... He also said the Administration was willing to see some newly-mined South African gold enter the monetary system... All the European Ministers on whom Mr. Kennedy called are believed to have argued that the free gold price should not be allowed to fall below the official $ parity. Some have claimed that their Central Banks would intervene on the market to stop this happening even though they had signed the Washington agreement."

From Tokyo comes word that Japan will buy gold from West Germany with U.S. $'s to build up its small gold reserves.

Last week in Paris France's Finance Minister Giscard d'Estaing met with Secretary Kennedy. In a radio meeting just before the interview he said: "It would be neither reasonable nor realistic to allow the free market price to slip below the official $ parity." Just a few days before Chancellor Brandt of Germany had welcomed the suggestion of the Common Market European reserve fund for European stabilization.

In any case there never was any danger of gold going below $35 because it is forbidden by the IMF. Outstanding European columnist Gordon Tether writes in the Financial Times that no amount of devious misinterpretation of the Washington agreement on the two-tier system can close the door to "the disposal of newly-mined gold for monetary purposes at that level ($35)." He quotes the IMF, Section 6, Article 5, that "any member desiring to obtain... the currency of another member for gold shall, provided it can do so with equal advantage, acquire it by the sale of gold to the Fund."

This means that (unless they can get gold cheaper somewhere else) anyone wishing foreign currency surrenders his gold directly to the Fund who obtains the currency for him. Tether quotes another paragraph: "Nothing in this section shall be deemed to preclude any member from selling on any market gold newly produced from mines located in its own territories."

So from the beginning the law was clear. S. A. had every freedom all along to avail itself of the right to sell gold at $35 per oz. In spite of all the bullying of the U.S. Treasury; in spite of all its maneuverings to change the rules of the game to suit itself, it has met a wall of complete opposition from the countries of Europe and for once the BULLY has not been able to get his way.

THE FUTURE GOLD PRICE

The future price of gold is an open question but consider these views:

(1) It was impossible to hold the price at $35 per oz. Some years ago enormous pressure threatened to break the U.S. $35 price. The U.S. had to holler for help, and it got all countries to join it in a formidable pool which was calculated to withstand any avalanche. But the 1968 avalanche smashed the pool. The U.S. capitulated. Monetary authorities had to stop selling gold. CONCLUSION -- THE GOLD PRICE OF $35 IS UNSTABLE -- MUST GO UP OR DOWN.

(2) Will the gold price go down? This was the hope of the U.S. in the Washington agreement. By forbidding Central Banks to buy gold, the U.S. thought that the S.A. production would smash the price, perhaps to $25 per oz. Instead, the two-tier system was a victory for the gold bugs. Completely fooling the U.S., gold went to $44 per oz. The next move was to create SDR's which the U.S. thought would discredit gold and allow their paper currency to rule the world. They hoped to push gold below $35 -- and nearly did so. But at the $35 level they ran into the hard core resistance of all of Europe, and had to back off. SO NOW WE KNOW THAT GOLD WILL NOT GO BELOW $35.

(3) This places us right back where we were in 1968, except that the gold shortage is much more severe. Now Europe has already shown its backbone and it looks like this enormous cooperation on the paper $ is coming to an end.

CONCLUSION -- SINCE GOLD WILL NOT STAND STILL, AND SINCE IT WILL NOT GO DOWN -- IT IS GOING UP.

THE LITTLE IMF

Now we have a little IMF, and it would be foolish to think that this would be founded on paper like the current failure. Since these countries have the gold it will be founded on gold. Now what shall we expect?

Assuming the ECM can work out the new EUROPEAN CURRENCY -- gold backed, and gold convertible, you will see billions of Euro-funds rushing to convert themselves into the new hard currency. It would be unthinkable that the new Euro-currency could accept these unconvertible $'s on a par and then pay out gold to redeem them. Therefore we shall see these Euro-$'s going at a discount against the EUROPEAN CURRENCY.

BIG DEBTS OR--LITTLE DEBTS?

Should we owe lots of money, or should we owe no money? Mr. Russell is inclined to think -- he says instinctively -- that we should owe no money. But I am coming around to the opposite conclusion. Reading between the lines you have probably seen this for the past few months. Although I am not sure of the answer, I think the arguments deserve consideration.

I travel the same road with Mr. Russell up to and including the crash of several hundred points in the D.J. We travel also the same road further, believing that interest rates will still increase, and that we may have inflation in the midst of depression. We continue even further together in that we believe at this point the paper money will have to be defended with gold -- and the U.S. government will have no alternative but to announce an increase in the gold price.

But at this point Mr. Russell and I part company. He believes that a doubling or a tripling of the price of gold would restore the world money situation. I think, on the other hand, that right here we come to the COLLAPSE of the U.S. $. I say this:

(1) Once you raise the price of gold at all, you have bowed to gold. You have called gold the ultimate money. You have made the $ secondary to gold. GOLD HAS BECOME KING!

(2) From that moment on all money is related to gold, including the $.

(3) Now we have a totally new concept -- a new recognized standard. Once we have this standard the measurements according to this standard become completely inevitable.

(4) Once the measurement is a law of "weights and measures" the measurements will have to be realistic.

(5) A realistic measurement of U.S. $ against gold will not come as a mere tripling of the gold price.

Those are the arguments and here I should like to elaborate.

The whole point is that you suddenly wake up to a morning of reality. On the day that Germany surrendered, we had immediately a TOTAL new set of world circumstances. The truth broke through the clouds in crystal clarity.

On the day that you find out your girlfriend is a tart, your entire relationship is suddenly reversed. You are faced with an entire new set of concepts. You sweep away the entire falsification of reality under which you had been living. You don't go halfway to reality. If you do, you don't go at all. When reality bursts upon the scene, it means all the way.

What does "all the way" mean for the U.S. $?

If the U.S. raises the price of gold at all, it will mean a full return to gold convertibility, on an international basis.

What does this mean?

We would be inevitably faced, I think, with the situation where the money system would have to be overhauled, and just as it was in France and Germany and other countries, the U.S. would have to issue one new $ for several of the old $'s. This might be 5 to 1, 10 to 1 -- or how much more I do not know -- depending on how much further the situation goes.

I propose the following proposition without question or qualification.

ONCE THE PRICE OF GOLD IS OFFICIALLY RAISED AT ALL, WE HAVE STARTED ON A TOBOGGAN RIDE THAT CANNOT END UNTIL THE PRICE IS AT LEAST $175 PER OZ.

REPUDIATION OF DEBT.

You repudiate debt not by laws, but simply by making the debt certificates next to worthless. The government owes you $10,000 per bond. But by the time you get around to collecting, they have declared that one new $ is equal to ten old $'s. You find that the new $ will buy what your old $ bought when you bought the bond. So while you receive the whole $10,000 of old money, you actually receive only 10% of the purchasing power you invested.

Under these conditions all debts would be subject to large repudiation, whether the money is owed to the bank, to mortgage companies; or even if it is held in the form of cash.

And this brings us back to the start of the discussion: Big Debts or Little Debts?

TIMING

Don't expect all this to happen in a few days or a few weeks. Pondering the substance of the above stories one is struck with awe at the magnitude of the changes we are discussing. We are looking at economic and social changes comparable with a half dozen major events in the history of the world. History books of the next century will see this in perspective as comparable to the industrial revolution, American independence; the fall of Rome.

All of human existence is based on money. The physical man sweats, bleeds, grieves and expends his life forces to acquire goods for himself and his family. It is unthinkable that a money system could collapse without precipitating the most far reaching consequences imaginable.

The weakness of our position today is that the whole world became dependent on one currency at Bretton-Woods in 1934. The absolute cornerstone and foundation was convertibility. Removal of that clause means that huge U.S. deficits can buy the natural resources of the world by the mere use of U.S. printing presses. This means that the other countries become the servants of the U.S. money system. The U.S. $ failed when the convertibility failed in March 1968. Since then we have had unbridled spending in the nature of 1929. But this does not make a parallel. In 1929 we had a solid $ -- a concrete floor on which to rebuild our same system. This time there is only a void.

Just as the young swingers in the market today do

not recognize that 1929 is an historical guidepost; just so hardly anybody realizes that 1929 is not the ultimate in economic failure.

What we are facing today is the overturn of the economies of the world.

The year 1970 promises to go down as the historical year of the CHANGE. Whether this happens in January, July or December is a matter of conjecture.

* * *

I place this panic between the current market level of 780 and 690. Decisively breaking 740, the panic could commence on any market day. Today's rally should go higher. Nevertheless it is a phony.

SILVER--WHAT HAPPENED?

As always the market was a victim of a completely unforeseen engineered event. The Bank of England forbade any further purchases of silver for credit that would exceed the 1968 level.

Many of the Swiss banks borrow their money from the bullion dealers in London from whom they buy the silver. The Bank of England not only knocked out this buying but it also scared established holders into selling.

The excuse for this move was the British B.O.P. against which silver purchases are almost invisible.

This was a manipulated move by the highest authorities, probably at the instigation of the U.S., to keep the silver price from getting away. It coincided with the artificial manipulation of the gold price to $35.

An inkling of the Treasury attitude is contained in a letter by Rep. McClure to H. F. Magnuson. He says: "I would like nothing more than to limit further the categories of silver available for sale but this can only be done with the approval of the Coinage Commission and Secretary Kennedy refuses to call a meeting."

Also on Dec. 5th, the Treasury issued this statement: "We have not and do not anticipate recirculating any of the silver dimes and quarters in our inventory."

The Eisenhower $ is still an unsettled issue. It would be unwise to conclude either yea or nay. Odds in favour decline as time passes.

* * *

Rumor is that the GSA will not sell silver at less than $1.70. While I discredit most rumors, I believe this one. Dumping any of it at lower prices would create a storm. I am calling $1.70 about the bottom of the market on silver. If the rumor is true, we will almost immediately see $1.80 silver again.

The silver market is the toughest of all markets to play because it is at the mercy of international manipulation.

CONCLUSION -- The only way to play the silver market is to buy silver like a stock with 1/3 to 1/2 margin on the price of silver. PLEASE -- No matter how good it looks, do not extend yourself on this bucking horse. Sufficient margins guarantee you restful nights even if you have to wait longer than expected.

SIGNIFICANT FINANCIAL EVENTS
NOVEMBER 27TH TO DECEMBER 18TH, 1969

Suggestion: Clip and File.

D.J. fell from 810 Nov. 26 to 783.79 Dec. 18th.
Spot Silver fell from $1.87 Nov. 26 to $1.74 Dec. 18.
Gold fell from $35.55 Nov. 27 to $35.01 Dec. 18.
Dec. 2 -- Planned capital spending up to $76.8 billion, 1st. quarter.
Dec. 10 -- NYSE seat sells lowest in 2½ yrs at $280,000, down from peak of $550,000 last year.
Dec. 11 -- ECM banks propose $2 bil. -- little IMF.
Dec. 11 -- Europe resists any drop below $35 gold.
Dec. 12 -- Sec. Kennedy "will not oppose gold support at $35."
Dec. 15 -- U.S. & S.A. talks end without comment.
Dec. 15 -- Nov. US ind. output sharpest drop in 5 yrs.
Dec. 18 -- Mkt. jumps 14 pts on belief Burns will ease money. BUT only 14 new highs -- 242 new lows.

WILD INFLATION?

If the world splits into two money blocks, the U.S. will be forced into huge deficit financing which will mean inflation even greater than we have seen. Inflation in the midst of recession and depression; higher interest rates, higher prices, higher unemployment, reduced trade, further depreciation in the value of cash and bonds. In this way the stock market might crash less severely measured in $'s, but perhaps even more severely measured in purchasing power.

Only alternative to this situation is for the U.S. to avoid the two money system by increasing the price of gold. Since this is disastrous, it is highly unlikely.

D.J. BREAKS 1966 LOWS

Based on purchasing power the D.J. long ago broke the extreme lows of 1966. Allowing for inflation of 3% in 1967, 4% in 1968 and 6% in 1969 -- a 13% drop in purchasing power -- the D.J. industrials at 780 must be reduced by 101 points for a constant value of 679. Likewise, G.M. at $66 is worth 13% less or $57 based on 1966 purchasing power. Thus in real terms the D.J. has made a new record bottom.

RECOMMENDATIONS

In view of all the above, the previous advice remains the same. Sell stocks. Sell bonds. And put money into things that are REAL. PRESERVE VALUE. U.S. would be hard pressed for gold and silver to buy raw materials. So gold and silver are the best of the REAL assets -- most readily usable and storable. Depreciating cash should be placed in U.S. silver coinage, in silver bullion, in S.A. gold stocks. With a floor on gold, no stock in the world matches Free State Geduld, paying 12% dividend even at this price. In the same league is West Driefontein, Western Deep Levels and President Brand. For the long pull (lacking currend dividends) is Kloof, East Driefontein. Also N. American silver stocks. Also Giant Yellowknife and Eagle Gold in Canada.

C. V. Myers,
Editor.

DISTRIBUTED BY THE INTERPUBLISHING CO. LTD., Nuschelerstrasse 31, 8001 Zurich, Switzerland
Mailed from 903 Lancaster Building, Calgary 2, Alberta, Canada
24 ISSUES $85. 12 ISSUES $50. TRIAL 5 ISSUES $20.

$ MYERS' FINANCE REVIEW $
1940 1969

903 LANCASTER BLDG., CALGARY 2, ALBERTA, CANADA TELEPHONE (403) 269-1103

No. 68 LET THE TRUTH BE TOLD June 4, 1969

This letter goes to all U.S. Senators and House of Representatives -- compliments of MFR.

MINNESOTA CONSTITUTION -- ARTICLE 9 SECTION 13.
THE LEGISLATURE HAS (1) "NO POWER TO PASS ANY LAW SANCTIONING IN ANY MANNER, DIRECTLY OR INDIRECTLY, SUSPENDING 'SPECIE' PAYMENTS BY ANY PERSON, ASSOCIATION, OR CORPORATION ISSUING BANK NOTES OF ANY DESCRIPTION."

In the English language this means the Minnesota legislature shall have no power to pass any law sanctioning Federal Reserve notes.

This means that if you receive a $1000 cheque in payment of debt and you take it to a state bank in Minnesota you can demand silver coinage. If they refuse to give you silver coinage they forfeit their charter under the laws of the state of Minnesota.
I do not know how many other states have this same provision. It does not matter. Big money can come into the state of Minnesota and demand millions of $'s in silver coinage. If the banks do not comply they would have to close their doors under the laws of Minnesota. The state banks are all tied up with the Federal Reserve system.
Such a move might put out the fire under the melting pots in a hurry.

THE WORLD'S GREATEST DOCUMENT

GUARANTEES GOLD AND SILVER IF DEMANDED



U.S. CONSTITUTION UNASSAILABLE

The U.S. constitution is unassailable. This is the first thing to remember.
"This constitution and the laws of the United States which shall be made in persuance thereof... shall be the supreme law of the land, and judges in each state shall be bound thereby.... All executive and judicial officers... shall be bound by oath or affirmation to support this constitution." -- Article VI.

* * *

The meaning is clear -- laws enacted by Congress must be pursuant to the constitution -- 16AM JUR 20 #177 -- "The construction of a statute which brings it in conflict with the constitution will nullify it... an unconstitutional statute though having the form and name of a law is in reality no law, but is wholly void..

"Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted."

THEREFORE -- if the Federal Reserve Act (now that it has been ammended in fact with fiat money) contravenes the constitution, then according to the same AM JUR reference "it imposes no duties, confers no rights... bestows no power or authority on anyone, affords no protection and justifies no acts performed under it. Insofar as a statute runs counter to the fundamental law of the land it is superseded thereby."

* * *

Your money (Federal Reserve notes) issued under the Federal Reserve legislation contends on the face of the money "This note is legal tender for all debts, public and private."

The constitution says (Article I Section 10) "No state shall make anything but gold and silver coin a tender in payment of debts."

* * *

An argument arises that while the states don't have the right to make anything but gold and silver legal tender, that the Federal government does.

But nowhere does the constitution give the federal government this right. Indeed Article X plainly states "The powers not delegated to the United States ... are reserved to the states respectively or to the people."

Thus the constitution clearly in effect restrains the federal government from making fiat money compulsory legal tender.

* * *

Earlier Federal Reserve notes had promised to pay off in silver, and the $ was defined as 1/35th of an ounce of gold. Current Federal Reserve notes don't promise to pay anything -- a $1 note today does not even promise to pay $1.

But even if the note did promise to pay, the constitution plainly forbids that it be forced on anyone as payment. WHOEVER demands gold and silver may

Respondent's Ex. DD
2/13/70 Ems

42174

under the constitution so collect.

Precedents in court are plentiful. AM JUR 2D #8 says "the term dollar means money. Since it is the unit of the money of the country... it cannot mean promissory notes or other evidences of debt.

"Bank notes... are a good tender as money unless specifically objected to.

"Money includes only such bank notes... in actual and general circulation at par with coin as a substitute for coin, interchangeable with coin."

"Bank notes circulate as such only by general consent and usage.. consent and usage is based on the convertibility of such notes into coin at the pleasure of the holder upon presentation to the bank for redemption. But... upon the failure... or inability of the bank to redeem its bills they instantly lose their character as money... the notes become the mere dishonoured and depreciated evidences of debt."

Under Article 1 Section 10 the several states are prohibited from coining money, emitting bills of credit, or making anything but gold and silver coin a tender in payment of debt.

YOU AND THE CONSTITUTION

If you sell 1000 shares of General Motors through Merrill Lynch in Minneapolis for $80,000 -- Merrill Lynch owes you $80,000. They will offer you a cheque. You will take this to a state bank and demand $80,000 in silver coinage of face value. The bank either pays or loses its charter, and closes its doors.

The next day you may buy 1000 shares of General Motors and issue a cheque. Nothing prevents anyone from accepting paper money. Bankers and brokers love paper money and credit. Give it to them. Accept your stock.

The next day you may sell your new General Motors and again demand gold and silver -- under the constitution.

This gives you silver at $1.29 per oz. on face value of coin and gold at $35 per oz. on the standards set earlier by the Congress. Of course they would have the right to pay in either silver or gold since both are legal tender.

If many do this of course, Merrill Lynch will go crazy. Soon Merrill Lynch would refuse to buy any stocks unless paid in gold and silver.

The result is the INTERNAL COLLAPSE OF THE AMERICAN PAPER $.

* * *

If you have money on deposit in the bank you can demand the bank pay you in gold and silver. It seems to me this is true, under your inalienable rights under the United States constitution.

CAN A JUDGE STOP IT?

Will your court judges nevertheless deny you these rights? Here is a precedent.

L. O. Cooke V. Samuel G. Iverson -- 108 Minnesota Report.

"When the language of the constitution is positive and free from all ambiquity, all courts are not at liberty by a resort to the refinement of legal learning to restrict its obvious meaning and to avoid the hardships of particular cases. We must accept the constitution as it reads when its language is unambiquous for it is the mandate of the sovereign power."

Well, it reads 'No state shall make anything but gold and silver coin a tender in payment of debt."

The constitution Article VI -- "The Senate and Representatives.. all executive and judicial officers, both of the United States and the several states shall be bound by oath or affirmation to support the constitution.

CONCLUSION -- No judge or group of judges under his oath can logically rule against Article I Section 10 of the constitution and it is not his business in any way to consider the consequences which may result from his sworn duty to rule for the constitution.

The Edwards V. Kearzey -- Supreme Court of the United States -- "Policy and humanity are dangerous guides in the discussion of a legal proposition. He who follows them far is apt to bring back the means of error and delusion. The prohibition (here) contains no qualifications and we have no judicial authority to interpolate any. Our duty is simply to execute it."

* * *

Likewise it is clear that Article I Section 10 of the constitution contains no qualification, and no judge has any right to interpolate any. His duty is simply to execute it.

The Supreme Court reference above also says this: "Anything that is forbidden by the constitution is void."

I believe it is quite clear and it is my interpretation that the Henry Fowler paper money is strictly and specifically forbidden -- and must therefore be void according to the U.S. constitution and precedent in law.

* * *

16AM JUR 2D #219 -- "When a court is created the judicial power is conferred by the constitution."

The only power the court has is therefore to affirm the constitution.

F.D.R. AND GOLD

From the constitution it becomes crystal clear that Franklin Delano Roosevelt never did have the authority to prohibit U.S. citizens from owning gold. It was and remains their fundamental right under their constitution.

16AM JUR 2D #212 -- "No arbitrary and unlimited power is vested in any department; such power is regarded as a condition subversive to the constitution, and the chief character and evil of tyrannical and despotic forms of government."

Justice Mahoney -- "There is no such thing as the idea of a compact between the people on one side and the government on the other. The compact is that of the people with each other to produce and constitute a government.

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

USURPATION

Franklin Delano Roosevelt forgot that he was an employee. He usurped the power of the U.S. constitution, defied it and abolished the fundamental guarantee. The U.S. constitution, Article V, says that no person shall be "deprived of... property, without due process of law...."

Roosevelt could legally have deprived people of their gold only by AMMENDING the constitution. He would have had to secure two-thirds majority in both houses and the approval of three-quarters of the legislatures of the various states. Of course, he never could have succeeded, so he circumvented the constitution and took and assumed the power of a despot.

The usurpation of this authority, and the despotism continued for 35 years, and still exists in defiance of the constitution under Mr. Nixon, the newest presidential servant of the constitution of the United States. By continuing to allow this usurpation Mr. Nixon condones and becomes a party to it.

I refer you to your historical DECLARATION OF INDEPENDENCE.

"When a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them (the people) under absolute despotism, it is their right, it is their duty to throw off such government and to provide new guards for their future security."

The usurpations were as follows:

Your paper money first lost its gold convertibility.

Your paper money next lost its 100% gold backing -- reduced to 40%.

Your paper money next lost gold backing -- reduced to 25% gold cover.

Your paper money next lost its silver convertibility.

Your paper money which promised to pay the sum of one dollar lost even that promise and is now simply entitled "one dollar".

All this amounts to, and qualifies as a "long train of usurpations."

Of course, your guaranteed authoritative right exists in the constitution. It is already there and should not have to be fought for. The wonder of it is that 200 million Americans would stand still like docile sheep in a slaughterhouse.

THE CONGRESS

The case in Minnesota (MFR #67) where Justice Mahoney refused to accept Federal Reserve notes as lawful money, and where he thereby denied an appeal by a Federal Reserve Bank is a breakthrough back to the constitution. Like the ghost of the murdered king, it will continue to haunt Macbeth (the money managers) -- unless someone can reverse Mahoney.

The fact that Jerome Daly of Savage, Minnesota defied a Federal Reserve Bank -- refused to pay his mortgage -- and has rendered the bank impotent to recover real property with unconvertible credit is a ghost that will not rest -- unless someone can take Daly's land away.

Now the U.S. Congress all know about it, and each one knows that the other one knows. I know they know, and you know they know, because I have told them. And I also KNOW that a considerable readership of this letter exists in Washington.

The BIG PRESS has withheld from you the truth about your money which your servants have squandered.

But now the press knows about the Minnesota case -- and they know that each other knows.

Since the Minnesota story is hard news of COMPLETE FACT (not opinion) they have no excuse not to publish this news.

Failure to tell you that a U.S. court* has rejected U.S. currency as money, and made the rejection stick, would amount to strong evidence of press censorship, if not complicity with the BIG money interests.

Now the Congress knows. What are they going to do to support their solemn oath of office to UPHOLD their constitution and yours?

* It has been objected that a Justice of the Peace Court is not a court of record. It IS a court of record in Minnesota -- indeed the oldest court.

WHAT CONGRESS CAN DO

Gold and silver must back the U.S. $. This is inherent in the constitution. Congress must set the measure -- say how much. Congress has not said how much since 1878. Now there isn't enough silver and gold to support the previous standards set by Congress. Article I of the constitution says Congress is to "coin money... and fix a standard of weights and measures." Making a new set of standards for the amount of gold and silver in a United States $ is mandatory. Whatever that amount is set at, will be the new convertible AMERICAN $. Unless Congress does this -- there is no constitution in the United States -- AND YOUR COUNTRY HAS BEEN DESTROYED!

WHAT YOU CAN DO TO PRESERVE THE U.S.A.

Write Congressmen and Senators.

Claim your right under the constitution and choose a decision by jury. If you have a G.I. insurance policy which you intend to cash in, DEMAND gold and silver coin and show them Article I Section 10 of the constitution.

If you do not claim, indeed DEMAND the rights granted you in your constitution, there will be no United States of America for your children.

THE SILVER PRICE

Now it is plain to see why U.S. authorities were so desperate to hold the price of silver; to sell off hundreds of millions of oz. -- all of its stockpile -- and then the melted coins besides.

BECAUSE of the inseparable siamese attachment "gold and silver specie" in the constitution. The silver price of $3 for example, in the light of the developments shown in this letter, would have been capable of bringing down the whole $ structure in short order. People could demand silver specie in payment of debt at $1.29 and sell later at $3.

Even at current prices the paper $ is in peril.

Last spring MFR made the accusation that the U.S. Treasury was selling silver short on the New York Commodity Exchange, and this came from a source in the N.Y.C.E. The Treasury denied this. That does not preclude the probable cooperation of the Treasury with Engelhard Industries and perhaps others to suppress the silver price on the N.Y.C.E. Engelhard obtained half of the dumped Treasury silver and was in a position to sell short on the commodity exchange.

This suppression of the silver futures market in conjunction with the superfluous sales of silver each week successfully kept the price under control, and even at a depressed level.

BUT TODAY YOU CAN GO TO THE MINNESOTA BANKS AND DEMAND SILVER COINAGE AND CLOSE ALL THE STATE BANKS OF MINNESOTA IN A MATTER OF DAYS. This probably exists in other states as well. It may not happen. But it CAN.

GET RID OF SILVER

It seems to be the plan to get all of the silver out of the country as soon as possible. The criminal export of strategic silver from the U.S.A. last year, the complete depletion of Treasury reserves at low prices, and now the encouragement of the export of melted coinage would seem to indicate a plan to rid the country of silver. Under such circumstances the constitution obviously could not be enforced for very real reasons of non-existent silver.

The U.S. executive branch too has mortgaged all

the gold belonging to the citizens under the constitution and refuses to give the citizens an account of the public financial condition. It is your money. It does not belong to Mr. Nixon or to Mr. Kennedy, but they will not tell you the TRUTH on how much is pledged to the I.M.F., Canada and Germany in Roosabonds.

YOUR LOYALTY

Your only loyalty is to the constitution of the U.S. For since when does the owner enthrone the servant? It is your duty to claim and assert your rights under the constitution and to demand from your servants that they honour and obey your constitution. They have no right to ask for your cooperation which in any way helps them to carry out acts contrary to the provisions of the constitution.

The executive branch have usurped the power of the people on money. They are imposters in contradiction of your rights. Their despotic powers have deprived you and your country of all the gold and silver which your constitution says is the only real money. By the usurpation of authority these despots under the cloak of philanthropy have ruined your nation and denuded it of all real money.

When they asked you not to hoard silver they were asking you to turn loose of it so they could melt it, thus deny the banks, and thus sabotage the specie payment section of your constitution. When they ask you not to own gold, they ask you to become an accomplice in subverting your own rights.

If a thief enters your house, can he ask your loyalty? Your help in stealing your own goods?

When your executive branch sells off your Treasury silver coins hot out of the melting pot but keeps them out of the banks they thwart the constitution which tells you that silver is your real money. When they say that gold is no good they sneer at your constitution.

For 35 years they have worked toward the monetary destruction of this great country, admired by all the world -- the U.S.A. Surreptitiously in the night they have bored holes in the monetary foundation.

History tells us no great empire has ever yet survived the implementation of fiat money.

* * *

That is why the founding fathers in their wisdom made gold and silver the basis for all U.S. money forever.

THE STORY

The trigger story to repeat briefly is this:

The case was in Justice Court, Township of Credit River; Martin V. Mahoney, Justice. In the State of Minnesota, County of Scott; plaintiff First National Bank of Montgomery, and defendant Jerome Daly. The bank had loaned $14,000 to Jerome Daly, which had not been paid, and it moved to secure possession of the property in a trial by jury. The jury unanimously rejected the plaintiff on the grounds that it admitted it had created the money out of nothing, and that it knew of no law that allowed it to create money. Therefore there was no consideration. The mortgage was declared null and void - Dec. 9, 1968.

The bank went to appeal in the DISTRICT Court and offered two paper dollars as the standard fee to the Justice of the Peace to transfer the case. Justice Mahoney refused the two dollar bills on the grounds they were not money and he was not required under the State of Minnesota to accept them. However, he invited the bank to a hearing to show cause how they could claim the two paper dollars was money under the law. The bank didn't show up.

The strongest point of this case is that the bank would rather give up $14,000 then be required to prove that Federal Reserve notes are money. They dropped the case, undoubtedly hoping the news would go no further. Appeal was denied Feb. 4, 1969. The story was further brought to light by MFR #67 last week. It is no secret now.

They may claim the Justice of the Peace Court is a low court and carries no precedent in law. But here we have the greatest PRECEDENT IN FACT. Jerome Daly has defied the Federal Reserve system of the U.S. to claim real property on a mortgage. They have not been able to claim it. Justice Mahoney has defied the Federal Reserve system to force him to accept Federal Reserve notes as money under the constitution of the U.S. and they have abdicated and run away from this challenge.

THE CREDIT

The credit for this goes to two patriotic Americans, Jerome Daly and Justice Mahoney, who have the courage to stand up for the constitution. For whatever may be the immediate hardship, these men recognize that if the constitution is gone, the whole country is gone. If you don't protect and claim your rights, eventually they disappear, and your liberties die from lack of use. Your liberties are very sick.

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THE GOLD PRICE

The gold price has been dropping rather dramatically the last few days. No apparent reason. Obviously there is a concerted move afoot to depress gold. It would not be surprising to find that certain monetary authorities are themselves dumping gold on the free market to push down the dangerous price level contrary to their own Washington agreement of 1968. It has been fully established that the world monetary authorities are not to be trusted. Clandestine and secret agreements are rampant. They can be recognized only by their results. Despite all the manipulations, the situation continually worsens.

* * *

It is surprising how people purposefully disregard solid evidence served up for them on a platter. For the most part they shrug it off or laugh. The Harry Schultz Letter hits this pretty good when it says: "They laughed at Noah every day it didn't rain."

RECOMMENDATIONS

1. Demand silver whenever possible.
2. Buy silver coinage - all you can get. At 10% to 20% premium, it's a steal. Buy silver bullion in Switz. or buy near month futures - TAKE DELIVERY.
3. Hold silver and gold shares; buy S.A. golds.
4. For those brave enough to withstand the onslaught of the Internal Revenue Service, test constitutionality of FDR's dictatorial removal of your right to own gold.

Note: Nearly all Americans fear the Internal Revenue Dept. They regard it as the POLICE arm of a despotic government.

C. V. Myers, Editor.

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24 ISSUES $85. 12 ISSUES $50. TRIAL 5 ISSUES $20. 903 LANCASTER BUILDING, CALGARY 2, ALBERTA, CANADA

$ MYERS' FINANCE REVIEW $

1969

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903 LANOR[illegible]RY 2, ALBERTA, CANADA TELEPHONE (403) 269-1103

No. 68-X LET THE TRUTH BE TOLD June 9, 1969

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This letter is written as a special service and is not charged against your subscription. It is not within the power of a newsman to give any greater GIFT to his readers than the TRUTH. For that reason I want this short letter to stand out as my GIFT to my subscribers. It is the greatest and most NEEDED truth that I will ever be privileged to publish.

Not only can you own gold, you can go to the bank and DEMAND gold COIN at face value for paper money.

Not Mr. Nixon, not Mr. Kennedy, not Mr. McChesney Martin -- not all of these combined -- have the power to deny you this right -- for they are the servants of the constitution, not its master.

You are agreed, the government is agreed, all of the judges are agreed, and all are universally AGREED that the constitution is supreme. Let them read this and shiver.

YOUR CONSTITUTION SAYS

THAT IF YOU CAN'T OWN GOLD,

NEW YORK STATE CAN CREATE NOBILITY AND TEXAS CAN JOIN MEXICO



ARTICLE I SECTION 10 -- "No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts or grant any Title of Nobility."

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It was made because of the oppression that the forefathers had suffered under despotic regimes. It was the banner of FREEDOM. It is epitomized in the Statue of Liberty outside of New York.

THE CONSTITUTION OF THE UNITED STATES IS THE UNITED STATES. It has been the hope of free men all over the world. It is the monumental document of mankind. If it is trampled, if any of its cornerstones can be arbitrarily removed -- these hopes of mankind must perish.

Its language is clear and simple. It was made for the workers, the farmers, the businessmen, the bulk of all the people to understand and read. It's language is so plain that legal learning is not needed in the interpretation of most of its articles and sections.

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And so this says you can go to the bank and collect the face value marked on gold and silver coin.

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CONVERSELY if New York State cannot create nobility and if Texas cannot join Mexico, then every bank in the United States of America is obligated and must pay you gold and silver coin on face value.

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The federal government has no power whatsoever to decide what is or what is not money.

ARTICLE X -- "The powers not delegated to the United States by the Constitution, nor prohibited by

it to the States, are reserved to the States respectively or to the people."

Now please follow me closely and think hard:

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THEREFORE each and every power not specifically granted to the federal government is KEPT BACK from the federal government.

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THE RESULT

IF YOU ARE OWED A DEBT -- IF SOMEONE WRITES YOU A CHEQUE FOR $100 -- AND IF YOU TAKE THIS TO THE BANK, THE BANK MUST GIVE YOU GOLD AND SILVER COIN. If they refuse you, the judiciary must enforce payment, or must seize the bank and its premises and offer for sale.

GOLD EQUALLY WITH SILVER

Now you will notice that the constitution says gold AND silver coin. It does not say gold or silver coin.

The result is that you can demand both gold and silver coin. And your case to demand gold is on an absolutely equal status with silver. The "And" makes the one to the other, no less or more important than the other -- or the one or the other, no less your right than the other.

The truth is that the constitution of the United States unquestionably and in complete ultimacy gives you the right not only to own gold coin but to demand gold coin in payment when you collect, and at face value.

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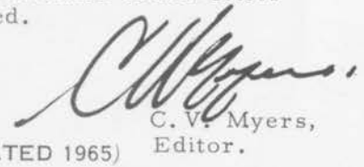
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for any contract or note."

The Justice contended that whenever there is not a lawful consideration -- that is someone gave up something to make a contract -- there is no contract. Since the Federal Reserve Bank gave up nothing in creating $14,000, it had no contract. He says:

"The Federal Reserves notes are acquired through the use of unconstitutional statutes and fraud."

Justice Mahoney also branded as illegal the silver sandwich coins quoting the constitution to state that only Congress has the authority to coin money, regulate the value thereof, and fix the standard of weights and measures. The last time the Congress did this was on February 28, 1878 when it fixed the silver $ at 412.5 grains troy weight of silver. "The Congress cannot abdicate or delegate these legislative powers." Usurpation by the executive or his agents is void. Thus the silver clad coins are a debasing of the coin when once the standard has been fixed. They also are not a legal tender and are unconstitutional and void.

Justice Mahoney says that the question whether the U.S. government has the power to incorporate a bank is immaterial to the issue in any case.

"Such a corporation certainly cannot have any more rights than a natural person. The emission of bills of credit upon their books, without consideration and the issuance of Federal Reserve notes without consideration, to circulate as a legal tender for the payment of debts is not permitted, expressly or implied by the constitution of the United States."

THE MEANING

Regardless of what pro and con arguments there may be about jury theory, we have here a precedent of fact. A bank has a mortgage. The person who borrowed the money has not paid it back. The bank is not able to get it back. The bank is not able to seize the property. Why?

* * *

Because the bank gave up nothing in the first place except some ink. And this is against the constitution. And there is no law anywhere in the United States which gives the bank the right to make money out of nothing and then to seize a man's property because he does not pay that money back.

Can this be changed? Only by an ammendment to the constitution. This can be done as follows:

The ammendment which would allow fiat money and which would allow people to take over rights without giving up anything is in its face ridiculous. But even if it were not, it would have to pass both Houses of Congress by a two-thirds majority. After that it would have to receive the approval of the legislatures of three-quarters of the states of the United States of America.

Meanwhile the constitution of the United States is in direct conflict with Federal Reserve Law.

If you have a rule book, and if someone can break a rule in the rule book for the convenience and what seems to be common sense, then you must conclude that any other rule in the rule book can be broken -- and that you must throw the whole rule book away -- because there is not one rule which you can depend upon.

If this part of the constitution can be negated by the judiciary, by the executive, or by anyone, then any part of the constitution of the United States can be broken when deemed advisable by the judiciary or the executive.

If this part of the constitution can be breached there is no constitution in the United States of America. All is lip service. Guaranteed rights, privileges, and freedoms are a forgotten dream.

Mr. Nixon and the judiciary have sworn to UPHOLD the constitution. Let's see if they will.

DISTRIBUTION

Besides the legislators already mentioned, this letter is going out to the following:

IN CANADA -- Prime Minister Trudeau, Foreign Min. Sharpe, Fin. Min. Benson -- to the financial editors of the Calgary Albertan, Toronto Globe and Mail, Financial Post, Toronto Star, Montreal Gazette, Ottawa Citizen, Winnipeg Free Press, Vancouver Sun, and others.

IN THE U.S. -- Financial editors of the Wall Street Journal, New York Times, Time Magazine, U.S. News & World Report, Newsweek, Readers Digest, Business Week, Los Angeles Times, San Francisco Chronicle, Seattle Post, Denver Post, Washington Post, Houston Chronicle, Chicago Tribune. Secretary Kennedy, McChesney Martin, Jr.

ABROAD -- It goes to Rt. Hon. Harold Wilson, Edward Heath, Enoch Powell, and the finance ministers Strauss of Germany, Belgium, Netherlands, Italy, France. To Blessing of the Bundesbank and to the presidents of the Swiss Big Three -- Swiss Credit, Union and Swiss Bank Corp. It goes to S.A. Finance Minister Diederichs and to the financial editors of London Financial Times, La Monde and N.Y. Herald Tribune in Paris.

* * *

For a full reproduction of the judgment, Findings of Fact, Precedent, etc. these are contained in a publication called The Daly Eagle, Savage,Minnesota, at $5.00 per copy. This information is offered without either approval or disapproval by the Daly Eagle.

THE BIG PICTURE

If the banks cannot collect real property on their mortgages, their mortgage paper becomes worthless. However, their obligations to their depositors remain the same. What happens to your cash money deposited with these banks?

The question is too big for me and I leave it as an exercise for your imagination.

If you don't have to accept Federal Reserve notes in payment of debt -- and the constitution says you don't -- and if you demand gold or silver, how many debts will be paid? Can you demand real property?

I don't know any of these answers. But I know that the Federal Reserve law came into confrontation with the constitution when Johnson and Fowler persuaded Congress to take all backing from behind the American $ so that gold could be paid out to foreigners.

THAT MADE U.S. MONEY ILLEGAL AND THAT IS WHY JEROME DALY STILL HAS HIS PROPERTY IN MINNESOTA AND THE BANK CANNOT COLLECT IT.

Does this mean you don't have to pay your mortgage? Again, I don't know. One man didn't.

The thing for you to recognize is that the U.S. money system is in DEEP, DEEP trouble.

SILVER-Going-Going-GONE

In 1941 the U.S. Treasury had 3000 mm oz.

In 1961 the U.S. Treasury had 1900 mm oz.

In 1969 the U.S. Treasury has 1 mm oz? NO. One-sixth of 1 mm oz.

Last year U.S. industry used 145 mm oz. U.S.

produced 35 mm oz. Did that mean imports of 110 mm oz? It did not. The U.S. was a net exporter.

The U.S. exported the entire 35 mm oz. it produced. It exported 20 mm oz. besides that; and the entire 145 mm oz. used by industry came out of the shrinking Treasury storehouse.

Today with approximately NOTHING left the sales go on. Indeed they are accelerating. Because now coinage can be melted into bars and shipped out of the country.

In 1968 net silver export was about equal to the net export of the previous three years combined. Now the Treasury has thrown open its meagre resources for the world to bid on.

YET the U.S. Navy must be rebuilt as a nuclear fleet which means strategic use of a small mountain of silver.

The world uses 200 mm oz. more each year than it produces. There is NO storehouse of silver anywhere.

THE SILVER PRICE

Handy & Harman last week estimated publicly that the break even point for coinage holders -- considering transporation, refining, etc. -- would be $1.65 to $1.75 per oz. Recognizing the source as the greatest of all silver bears it seems reasonable to accept this price range as an absolute FLOOR. One might quite reasonably call $1.75 the absolute floor.

This confirms my opinion expressed in the last month or so that we are at the bottom of the silver market and that there is really no foreseeable circumstances under which we can decline from the $1.70 to the $1.80 range. People don't sell to break even.

THEREFORE it seems to me that the downside risk on silver from here on is nil and the upside potential is unknown, unlimited, and in the wide blue yonder.

If the constitution is to hold -- or even if the question of the legality of paper money increases -- the scramble for silver and gold will be unimaginable. There are only a few ounces left of silver for each of the people of the U.S., and there is no gold.

When fiat money once comes into serious and widespread doubt we are at the eve of the end. The doubt at this time is serious but as yet is not widespread.

HERE WE STAND

In the first issue of MFR on March 3, 1967 I said: "The monetary systems of the world are directly over a time bomb -- which is at this moment ticking in Washington." I recommended heavy purchases of silver and predicted the Treasury would be forced to surrender the silver price of $1.29 per oz. It did surrender on May 17th.

In November of 1967 I stated "It is now time to buy gold and gold stocks." In March of 1968 the world gold pool fell apart.

This is the ONLY letter which has consistently recommended 100% investment in gold and silver and gold and silver stocks. Not 10%; not 20%; not 30% -- BUT 100%.

I am at a considerable loss of patience with those letters which continually point out the weakness of the monetary system, the strength of gold and the strength of silver, and predict a stock market debacle -- and at the same time recommend 20% investment in gold and silver.

Why should we take an 80% risk?

All of the silver stocks and all of the gold stocks combined come nowhere near total capital of one big company on the New York board -- IBM or GM. Imagine then the indescribable scramble for silver and gold if paper currency crumbles.

But 99% of the public still crowd the board rooms, still talk of a great new bull market, still see no danger in the paper money system. That is the reason why no big move has until this time developed in silver, gold or the stock market.

Your full appreciation of this letter will only arrive when the stampede begins. And you must imagine this stampede yourself because I am not going to try to envision it for you.

This letter has stood and still stands on this simple dictum: 100% investment in gold and silver and gold and silver stocks -- out of the stock market completely -- bonds may be good but may be worthless. A debt moratorium enters the picture for the first time as a possibility.

CASH

Until now I felt that the next best thing to gold and silver was cash. This case in Minnesota casts grave doubts. I do not know if cash will lose its value but I KNOW that gold and silver and gold and silver stocks will not.

You are privileged to be ahead of the big stampede. To avoid it you have to be early.

THE CURRENCIES

The U.S. suffered its greatest quarterly loss since 1950. France on May 14th suffered its second greatest weekly loss since the big strike in May 1968. The Lb. has seen no revival -- no remedy is in sight. Germany took in between $4 and $5 billion, and $3 billion has stayed tight.

The June 1st French election is near. Keisinger of Germany visited Japan last week. Strauss, economic minister, visited Harold Wilson.

S. Africa has disposed of nearly $150 million in gold -- whether on the free market or to monetary authorities we do not know.

The currencies are vulnerable to tidal events which will come in a series. If the upcoming tide in June does not sweep them away, the next one will.

This is enough for you to know. You can't expect to pinpoint timing of this historical development to the day or the week, and you can't expect an $80 a year letter to tell you which day you should buy silver so it will go up the next. Or an $8000 letter either.

I have told you to buy silver and gold. When you look back in a year or two whether you bought on the high or the low will be of little consequence. Whether you sold out of the stock market at D.J. 890 or 950 will be of little consequence.

What will count is that this was a matter of financial life or death. The big thing will be that you did it.

RECOMMENDATIONS

If you have not done so, by all means go and do it now.

OFFER

Resulting from new doubts about paper money MFR makes this offer -- 50% of the subscription price for any term if delivered in U.S. silver coinage.



C.V. Myers,
Editor.

PUBLISHED AND DISTRIBUTED BY CV RANCH LTD. (ALBERTA INCORPORATED 1965)
24 ISSUES $85. 12 ISSUES $50. TRIAL 5 ISSUES $20. 903 LANCASTER BUILDING, CALGARY 2, ALBERTA, CANADA

RESPONDENT'S EXHIBIT 6
2/11/70 L.M.F. 42174

$ MYERS' REVIEW
1940 1969

[illegible] LANCASTER BLDG., CALGARY 1, ALBERTA, CANADA TELEPHONE (403) 269-1103

No. 67 LET THE TRUTH BE TOLD May 27, 1969

This letter goes to all U.S. Senators and House of Reps; and all members of the Canadian House of Commons -- compliments of MFR. I consider this to be the biggest scoop I have ever had, or even seen in a lifetime of journalism. Lay you a silver dollar it will not be published by the W.S.J. or the N.Y.T.

THE MINNESOTA BOMBSHELL

U.S. COURT RULES

FEDERAL RESERVE NOTES ARE NOT MONEY

Under a TRIAL BY JURY a Federal Reserve Bank has foreclosed on a mortgage, but was unable to obtain possession of the property. The mortgage is null and void.

RESULT -- All mortgage paper held as a result of the creation of credit (money) by Federal Reserve banks are void. Bonds arbitrarily created by bookkeeping entries also are without legal consideration -- also null and void. As this works its way back up the system the results are beyond comprehension.



A U.S. court has refused to accept Federal Reserve notes as payment for fees for an appeal by a Federal Reserve Bank -- Declared the notes NOT MONEY under the constitution. Appeal denied.

RESULT -- The Federal Reserve Act #432 is unconstitutional -- null and void -- and U.S. paper currency is void.

Unless the Minnesota court is forced to break precedent and reopen the case, the reverberations will be interesting.

* * *

THE STORY

The story -- like all great stories -- is simple. On May of 1964 Jerome Daly, an attorney in Savage, Minnesota received $14,000, gave the bank a note, and secured the note with a mortgage on real property in Scott County, Minnesota. In Spring 1967 the mortgagee being in arrears $476, the bank foreclosed by advertisement and bought the property in at a sheriff's sale June 26, 1967. The mortgagee did not pay within the alloted 12 month period following the sale and so the bank brought action for the possession of the property.

> A confrontation exists between the Constitution of the United States and the Federal Reserve System. The confrontation crystallized when all gold and silver backing was withdrawn from U.S. money. The constitution forbids the settling of debts with fiat money. Continuation of fiat money nullifies the constitution of the United States of America.

Two justices were disqualified by affidavit of prejudice; the first by the mortgagee, the second by the bank. A third justice refused to have anything to do with the case. So it went to trial by jury before Martin V. Mahoney, Justice of the Peace, Credit River Township, Scott County, Minnesota.

On December 7th, 1968 the jury found both the note and the mortgage to be void for lack of a lawful consideration given by the bank. And the U.S. constitution plainly states that there must be a lawful consideration.

The bank applied for appeal to the big court -- the DISTRICT Court of Minnesota, and offered two $1 bills which the State of Minnesota turned over to Justice Mahoney as the required fee for the appeal. Justice Mahoney refused to accept the bills because they could not be converted as required under the U.S. constitution. Mahoney invited the bank to a hearing to "show cause" how they could consider the $1 bills as being money. The bank did not appear at this hearing. The appeal was denied. The time expired. Under the laws of the United States the case is closed.

THE JUDGMENT

The judgment was as straightforward as the story. Like all great judgments it was simple. In part it reads as follows:

"The issues tried to the jury were whether there was a lawful consideration... Mr. Morgan (president of the bank) admitted that all the money or credit which was used as a consideration was created upon their books, that this was standard banking

In the U.S. the constitution is SUPREME. The judiciary, the executive, and the Congress itself hold office only by virtue of and through the constitution. The first thing a new president swears is to UPHOLD THE CONSTITUTION -- not to change it, subvert it, evade it -- but to be the CHAMPION of the constitution. The Federal Reserve says that the fiat Federal Reserve notes must be accepted in settlement of debt. The constitution says "NO".

practice exercised by their bank in combination with the Federal Reserve Bank of Minneapolis...Further he (Mr. Morgan) knew of no United States Statute or Law that gave the plaintiff (the bank) the authority to do this.

"At 12:15 on December 7, 1968 the jury returned its unanimous verdict for the defendant.

"It is hereby ordered, adjudged and decreed:

(1) The plaintiff (the bank) is not entitled to recover possession of Lot 19 Fairview Beach...

(2) That because of failure of a lawful consideration the note and mortgage dated May 8, 1964 are null and void.

(3) The sheriff's sale of the above described premises held on June 26, 1967 is null and void, of no effect.

(4) That the plaintiff has no right, title or interest in said premises or lien thereon, as is above described."

The judgment was written on December 9, 1968 by Justice Martin V. Mahoney and followed by a memorandum:

"The bank admitted... that it did create the entire $14,000 in money or credit upon its own books by bookkeeping entry. That this was the consideration for the mortgage. The money and credit first came into existence when they created it. Mr. Morgan admitted that no United States Law or Statute existed which gave him the right to do this.

"Plaintiff's act of creating credit is not authorized by the constitution and laws of the United States, is unconstitutional and void, and is not a lawful consideration in the eyes of the law to support anything or upon which any lawful rights can be built.

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

"Note: It has never been doubted that a Note given on a consideration which is prohibited by law is void."

THE APPEAL

The bank then appealed the case to the District Court and offered two $1 Federal Reserve notes. Justice Mahoney wrote:

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

"U.S. Constitution Article 1 Section 10 provides 'No state shall make anything but gold and silver coin a tender in payment of debts.'

"These Federal Reserve notes are not lawful money within the contemplation of the constitution of the United States and are null and void. Further, the notes on their face are not redeemable in gold or silver coin nor is there a fund set aside anywhere for the redemption of said notes. The notes were without any lawful consideration and therefore void."

The court offered the plaintiff a full and complete hearing to present evidence why it considered that the Federal Reserve notes were lawful money. The defendant did not show up.

* * *

The defendant appealed to th ri t Court in the State of Minnesota, and the District Court ordered Justice Mahoney to appear to show cause why he should not file in the District Court a transcript of all the entries, etc. -- which he had refused to do.

In order to show cause Mahoney upon motion of Daly ordered a hearing for the purpose of making Findings of Fact and Conclusions of Law.

Citing the constitution of the United States Mahoney concluded 'This creation of money or credit upon the books of the bank constitutes the creation of fiat money by bookkeeping entry. The first time that money comes into existence is when they create it on their bank books. The banks create it out of nothing."

The Federal Reserve Bank of Minneapolis obtains Federal Reserve notes (your paper currency)... for the cost of printing of each note, which is less than 1¢. The Federal Reserve Bank must deposit with the Treasurer of the U.S. a like amount of bonds for the notes it receives. But the bonds are without lawful consideration too, as the Federal Reserve Bank created the money and credit upon their books by which they acquired the bond. With their bookkeeping creating credit National banks obtain these notes from the Federal Reserve Banks.

"The net effect of the entire transaction is that the Federal Reserve Bank... obtains Federal Reserve notes (your paper money) for the cost of printing only.

"The Federal Reserve notes in question are unlawful and void on the following grounds:

"(a) Said notes are fiat money..There is no mode provided for the enforcement of the payment of the notes in anything of value.

(b) "The notes are obviously not gold or silver coin.

(c) "The sole consideration paid for the notes is in the neighbourhood of 9/10ths of 1¢, and therefore, there is no lawful consideration behind said notes.

(d) ..."Title 31USC Section 462 which attempts to make Federal Reserve notes... a legal tender for all debts, public and private, is unconstitutional and void in contrary to Article 1 Section 10 of the constitution."

THE CONSTITUTION

Some other pertinent observations by Justice Mahoney were as follows:

Justice Mahoney claimed that the Federal Reserve money, even if backed by an Act of Congress is in violation. He says:

"An Act of Congress in violation of the constitution confers no rights or privileges. See 16AM JUR 2D ' Constitutional Law' Sections 177 through 179."

Also he cites 36AMER JUR on money. Section 9 ...'When the inability of a bank to redeem its notes is openly avowed they instantly lose their character as money and their circulation as currency ceases."

* * *

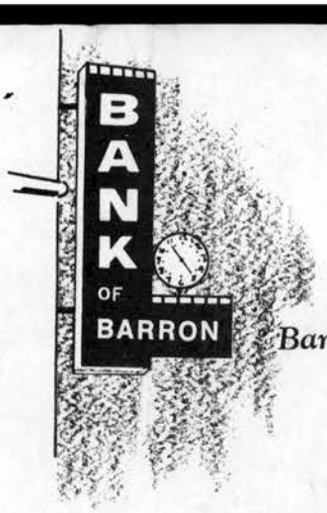
Of the activities of the Federal Reserve banks Justice Mahoney states:

"No state can make these notes a legal tender. Congress is incompetent to authorize a state to make these notes a legal tender.

"The constitution is the supreme law of the land. Section 432 (requiring creditors to accept paper money as lawful payment) is unconstitutional and void and I so hold.

"The two Federal Reserve notes are not a valid deposit of $2.00 with the Clerk of the District Court for the purpose of effecting an appeal from this court to the District Court.

"The common law requires a lawful consideration



Barron, Wisconsin 54812 • Phone 715 537-3141

July 2, 1969

Mr. Hugh D. Galuska, Jr., President
Federal Reserve Bank of Minneapolis
Minneapolis, Minnesota 55440

Dear Mr. Galuska:

This was given us by a customer that was concerned with the implications of the contents. I would appreciate your comments as to the credibility of this jury trial at Credit River, Minnesota and the ~~authority~~ authenticity of Jerome Daly of Credit River, Minnesota.

Yours very truly,

BANK OF BARRON

Nyles W. Ellefson

Nyles W. Ellefson
V. P. - Cashier

NWE:dp

Established in 1885

July 10, 1969

Mr. Nyles W. Ellefson
Vice President
BANK OF BARRON
Barron, Wisconsin 54812

Dear Mr. Ellefson:

Because of the unusual circumstances of the trial referred to in your letter of July 2, I suspect it is receiving far more attention than it merits. It was a Justice of the Peace court action - not a District Court action. An action has been filed in Scott County District Court to have the Justice of the Peace held in contempt for refusing to file an appeal from the bank in question.

The Federal District Court for the District of Minnesota has permanently enjoined Mr. Daly from "continuing, commencing or prosecuting any suit, action or proceeding, either in this Court or in any court, state or federal, upon any claim arising out of any" matter relating to the Federal Reserve Act or the banking system.

I do not believe that Mr. Daly or the action at Credit River represents a serious threat to the monetary stability of the United States.

Yours truly,

Hugh D. Galusha, Jr.
President

HDG:em

Burstein
Azine

FEDERAL RESERVE BANK OF MINNEAPOLIS
MINNEAPOLIS, MINNESOTA 55440

AREA CODE 612 333-0361

September 5, 1969

Harding A. Orren
Attorney at Law
Robins, Davis & Lyons
400 Dain Tower
Minneapolis, Minnesota 55402

Dear Mr. Orren:

Enclosed for your information is a September 2, 1969 letter from Robert Sanders, Assistant General Counsel of the Federal Reserve Board of Governors, containing a listing through August 25, 1969, of all inquiries received by the Board and the Treasury Department arising out of the Justice Mahoney's decision in the First National Bank of Montgomery -vs- Jerome Daly case.

I am also enclosing a copy of the May 27, 1969 edition of Myers' Finance Review printed in Calgary, Canada, which primarily gave rise to most of the inquiries outlined in the enclosed letter. Enclosed also are a copy of a June 20, 1969 edition of this publication, and a publication entitled The Daly Eagle dated February 7, 1969, apparently available at $2.00 a copy. I do not know how wide a distribution this publication has.

Very truly yours,

Roland D. Graham

Roland D. Graham
General Counsel

RDG:mf

Encs.

FEDERAL RESERVE BANK
OF MINNEAPOLIS

FORM A-1
COPY

June 5, 1969

Mr. John Bolman
P.O. Box 2686
Honolulu, Hawaii 96803

Dear Mr. Bolman:

This is in reply to your letter of May 31. This bank nor any other Federal Reserve Bank was a party to the litigations to which you refer in your letter and we have no knowledge concerning that law suit. However, I should mention for your benefit that it is well settled law that Federal Reserve Notes are legal tender and the Federal Reserve Act is not unconstitutional, Justice of the Peace Mahoney notwithstanding.

Very truly yours,

Melvin L. Burstein
Assistant General Counsel

MLB:11

May 31, 1969

FEDERAL RESERVE BANK
of Minneapolis
Minneapolis, Minn.55400

Gentlemen:

Referring to the MYERS' FINANCE REVIEW No. 67, dated May 27, 1969 of which you no doubt have a copy, will you kindly advise whether you intend to publish an answer?

If so will you kindly send me a copy and any additional information you may publish or reproduce that touches on this situation.

I would also appreciate your sending published information that explains the Federal Reserves position on Federal Reserve Notes that makes them legal tender for all debts public and private in the United States.

I will greatly appreciate your reply.

Very truly yours,

John Bolman

JOHN BOLMAN

JOHN BOLMAN
P. O. Box 2686
HONOLULU, HAWAII 96803

FEDERAL RESERVE BANK
OF MINNEAPOLIS

FORM A-1
COPY

June 17, 1969

Mr. Dean H. Albert
Vice President & Comptroller
Bancorporation of Montana
P. O. Box 2308
Great Falls, Montana 59401

Dear Dean:

Thanks for sending in the issue of Myers' Finance Review with your letter of June 12. You are modest in stating that the contents are quite unusual. There is, however, considerable background information not included in the Minnesota bombshell article.

Jerome Daly, the attorney of Savage, Minnesota, referred to in the article, has brought a number of law suits centering around his contention that the Federal Reserve Act is unconstitutional, that Federal Reserve Notes are invalid and worthless, that the Federal Reserve System is part and parcel of a communist inspired conspiracy of Jewish international bankers to oppress the common man, etc. A number of these suits have named as codefendents the Federal Reserve Bank of Minneapolis and various commercial banks and public officials, including the President of the United States, the Secretary of the Treasury, other cabinet members, the Chief Justice and certain Associate Justices of the Supreme Court, the Chairman of our Board of Directors, as well as John Doe and Richard Roe. In a couple of other suits he has included the Federal Reserve Bank of Kansas City. In the cases in which the Federal Reserve Banks have been named and in any other cases that I know of except the one mentioned in Myers' Review, the United States District Court and the Circuit Court of Appeals have found Daly's contentions without legal merit. Some court opinions have characterized his efforts as frivolous, and he has been ordered by the court not to bring any further such actions against us.

The case publicized by Myers' Review was tried before a Justice of the Peace and was an eviction proceeding following foreclosure. Contradicting the article's lead-off statement, the Federal Reserve Bank was not a party to it, nor was the United States or any official or representative thereof. The decision has no bearing on the Fed's legitimacy or the value of Federal Reserve Notes.

FEDERAL RESERVE BANK
OF MINNEAPOLIS

FORM A-1
COPY

It's interesting to note that Justice of the Peace Mahoney refused to accept Federal Reserve Notes for the appeal fee. I wonder just what medium of exchange he uses for his personal affairs, as well as in other proceedings before him.

It may safely be stated that the Coinage Act of 1965 is still in effect which provides that "All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations), regardless of when coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues."

Dean, I hope the above gives you some information to help put your customer at ease respecting the validity of our monetary system.

Regards,

L. G. Gable
Vice President

LGG:B
Enc.
cc: Strothman, Graham, Hellweg

June 6, 1969

Mr. Angelo M. Spinelli
Spinl Manufacturing Jeweler
48 West 48th Street
New York, New York 10036

Dear Mr. Spinelli:

This is in reply to your message of June 2 in which you inquire about a case decided by a Justice Martin which apparently has some bearing upon Federal Reserve Notes. We have no information with regard to this case.

Very truly yours,

Melvin L. Burstein
Assistant General Counsel

MLB:11

Petitioners Ex 3
FMJ 2/9/70

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION

42174

Alfred M. Joyce,

Plaintiff,

vs.

COMPLAINT

Commodity Credit Corporation of the United States, Federal Reserve Bank of Kansas City, Missouri, Northwestern State Bank of Appleton, Minnesota, Earl McNiel, Simon Jorgenson, Lawrence Hultgren, Ardel Sebber, Oral Nelson, Nina Nelson, Cargill, Inc., Kenneth Kivley and Nettie B. Krebs, Executors of the Last Will and Testament of A. O. Krebs, Decedent,

Defendants.

4 66CIV225

PLAINTIFF FOR HIS CAUSE OF ACTION HEREIN, STATES AND ALLEGES:

I.

That plaintiff is and has been a resident and citizen of the State of Minnesota and of the United States and owns and occupies a farm located in the County of Chippewa and State of Minnesota, described as follows:

The South One-half (S 1/2) of the Northeast Quarter (NE 1/4) and all of the Southeast Quarter (SE 1/4) of Section 23, Township 119, Range 42 West of the Fifth Principle Meridian,

where plaintiff is and has been at all times herein material engaged in the business and occupation of farming.

II.

That during the year 1961, plaintiff grew and raised a crop of corn on his farm and harvested approximately three thousand five hundred (3,500) bushels of corn and delivered it to the defendant, Cargill, Inc., who held it as a warehouseman. That the value of the corn is in the sum of Four Thousand Five Hundred ($4,500.00) Dollars, together with interest thereon at the rate of six (6%) per cent since October 15, 1961. That defendants, Sebber, Jorgenson,

January 30 1970

Gerald C. Palmer

Filed July 11 1966
Frank A. Massey, Clerk
By Gerald H. Bergquist

Hultgren, and McNiel, are designated as agents of the Agricultural Stabilization Conservation Service, which is a purported division of the United States Department of Agriculture, but actually an agent of the defendant, Commodity Credit Corporation. That defendant, Northwestern State Bank of Appleton, Minnesota, is a state bank organized and existing under and by virtue of the laws of the State of Minnesota. ThatA. O. Krebs was, during his lifetime, president and director of said bank. That defendants, Nettie B. Krebs and Kenneth Kivley, are the duly appointed co-executors of the Last Will and Testament of A. O. Krebs, Decedent, having died in the mouth of January, 1966. That defendants, Oral Nelson and Nina Nelson, are neighbors to the south of the above described property owned by the plaintiff. That the defendants, Commodity Credit Corporation and Northwestern State Bank of Appleton, Minnesota, Federal Reserve Bank of Kansas City, Missouri, Cargill, Inc., A. O. Krebs, acting as director of defendant, Northwestern State Bank of Appleton, Minnesota, and defendants, Sebber, Jorgensen, Hultgren, and McNiel, acting for defendant, Commodity Credit Corporation, did unlawfully, willfully and wrongfully conspire to deprive plaintiff to the right, title, and possession of said corn and the value thereof and have so detained the same ever since October 1, 1961, to plaintiff's damage in the sum of Four Thousand Five Hundred ($4,500.00) Dollars, general damages, and Four Thousand Five Hundred ($4,500.00) Dollars, punative and exemplary damages. That plaintiff has never sold said corn or consented that it be sold and has never received payment for said corn in lawful money of the United States. That on or about April 18, 1966, plaintiff demanded of the defendant, Cargill, Inc., the delivery of the possession of the said corn but they refused and still refuse to do so. The plaintiff has been damaged in the sum of Nine Thousand ($9,000.00) Dollars, together with interest, because of the detention of said corn.

III.

That jurisidiction of this Court exists by reason of the fact that this is a suit against private organizations organized, created and existing by virtue of the laws of the United States, to-wit: Federal Reserve Bank of Kansas City, Missouri and Commodity Credit Corporation.

SECOND CAUSE OF ACTION

PLAINTIFF FOR HIS SECOND CAUSE OF ACTION HEREIN:

I.

Re-alleges all of the foregoing with the same full force and effect as though herein set out in full.

II.

That jurisdiction of this Court exists because this is a suit arising under the Constitution of the United States and for deprivation of plaintiff's civil rights as are secured by Title 28, Section 1343, of the U.S.C.A. and by virtue of the fact that corporations organized and existing and created under and by virtue of federal statutes and further by virtue of the fact that defendant, Northwestern State Bank of Appleton, Minnesota, is in express violation of the Constitution of the United States, Article I, Section 10, which is:

> "No state shall coin money, emit bills of credit; or make anything but gold and silver coin a tender in payment of debt."

III.

That the defendants, Oral Nelson, Nina Nelson, A. C. Krebs, as agent of the Northwestern State Bank of Appleton, Minnesota, Earl McNiel, Lawrence Hultgren, Simon Jorgenson, Ardel Sebber, did during the years 1963, 1964, 1965 and 1966, conspire with each other and enter into a conspiracy to deprive plaintiff of the right, title and possession of the South Eighty (S 80) of plaintiff's farm heretofore described, to the plaintiff's damage as hereinafter alleged.

IV.

That defendant, Northwestern State Bank of Appleton, Minnesota, acting as one of the main conspirators in the above described conspiracy, did create money and credit on its own books by bookkeeping entry, constituting aggravated forgery and recorded a Twelve Thousand ($12,000.00) Dollar mortgage on said property, slandering the title to plaintiff's damage as is hereinafter alleged.

V.

That the defendant, Northwestern State Bank of Appleton, Minnesota, is a chartered bank, organized, existing and created under and by virtue of the laws

of the State of Minnesota. That the defendants, Oral Nelson and Nina Nelson and Northwestern State Bank of Appleton, Minnesota, and A. O. Krebs, acting as agent of the Northwestern State Bank of Appleton, Minnesota, did conspire and did deprive the plaintiff of the right, title and possession and use, including diverted acres, of said property and the use thereof by trespassing upon said property and taking and detaining the possession of said property from the plaintiff without due process of law, contrary to the law of the land. That plaintiff has been damaged as a result of said foregoing conspiracy in the sum of Twenty Five Thousand ($25,000.00) Dollars, general damages, and Twenty Five Thousand ($25,000.00) Dollars, punative and exemplary damages, by reason of the willful, unlawful activity as is hereinbefore alleged.

WHEREFORE, plaintiff demands judgment against the defendants, and each of them, in the sum of Sixty Two Thousand ($62,000.00) Dollars, together with his costs and disbursements incurred herein.

PLAINTIFF DEMANDS A TRIAL BY A JURY OF TWELVE.

JEROME DALY
Attorney for Plaintiff
28 East Minnesota Street
Savage, Minnesota

REPLY MESSAGE

THIS FORM AVAILABLE FROM GRAYARC CO., INC., 882 THIRD AVE., BROOKLYN, N. Y. 11232

TO Federal Reserve Bank
Minneapolis
Minnisota

FROM

SPINL manufacturing Jeweler
48 West 48th Street New York, N. Y. 10036 PLaza 7-0547

SUBJECT: Justice Martin V. Mahoney decision Daly property

DATE: June 2nd, 1969

FOLD ↑

Gentlemen: What information have you on the decision of Justice Martin V. Mahoney case Daly vs Bank(do not know the name of bank).As I was made to understand a $2.00 , in Federal Reserve Notes was not a valid deposit, and the appeal was denied, meanwhile Mr. Jerome/Daly still has his property in Minnesota and the bank cannot collect. Does this mean you don't have to pay your mortgage?

Since our currency has no gold or silver backing, this could have dire implication
For a full reproduction of the judgement, Findings of Fact,Precedents, etc. these are contained in a publication called The Daly Eagle, Savage, Minnesota.

Sincerely yours,

PLEASE REPLY TO ⟶ SIGNED Angelo M. Spinelli

DATE

SIGNED

GRAYARC CO., INC., BROOKLYN, N. Y. 11232

THIS COPY FOR PERSON ADDRESSED

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D.C. 20551

OFFICE OF THE CHAIRMAN

August 13, 1969.

The Honorable Herman E. Talmadge,
United States Senate,
Washington, D. C. 20510

Dear Senator Talmadge:

This refers to your request of July 25, 1969, for information upon which to base a reply to a communication relating to a Decree issued by Martin V. Mahoney, Justice of the Peace, Credit River Township, Scott County, Minnesota, in the case of First National Bank of Montgomery v. Jerome Daly.

The bank's action was brought to recover possession of a parcel of real property. From the Decree, it appears that in 1964 the bank, as consideration for a note and mortgage on the property, extended credit in the form of a balance with the bank that Mr. Daly could draw on by check. (There is no indication in the Decree whether Mr. Daly drew on such credit.) In the action the bank asserted ownership of the property on the basis of an earlier foreclosure proceeding on the mortgage as a result of default by Mr. Daly in payments on the loan. Mr. Daly argued that the credit the bank extended to him was no consideration for his note and mortgage and for that reason the Sheriff's sale of the property in the foreclosure proceeding was ineffectual to pass title to the bank. Justice Mahoney accepted that argument.

The memorandum opinion accompanying the Decree states that "Plaintiff's act of creating credit is not authorized by the Constitution and Laws of the United States, is unconstitutional and void, and is not a lawful consideration in the eyes of the Law to support anything or upon which any lawful rights can be built."

Subsequent to issuance of the Decree on December 9, 1968, the bank attempted to appeal to a Minnesota State District Court, but has been impeded in doing so by Justice Mahoney refusing to accept two $1 Federal Reserve notes as payment of a fee to which he is entitled in the event of an appeal to such Court. Counsel for the bank has filed a motion in such Court to have Justice Mahoney show cause why he should not nevertheless file with the Court a transcript of all entries made in his docket, together with all other papers relating to the case that were filed with him, in order that the Court may proceed with the appeal.

Pending reversal of Justice Mahoney's Decree, the case represents the first successful episode in a long-standing effort by Mr. Daly to have the bulk of our nation's currency - Federal Reserve notes - and our nation's monetary system judged unconstitutional. Numerous previous actions in which Mr. Daly was involved have been dismissed by Federal courts on the grounds of lack of standing to sue or failure to state a cause of action. The cases on which there are reported opinions are:

Horne v. Federal Reserve Bank of Minneapolis,
227 F. Supp. 225 (U.S.D.C. Minn.), 344 F.2d 725 (8th Cir. 1965);

Koll v. Wayzata State Bank,
397 F.2d 124 (8th Cir. 1968).

On June 20, 1968, in connection with Joyce v. Northwestern State Bank of Appleton, U.S.D.C. Minn. file number 3-68 Civ. 32, the Court issued a permanent injunction against Mr. Daly "continuing, commencing or prosecuting any suit, action or proceeding, either in this Court or in any court, state or federal, upon any claim arising out of . . . any claims regarding unlawful creation of money and credit".

On the substantive legal questions involved, it should be noted that the Constitutional authority of the Congress to enact a law making Treasury notes legal tender was upheld in 1884 in the Legal Tender Case (United States Reports, volume 110, page 421). The most recent legislation in this area is the Coinage Act of 1965, which provides that "All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations), regardless of when coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues" (Unites States Code, title 31, section 392). We feel confident that the Supreme Court would hold this Act of Congress Constitutional for reasons similar to those it found persuasive in the Legal Tender Case.

We also believe that the Court would hold Constitutional the aspect of our nation's banking system under which money in the form of bank balances may be created. Any person may, of course, refuse to accept as payment for a debt a check drawn on an account in a bank. However, this does not mean that use of checks as a medium of exchange is unconstitutional or that the grant or transfer of credit by means of a check is insufficient consideration for a lawful contract.

To close on a personal note, as I stated in 1963 in testifying before the House Banking Committee with respect to Federal Reserve notes, "I will take all you give me."

Sincerely yours,

(signed) Wm. McC. Martin, Jr.

Wm. McC. Martin, Jr.

Petitioner: Epps

3 thru 10

Digest
E C Kley
Kivley

Petitioner's Ex 4
2/9/70 lmy

42174

CIVIL DOCKET
UNITED STATES DISTRICT COURT

Judged

Jury demand date:
7-11-66

4 66CIV225

D. C. Form No. 106A Rev.

TITLE OF CASE	ATTORNEYS
Alfred M. Joyce vs. 1 Commodity Credit Corporation of the United States, 2 Federal Reserve Bank of Kansas City, Missouri, 3 Northwestern State Bank of Appleton, Minnesota, 4 Earl McNiel, 5 Simon Jorgenson, 6 Lawrence Hultgren, 7 Ardel Sebber, 8 Oral Nelson, 9 Nina Nelson, 10 Cargill, Inc., 11 Kenneth Kivley and 12 Nettie B. Krebs, Executors of the Last Will and Testament of A. O. Krebs, Decedent	For plaintiff: Jerome Daly 28 East Minnesota Street Savage, Minnesota Alfred M. Joyce, pro se RFD The Lazy J Milan, Minn. 56262 For defendant: For N. W. State Bank of Appleton: Bennett & Bodger James R. Bennett 145 W. Snelling Ave., Appleton, Minn. 56208 For Oral Nelson and Nina Nelson: Prindle, Maland & Ward Donald L. Maland Odd Fellows Bldg., Montevideo,Minn.56222 For Kivley and Krebs: Kenneth Kivley ~~Monkkexxkkexxxxxx~~. Appleton, Minn. For Commodity Credit, Fedl. Reserve, McNeil, Hultgren, Jorgenson & Sebber: Patrick J. Foley Neil P. Convery For Cargill, Inc.: Erickson, Popham, Haik & Schnobrich Wayne G. Popham, G. Marc Whitehead 900 F & M Bank Bldg., Mpls., Minn.

STATISTICAL RECORD	COSTS		
J.S. 5 mailed ✓	Clerk		
J.S. 6 mailed ✓	Marshal		
Basis of Action: Conversion of corn - 1st cause of action. Conspiracy to deprive pltf of his farm - 2nd cause of action.	Docket fee		
Action arose at:	Witness fees		
	Depositions		

A true copy [illegible]
Certified
ATTEST: [illegible]
January 30 1970
BY: Judith C Kalmes
Deputy

4 66CIV225

DATE	PROCEEDINGS	Date Order or Judgment Noted
7-11-66	Filed Complaint, with demand for trial by jury. Issued Summons twelve copies.	
7-18-66	Filed Order (Devitt-J.) that any Sheriff, Constable or Peace Officer or Francis Maher, Chief of Police, Appleton, Minnesota, or the United States Marshal may serve the summons in this action upon all parties except Commodity Credit Corporation of the United States and the Federal Reserve Bank of Kansas City.	
8-1-66	Filed Notice of Motion, returnable Aug. 8, 1966, and Motion of defendants N. W. State Bank, Oral Nelson, Nina Nelson, Kenneth Kivley and Nettie B. Krebs for order of dismissal, with aff. of service by mail on 7-29-66	
	Filed Summons with returns of service on the U. S. Atty. on 7-12-66; on the Com. Credit Corp. in Mpls. on 7-15-66; on Com. Cr. Corp. of Fedl. Reserve Bank at Kansas City on 7-13-66; and on Com. Cr. Corp. of the U. S., the Federal Reserve Bank of Kansas City, N. W. State Bank of Appleton, Earl McNiel, Simon Jorgenson, Lawrence Hultgren, Ardel Sebber, Oral Nelson, Nina Nelson, Cargill, Inc., Kenneth Kivley and Nettie B. Krebs by serving The Attorney General, Wash., D. C., on 7-13-66	
8-8-66	Entered record of hearing on motion of defendants N.W. State Bank, Oral Nelson, Nina Nelson, Kenneth Kivley and Nettie B. Krebs for dismissal - argued, and by the Court taken under advisement. Mr. Daly is given 10 days to submit a brief, and counsel for defendants given 10 days thereafter to submit their briefs. (Nordbye, J.)	
9-12-66	Filed Notice of taking deposition of Harvey LaGrange, with affs. of service by mail on 9-12-66	
1-5-67	Filed Deposition of Alfred M. Joyce taken on Sept. 7, 1966, with exhibits	
1-9-67	Filed Deposition of Harvey LaGrange taken on Sept. 19, 1966	
1-13-67	Filed Answer of defendants Commodity Credit Corp., Federal Reserve Bank of Kansas City, Earle McNeil, Lawrence Hultgren, Simon Jorgenson and Ordell Sebber, and Cross-claim against Northwestern State Bank of Appleton, with certificate of service by mail on 1-13-67	
1-23-67	Filed Notice of Motion, returnable Jan. 30, 1967, and Motion of plaintiff for order allowing the Amended Complaint to be substituted for the original complaint herein, with copy of Amended Complaint, and affs. of service by mail on 1-20-67	
1-30-67	Entered record of hearing on plaintiff's motion for order allowing substitution of an Amended Complaint - argued and submitted - plaintiff to submit a memorandum in support of motion. Defendants' move for a dismissal - ruling deferred. (Nordbye, J.) (Kiel, reporter)	
1-31-67	Filed Reporter's Notes for Jan. 30, 1967 (Sutfin, reporter, (R.K.)	
2-3-67	Filed Separate Answer of Commodity Credit Corp. to the Cross-claim of Cargill, Inc., with certificate of service by mail on 2-2-67	
	Filed Notice of Motion, returnable Feb. 17, 1967, and Motion of defendants Commodity Credit Corp., Fedl. Reserve Bank of Kansas City, Earle McNeil, Lawrence Holtgren, Simon Jorgenson and Ordell Sebber, for order dismissing the complaint and granting summary judgment in favor of said defendants, with Affidavit of Earle McNeil, Brief in support of motion, and certificate of service by mail on 2-2-67	

D. C. 110A Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Or Judgmen
2-8-67	Filed Notice of Motion, returnable Feb. 17, 1967, and Motion of defendants Kenneth Kivley and Nettie B. Krebs for order dismissing the complaint and granting summary judgmentin their favor, with Affidavit of R. C. Krebs, Brief in support of motion, and aff. of service by mail on 2-7-67	
2-13-67	Filed Affidavit of Prejudice, with aff. of service by mail on 2-11-67	
2-15-67	Filed Separate Answer and Cross-claim of Cargill, Inc., with aff. of service by mail on 8-20-67	
	Filed Notice of Motion, returnable Feb. 17, 1967, and Motion of defendant Cargill, Inc. for summary judgment, with Affidavits of Emmett L. Thorsland, Harold E. Burns and George W. Meister, Brief in support of motion, and affs. of service by mail on 2-4-67	
2-17-67	Entered record of hearing on motions for order dismissing the complaint and granting summary judgment, by Commodity Credit, Fedl. Reserve Bank of K.C., Earle McNeil, Lawrence Hultgren, Simon Jorgenson, Ordell Sebber, Kenneth Kivley, Nettie B. Krebs and Cargill, Inc. - argued and granted. Defendant N. W. State Bank of Appleton moves for order dismissing the complaint and granting summary judgment - granted. Counsel to prepare and submit appropriate order. The Court rules that the plaintiff's affidavit of prejudice is not timely and will not be recognized. Plaintiff moves to amend the complaint - motion is denied. Plaintiff moves to dismiss the action without prejudice - denied. (Nordbye, J.) (Kiel, reporter)	
2-20-67	Filed Reporter's notes for Feb. 17, 1967 (Sutfin, RAK, reporter)	
3-10-67	Filed Notice of Motion & Motion of Jerome Daly to disqualify Judge Nordbye, with aff. of serv. by mail on 3-2-67	
3-10-67	Filed Affidavit of Jerome Daly, with photo copies of newspaper clippings attached	
	Entered record of hearing on Motion for order to disqualify Judge Nordbye - argued and denied (Nordbye, J.) (Fowler, reporter)	
3-16-67	Filed Reporter's notes for Mar. 10, 1967 (Fowler, reporter)	
3-17-67	Filed Order for Judgment (Nordbye, J.) granting motion of defendants for summary judgment dismissing the action with prejudice	3-16
	Entered Summary Judgment that the motion of defendants for summary judgment be, and the same is hereby granted; that the plaintiff have and recover nothing by his suit against said defendants; that this action is dismissed with prejudice as to each of the defendants; and that the defendants recover their costs of action, to be taxed	
	Mailed Notice to counsel	
3-29-67	Filed Notice to plaintiff of filing of order granting summary judgment and dismissing the action, with aff. of service by mail on 3-28-67	
6-8-67	Filed Affidavit of G. Marc Whitehead, attorney for Cargill, Inc., in opposition to plaintiff's motion to amend complaint, with affs. of service by mail on 6-7-67	
6-13-67	Filed Affidavit of Oral Nelson and Nina Nelson in opposition to plaintiff's motion to amend complaint, with aff. of service by mail on 6-12-67	
	Filed Motion of plaintiff for order allowing supplemental complaint with Notice of motion, returnable June 12, 1967, and Marshal's returns of service on 6-8-67	

DATE	PROCEEDINGS	Date Order or Judgment Noted
6-13-67	Entered record of hearing on motion of plaintiff for order allowing supplemental complaint - no appearance on behalf of plaintiff - the matter is dismissed with prejudice. Ordered that the proposed supplemental summons and complaint be sealed and not opened except on order of the Court (Lord, J.)	
	Mailed Notice to counsel	
7-3-67	Filed Response of Defts Commodity Credit Corporation, Federal Reserve Bank of Kansas City, Earl McNeil, Simon Jorganson, Lawrence Haltgren and Ardel Sabber in opposition to Pltf's Motion for Order to File Supplemental Complaint with certificate of serv by mail on 7-3-67.	
7-5-67	Filed Affidavit in Opposition to plaintiff's Motion to amend Complaint and in support of deft's Kenneth Kivley and Nettie B. Krebs, Executors of the last Will and Testament of A. O. Krebs, decedent, Motion to prohibit defendant from filing further motions with aff of serv by mail on 7-1-67.	
7-7-67 ;	Filed affidavit of Oral Nelson and Nina Nelson in opposition to plaintiff's motion for order for supplemental complaint.	
7-14-67	Filed Order (Devitt-Larson-Lord-Nordbye) that the United States Marshal shall refuse to serve a Motion to have a so-called second supplemental complaint with supplemental summons, returnable August 14, and plaintiff, Alfred M. Joyce, is restrained by this order from serving said documents on any of said defendants or procuring any other person to serve them for him or in his behalf. A violation of this order with respect to the service of the motion to allow the second supplemental complaint will constitute the basis for a citation for contempt of this Court and it is further ordered that the plaintiff, Alfred M. Joyce, is restrained from filing or serving any further process in the above proceeding which has been heretofore on March 16, 1967, finally adjudicated and decided by an order of this Court. Any further proceedings in connection with said litigation must be by way of an appeal, if that right exists, to the Court of Appeals of this Circuit.	7-11-67
7-13-67	Filed Plaintiff's Motion for allowance of Fourth Supplemental Complaint, with Fourth Supplemental Complaint, and copy of Third Supplemental Complaint, motion returnable Aug. 14, 1967	
8-14-67	Filed Notice of Appeal by plaintiff Mailed copies of the Notice of Appeal to Patrick J. Foley, U.S.Atty., 596 U. S. Courthouse, Mpls. Minn.; Bennett & Bodger, 145 W. Snelling Ave., Appleton, Minn.; Prindle, Maland & Ward, Montevideo, Minn.; Kenneth Kivley, Appleton, Minn.; and Erickson, Popham, Haik & Schnobrich, 900 F & M Bank Bldg., Mpls., Minn.	
	Entered record of hearing on motion of plaintiff for allowance of Fourth Supplemental Complaint - no appearance and the motion is dismissed. (Neville, J.)	
8-22-67	Mailed Certified copy of Notice of Appeal and Relevant Docket Entries to the Clerk, U. S. Court of Appeals, Eighth Circuit, St. Louis, Mo.	
12-4-67	Filed Certified copy of Order of the U. S. Court of Appeals, Eighth Circuit, dismissing the appeal	
1-22-68	Filed Mandate of the U. S. Court of Appeals, Eighth Circuit, dismissing the appeal, with order to file same and enter judgment (Nordbye, J.) Entered Judgment in accordance with the Mandate, dismissing the appeal Mailed Notice to counsel	

Petitioner's Ex 5
2/9/70 lsm

42174

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF MINNESOTA - FOURTH DIVISION

Civil Action File No. 4 66CIV399

- -

Leo Zurn, JoAnn Van Popperin
William Wildanger, John Doe and
Richard Roe, Plaintiffs

Vs. COMPLAINT

Federal Reserve Bank of Minneapolis,
First National Bank of Minneapolis,
Northwestern National Bank of Minneapolis,
American National Bank of St. Paul
First National Bank of St. Paul,
State of Minnesota, United States of America,
Lyndon Johnson, President of the United States
Henry Fowler, Secretary of the Treasury of the
United States, Val Bjornson, Treasurer of
the State of Minnesota, Farmers and Mechanics
Savings Bank of Minneapolis

Defendants

- -

COME NOW THE PLAINTIFFS, in the full exercise of their individual soverign right to peaceably assemble and to petition the Judicial Department of the Government of the United States for a redress of grievances, for the Complaint herein, state and allege:

I.

That Plaintiffs are residents, freeholders, voters, citizens and taxpayers of the United States of America and State of Minnesota. That Plaintiffs bring this action as representative taxpayers, on behalf of, in the interest of themselves and the people of the United States and State of Minnesota and its Government. That the object of this action is to set aside and declare void all Bonds and Securities the defendant banks, U. S. Government and State of Minnesota, by virtue of the purported obligations of the United States of

Filed NOV 18 1966 10
Frank A. Massey, Clerk.
By Hazel E. Gabrielson

A true copy is shown
Certified January 14 30 1970
FRANK A. MASSEY, CLERK
BY: Judith Palmer
Deputy

America, held by said banks in the form of U. S. Securities, Bonds and other purported obligations of said state and United States. That there is a common question of law and fact at hand and the several rights are here asserted and the relief sought are common to and affect all of the taxpayers of the State of Minnesota and the United States individually and as a class; that plaintiffs above named are fully representative of this class of taxpayers, so numerous as to make it impracticable to bring them all before this Court.

That plaintiffs are individually obligated to pay direct and indirect taxes, duties, imposts and excises, and income taxes, pursuant to law, to pay the debts and provide the common defense and general welfare of the United States and the State of Minnesota and to retire their lawful obligations.

II.

That jurisdiction of this Court exists because this is a case in law and equity under the Constitution of the United States and the laws of the United States; is a controversy to which the United States is a party; directly involves the Constitution of the United States and more specifically Article I, Section 8, Clause 5, Article I, Section 10, Article III, Article VI, Amendments 1, 5, 7, 9, 10 and 13.

III.

That by virtue of the Declaration of Independence all soverign power is vested in and consequently derived from the people. That the individual and now the state, is the source of and basis of our social compact. With the exception of powers granted to the Government by the Constitution, soverignty resides in the individual. The defendant, U. S. Government, exists through a delegation by the people collectively as a nation of a portion of their soverign governmental powers based upon their natural and inherent rights. Beyond that, as against the individual, the U. S. Government has no rights. Its obligations consist altogether of duties.

More specifically, the people vested all legislative power granted, by the Constitution, in a Congress of the United States, a part of which is the power to coin money, regulate the value thereof, and of foreign coin. That this power to coin and create the nation's money has unconstitutionally been attempted to be delegated to the Federal Reserve Corporation, National Banks listed above and member State Banks dominated and controlled by foreign financiers, set up by dishonest means, using a Congress stuffed with time-serving legislators who act in behalf of the de facto banker-government to the detriment of the de jure government of the United States of America for the purpose of robbing the American public for the bankers' selfish gains. That the defendant Federal Reserve Bank of Minneapolis obtains the Federal Reserve Note from the United States Government Printing Office, including all other Federal Reserve Notes, for use in circulation to the general public paying as consideration therefor only the cost of printing.

More specifically, the defendant Banks are circulating what is perversely labeled Federal Reserve Notes, and are holding them out as lawful money, which read substantially on their face as follows: "Federal Reserve Note (1) THE UNITED STATES OF AMERICA This note is legal tender for all Debts Public and Private - Federal Reserve Bank of Minneapolis, Minnesota (H73911158 A) ONE DOLLAR, Signed by the Treasurer of the United States and the Secretary of the Treasury". That said Federal Reserve Notes are in various denominations; are fiat money and are redeemable in neither gold nor silver coin nor any thing else of value.

That Plaintiffs have been irreparably damaged as citizens of the State of Minnesota in that a legal tender for the payment of debts does not exist in conformance with Article 1 Section 10, United States Constitution.

That Silver Certificates, which read substantially as follows: "ONE SILVER CERTIFICATE" certifies that there is on deposit in the Treasury of the United States of America ONE DOLLAR in Silver, Payable to the Bearer on Demand "One DOLLAR WASHINGTON, D. C. Treasurer of the United States, Signed by Treasurer of the United States, C. Douglas Dillon Secretary of Treasury", are withdrawn from circulation leaving Plaintiffs without legal tender paper money of any kind.

IV.

That defendant Federal Reserve Bank of Minneapolis is a privately owned corporation, organized and existing by virtue of Title 12, under the complete domination, direction and control of a Board of Governors of the Federal Reserve System, operating completely independently of the United States. That the United States Government owns not one share of stock in said Bank. Among the employees of the Federal Reserve Bank of Minneapolis, not one is a member of the Civil Service.

V.

That the defendant Banks named herein are private corporations set up and existing under the National Banking Act of 1964 and all amendments thereto and/or the Federal Reserve Act of 1913. That said banks are unlawfully uttering, issuing and circulating unlawful money in the deluding and deceiving form of authentic U. S. Currency all contrary to the Constitution, which activity amounts to a nuisance as defined by common law.

VI.

That the defendant Henry H. Fowler is the Secretary of the Treasury of the United States and is the appointee of the agent of the defendant Lyndon Johnson, President of the United States of America.

That the office of President of the United States is a public trust with the Treasury of the United States directly under his control. As legally authorized by lawful authority, the President is the Executive Officer of the Government of the United States with authority through his Secretary of the Treasury for the regular disbursement of lawful money of the United States for the retirement of legal obligations of the Government of the United States on behalf of its people. Val Bjornson is the Treasurer of Minnesota and is legally authorized by law to retire lawful obligations of the State of Minnesota.

VII.

That the defendants John Doe and Richard Roe are fictitious persons named for the purpose of substituting other banks as defendants within the jurisdiction of this Court and other governmental subdivisions and their officers of the State of Minnesota, as necessary parties, the exact name of which are not ascertainable at this time.

VIII.

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) per cent 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".

IX.

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.

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 statuatory 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 constitutes 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 subdivisions, 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 Plaintiffs' 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 emmission of multiple bills of credit. Each entry is a separate offense.

The Defendant banks, along with the rest of the Banks through the United States are all engaged in the same activity. They coin no Gold or Silver Coins nor any other coins. They produce absolutely nothing of value. Yet they claim that the Government and people of the United States owe them $330,000,000,000.00.

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 and otherwise, which said defendant banks acquire as purported agents equitably belongs 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.

X.

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 forebearance, 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 Governments 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 and 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 Dollar Federal Reserve Note. That said activity by defendant banks constitutes 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.

XI.

That this aggravated forgery, as defined by M.S.A. 609.625, and the acquisition of United States and State Bonds 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 Funds, contrary to Minnesota Statute 609.465, all to plaintiffs' damage.

That the remainder of the defendants, in violation of their trust, have abandoned the interest of the people and plaintiffs' interest, and are going along with said conspiracy, giving aid and comfort to it, and, except the defendants United States of America and State of Minnesota, in willful violation of their oaths to support the Constitution of the United States of America, constituting perjury as defined by M. S. A. 609.48 and M. S. A. 481.15, Subdivision 1, Clause (4), and in willful violation of the Constitutions of the United States and the State of Minnesota, and all laws passed pursuant thereto, pertaining to oaths and affirmations. That said acts and conduct constitutes a conspiracy to defraud the U. S. Government, contrary to the express terms of U.S.C.A. That said acts constitute an embezzlement and theft contrary to the express provisions of Title 18, Chapter 31, U.S.C.A. That said acts related herein constitute a conspiracy to violate plaintiffs' natural rights as secured by the Declaration of Independence, the Constitution of the United States and 18 U.S.C.A. Sec. 241.

That said purported bonds, securities and obligations and the whole thereof, for which no legal consideration was paid, the exact amount and number of which are not presently known to plaintiffs, are in the possession, actual or constructive, of and run in favor of the defendant banks, jointly and/or severally, as attempted obligations of the United States Government and said State of Minnesota and its governmental subdivisions, which bonds are unlawful, void, worthless, and no obligation owing. Upon information and belief, the Federal Reserve Bank of Minneapolis holds the amount $850,000,000.00, more or less, of U. S. Securities the First National Bank of Minneapolis holds the amount of $ 88,193,942.00, more or less, of U. S. Securities and the amount of $ 52,299,325.00, more or less, of Secuties of the State of Minnesota or its governmental subdivisions; the Northwestern National Bank of Minneapolis holds the amount of

of $ 54,685,525 , more or less, of Securities of the State of Minnesota or its governmental subdivisions; The American National Bank of St. Paul holds the amount of $ 4,607,000 more or less, of U. S. Securities and the amount of $ 20,429,000 more or less, of Securities of the State of Minnesota or its governmental subdivision; the Farmers and Mechanics Savings Bank of Minneapolis holds the amount of $ 33,582,196 , more or less, of U. S. Securities and the amount of $ 52,436,193 , more or less, of Securities of the State of Minnesota or its governmental subdivision.

Except the Federal Reserve, the remainder of the defendant banks are National Banks and members of the Federal Reserve System owning stock in the Federal Reserve Bank of Minneapolis. That they, along with every other member national bank, exercise complete control over said Federal Reserve Bank, subject only to the control of the "Puppet" Board of Governors of the Federal Reserve System.

That the above cited U. S., State, County, City and Governmental Subdivisions Bonds and Securities are in the actual possession of and pledged to said Federal Reserve Bank as security for loans to the defendant National Banks. That said pledged Bonds and Securities appear to be the lawful obligation of the United States, State of Minnesota, and Counties of Hennepin and Ramsey in favor of said Federal Reserve Bank of Minneapolis, whereas, because of said fraud, theft, forgery, usury, conspiracy, unlawful creation of money by bookkeeping entry and unconstitutional activity the said Federal Reserve Bank of Minneapolis has no lawful claim to or interest in said Bonds.

That the defendant Federal Reserve Bank of Minneapolis holds the possession of U. S. Bonds and Securities, and other bonds and securities of the State of Minnesota and its Governmental Subdivisions, including counties, municipalities, townships, and school districts. That said Bonds and Securities purportedly belong to the defendant National Banks named herein and other defendant National Banks in the State of Minnesota. That said Bonds and Securities have been pledged to the Federal Reserve Bank as

collateral security for loans by said Federal Reserve Bank to its member National Banks and for the purposes of advancing money for said member banks' so-called reserves. That said Federal Reserve Bank creates money by bookkeeping entry as heretofore described for purposes of making said loans. That said Federal Reserve Bank of Minneapolis claims some right, title, interest or lien on said Bonds and Securities pledged to them, whereas, in law and in fact, said Federal Reserve Bank has no right, title, interest or lien thereon. That plaintiffs herein are assessed taxes federal, state, municipal, county, school district, and other sales taxes for the retirement of the principal and interest on said unlawful obligations.

That the exact number, nature, extent of and obligors of said bonds are not known to plaintiffs at this time, but, however, can be ascertained by discovery proceedings under the Federal Rules of Civil Procedure. That the names of the Governmental Subdivisions of the State of Minnesota who pledged said bonds can be ascertained by the same discovery proceedings.

That interlocutory judgment determining the number, nature, and extent of said Bonds and Securities held by the Federal Reserve Bank of Minneapolis is necessary herein to adjudicate plaintiffs' rights against the Federal Reserve Bank of Minneapolis and the defendant National Banks named herein.

Plaintiffs are obligated and required by Criminal Statute to pay Federal and State income taxes and to keep records, supply information and account for and pay over State and Federal income taxes for the retirement of these obligations and payment of the interest thereon.

That the defendant United States Government and State of Minnesota are in effect merely a conduit or collection agency for the defendant banks in the payment of principal and interest for these unlawful obligations effecting in fact peonage, servitude and slavery over plaintiffs and the people of the United States and State of Minnesota.

That the Defendant First National Bank of St. Paul holds the amount of $39,174,160, more or less of United States Securities or securities of Governmental Departments of the United States, and the amount of $49,298,104 of Securities of the State of Minnesota or its governmental subdivisions.

XII.

That Plaintiffs are being discriminated against by the Government of 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, Plaintiffs are not permitted to redeem Federal 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 transfered 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 Plaintiffs are being directly damaged by this theft.

XIII.

That the relief herein prayed for is based upon, but not limited to, the Declaratory Judgment Statutes of the State of Minnesota and Laws o fthe United States.

WHEREFORE, Plaintiffs, individually, as citizens and taxpayers, demand judgment and relief as follows:

(A) That Defendants be required to answer herein in the time prescribed by law.

(B) That Plaintiffs be granted the right to appropriate discovery procedures to determine the number, nature and extent of United States Securities, and, or the number, nature and extent of State, Municipal, Township, County, Village and School District Bonds and securities held by each of the Defendant Banks and the nature and extent of the ownership and lien or rights therein claimed by each of them.

(C) Pursuant to Sections 2281 through 2284 28 USC Plaintiffs hereby make application that the above entitled action be heard and determined by a District Court of Three Judges under Section 2284, United States Code.

(D) Interlocutory Judgment, according to the Rules of Civil Procedure for the District Courts of the United States, be entered herein determining the number, nature and extent of and all persons and corporations interested in and claiming title or lien on the U. S. Securities, State of Minnesota Bonds, and County, City, Township, Village, and School District Bonds held by the defendant banks named herein and each of them.

(E) For further Interlocutory Judgment that plaintiffs herein may amend their complaint to include the names of all governmental subdivisions and other banks revealed by discovery as necessary defendants for a full and complete adjudication of the rights of the parties herein.

That thereafter, a final judgment against all defendants joined as follows:

a. That the Court determine the number, nature, extent and amount of the purported United States Securities and obligations and securities, bonds and obligations of the State of Minnesota and its Government subdivisions held by the defendant banks and each of them, whether jointly or severally, and the same be declared null, void and no obligations owing by the United

States Government or the State of Minnesota and its Governmental Subdivisions to the said defendant banks named herein.

b. That Defendant Banks and each of them hold the title of all of their property, bonds, monies, real, personal and otherwise as constructive trustees for the Government of the United States, the true owner thereof; and that the United States Government is entitkled to immediate restitution thereof.

c. That the nuisance activity which said banks are engaged in unconstitutionally usurping the power of Congress to coin money and regulate the value thereof and of foreign exchange be abated and enjoined.

d. That the defendant Lyndon B. Johnson, as President, and defendant Henry H. Fowler, as Secretary of the Treasury of the United States, and each of them, be enjoined from applying any of the monies, tax or otherwise, of the Government of the United States of America toward the payment of said purported obligations and any interest thereon.

That the defendant Val Bjornson, as Treasurer of the State of Minnesota, be enjoined from applying any of the monies, tax or otherwise, of the State of Minnesota toward the payment for said purported obligations held by defendant banks or any interest thereon.

e. That said banks be enjoined from creating money or credit by bookkeeping entries upon their books and that they be enjoined from circulating private notes as money.

Jerome Daly

JEROME DALY
Attorney for Plaintiffs
28 East Minnesota Street
Savage, Minnesota

Dated this 17th day of
Nov., 1966
at Savage, Minnesota.

~~EXHIBIT "D"~~

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

4-66 Civ. 225

Alfred M. Joyce,

Plaintiff,

vs.

Commodity Credit Corporation of the United States, Federal Reserve Bank of Kansas City, Missouri, Northwestern State Bank of Appleton, Minnesota, Earl McNiel, Simon Jorgenson, Lawrence Hultgren, Ardel Sebber, Oral Nelson, Nina Nelson, Cargill, Inc., Kenneth Kivley and Nettie B. Krebs, Executors of the Last Will and Testament of A. O. Krebs, Decedent,

Defendants.

O R D E R

Appearances:

Mr. Jerome Daly, Savage, Minnesota, for plaintiff;

Mr. Neil P. Convery, Assistant United States Attorney, Minneapolis, Minnesota, for Commodity Credit Corporation, Federal Reserve Bank of Kansas City, Missouri, Earl McNiel, Simon Jorgenson, Lawrence Hultgren and Ardel Sebber;

Mr. James R. Bennett, of Messrs. Bennett & Bodger, Appleton, Minnesota, for Northwestern State Bank of Appleton, Minnesota;

Mr. Donald L. Maland, of Messrs. Prindle, Maland and Ward, Montevideo, Minnesota, for Oral Nelson and Nina Nelson;

Mr. C. Marc Whitehead, Minneapolis, Minnesota (Messrs. Erickson, Popham, Haik & Schnobrich, Minneapolis, Minnesota, of counsel) for Cargill, Inc.;

Mr. Kenneth Kivley, Appleton, Minnesota, for Kenneth Kivley and Nettie B. Krebs, Executors of the Last Will and Testament of A. O. Krebs, Decedent.

Filed March 17 1967
Frank A. Massey, Clerk. 1.
By Hazel E. Gabrielson
Deputy

A true copy in 11 sheets
Certified January 30 1970
BY: Judith Clabaugh
Deputy

Petitioner's Ex 6 42174
2/9/70 lmf

The above proceeding first came before the Court on August 8, 1966, on the motions of the Northwestern State Bank of Appleton, Minnesota, Oral Nelson, Nina Nelson, Kenneth Kivley and Nettie B. Krebs, as co-executors of the Last Will and Testament of A. O. Krebs, deceased, the former President of the Northwestern State Bank of Appleton, for an order granting a summary judgment of dismissal. The motion was taken under advisement in that the Court was informed that an action was pending before the State Court involving at least some of the issues in the action pending in this Court. Furthermore, no appearance had been made by Cargill, Inc., and Commodity Credit Corporation and by certain employees of the latter. A recital of the nature of plaintiff's claims in his complaint and the subsequent events following the motions heard on August 8, 1966, becomes necessary.

The original complaint herein consists of two causes of action. In the first cause, plaintiff alleges that Cargill, Inc., Commodity Credit Corporation, Federal Reserve Bank of Kansas City, A. O. Krebs, as agent for Northwestern State Bank of Appleton, Minnesota, and Earl McNiel, Simon Jorgenson, Lawrence Hultgren and Ardel Sebber, as agents for Commodity Credit Corporation, conspired to deprive plaintiff of some 3,500 bushels of corn of the value of $4,500, resulting in $9,000 in damages to plaintiff. The Nelsons are not named as parties to this conspiracy.

The second cause of action realleges the first count and states that during the years 1963 to 1966, inclusive, the Nelsons, A. O. Krebs, as agent for the Northwestern State Bank of Appleton, Earl McNiel, Simon Jorgenson, Lawrence Hultgren and Ardel Sebber entered into a conspiracy to deprive plaintiff of the South Eighty (80) of plaintiff's farm which is described as the South One-half (S 1/2) of the Northeast Quarter (NE 1/4) and all of the Southeast Quarter (SE 1/4) of Section 23, Township 119, Range 42 West of the Fifth Principal Meridian, Chippewa

County, Minnesota. And the bank is alleged to have created and recorded a $12,000 mortgage on plaintiff's farm property, slandering the title. The second count is alleged to be a suit arising under the Constitution of the United States and by reason of the deprivation of plaintiff's rights as secured by Section 1343, Title 28, United States Code, and further by virtue of the fact that the bank has violated the Constitution of the United States, Article 1, Section 10, which plaintiff quotes as follows:

> "No state shall coin money, emit bills of credit; or make anything but gold and silver coin a tender in payment of debt."

Jurisdiction allegedly exists as to the first cause of action in that the suit is against private corporations organized, created and existing by virtue of the laws of the United States, to wit, "Federal Reserve Bank of Kansas City, Missouri, and Commodity Credit Corporation."

On August 22 to August 30, 1966, the State District Court, Eighth Judicial District, sitting at Montevideo, Minnesota, heard an action instituted by Alfred M. Joyce against Northwestern State Bank of Appleton, Minnesota, Oral Nelson and Nina Nelson, husband and wife, Kenneth Kivley and Nettie D. Krebs, as co-executors under the Will of A. O. Krebs, deceased, Alfred M. Joyce, Jr., Mary Compton, and A. E. Kief, as Guardian of the Estate of Jeffery Allan Lincoln Compton, to determine adverse claims to the S 1/2 of the NE 1/4 and all of the SE 1/4, Section 23, etc. In a decision filed November 21, 1966, and judgment entered thereon on December 14, 1966, the court found that the plaintiff was the owner and in possession of the S 1/2 of the NE 1/4 and N 1/2 of the SE 1/4 of said property, subject to the following:

1. A mortgage to A. O. Krebs dated May 20, 1957, recorded in the Office of the Register of Deeds of Chippewa County on May 20, 1957 in Book 67 of Mortgages, Page 460. This mortgage secured a note of the plaintiff of even date in the sum of $4,000.00. There is due on said note the sum of $4,000.00, with interest at 6% from March 1, 1961.

2. A mortgage to A. O. Krebs dated March 24, 1958, and recorded in the Office of the Register of Deeds of Chippewa County, Minnesota, on March 29, 1958, in Book 67, Mortgages, Page 507. This mortgage secures a note of the plaintiff of even date in the sum of $3,500.00. There is due on said note the sum of $3,500.00, with interest at 6% from March 1, 1961. A. O. Krebs was the owner and holder of both of said notes and mortgages at the time of his death on December 20, 1965.

The court further held:

3. That the defendants other than Kenneth Kivley and Nettie B. Krebs, as co-executors of the estate of A. O. Krebs, deceased, have no right, title, estate interest or lien in or upon said real estate above described.

4. That as to the S 1/2 of the SE 1/4 of said Section 23, the ownership of that property was vested in Oral Nelson and Nina Nelson since April 17, 1964, and that the plaintiff, Alfred M. Joyce, has no right, title, interest, or lien in or upon said premises. That the property was subject to a $12,000 mortgage to the Northwestern State Bank of Appleton, Minnesota, which mortgage was later assigned to A. O. Krebs, who was the owner and holder of said note and mortgage at the time of his death.

On January 13, 1967, the Commodity Credit Corporation, Federal Reserve Bank of Kansas City, Earl McNiel, Lawrence Hultgren, Simon Jorgenson and Ardel Sebber filed their answer herein.

On January 30, 1967, the plaintiff made a motion before this Court for an order allowing him to file an amended complaint. The proposed amended complaint sets forth in one count the same claims against the defendants found in the original complaint, but attached as part of the proposed amended complaint is Exhibit A, which purports to be a copy of a proceeding instituted by several persons, adding the plaintiff, Alfred M. Joyce, as one of the plaintiffs, and joining as defendants the following: Federal Reserve Bank of Minneapolis, First National Bank of Minneapolis, Northwestern National Bank of Minneapolis, American National Bank of St. Paul, First National Bank of St. Paul, State of Minnesota, United States of America, Lyndon Johnson, President of the United States, Henry Fowler, Secretary of the Treasury of the United States, and Val Bjornson, Treasurer of the State of Minnesota. Plaintiff seeks relief

by reason of the alleged making of spurious and false claims by these defendants and the alleged illegal creation of money and credit.

As stated, the proposed amended complaint proceeds, without any separate count, to set forth the alleged conspiracy to defraud plaintiff of his corn as contended in the original complaint and the alleged conspiracy to deprive plaintiff of his lands and property, consisting of 80 acres and comprising the S 1/2 of the SE 1/4 of Section 23, etc. He seeks to have the mortgages on his alleged property voided by reason of the wrongful creation of money and credit by the unlawful action of the defendant Northwestern State Bank of Appleton heretofore alleged by its creation of money and credit on its books to plaintiff's damage in the sum of $25,000.

Plaintiff, by his proposed amended complaint, seeks judgment for the value of the corn and that he recover the undisputed possession of the land described in the complaint and that he recover "against the defendants and each of them" damages — general, special and punitive — in the sum of $157,000. In no way is it made to appear that the inclusion of Exhibit A has any relevancy to the claims made by plaintiff as to the corn or his real estate.

At the hearing on January 30, 1967, on plaintiff's motion to file his amended complaint, the Court had been informed that Cargill, Inc., was about to file a motion for summary judgment and hence announced that it would defer ruling on plaintiff's proposed motion to amend his complaint until all parties to the original complaint were before it.

On February 13, 1967, plaintiff filed an affidavit of prejudice against this Court wherein it was recited as follows:

> "Alfred M. Joyce, Plaintiff in this action, being first duly sworn deposes and states that he has read Exhibit 'A' consisting of 6 pages attached hereto and knows the contents thereof and therefore makes it a part of this affidavit of prejudice by reference the same as though herein set out in full; further that he has good reason to believe, does believe and so states that because of bias and prejudice on the part of

> Gunnar H. Nordbye, one of the Judges of the above entitled Court a fair trial or hearing of any kind cannot result with said Judge presiding and therefore, he makes this affidavit to disqualify said Judge for all purposes. That this affidavit of prejudice is made pursuant to the Declaration of Independence, the Constitution for the United States and all laws in pursuance thereof and Payne vs. Lee, 222 N. 269."

His attorney, Jerome Daly, had attached to plaintiff's affidavit a document similar to Exhibit A, the preferred part of the proposed amended complaint and other irrelevant documents, and it is to be gathered that the affidavit of prejudice is bottomed primarily upon the fact that this Court has a son who is a Vice President of the First National Bank of Minneapolis and that this bank would be involved in the alleged nation-wide conspiracy of national banks to illegally create money and credit.

On February 17, 1967, there was presented to this Court the motions for judgment of Cargill, Inc., Commodity Credit Corporation, Federal Reserve Bank of Kansas City, Oral Nelson, Mina Nelson, Earl McNiel, Lawrence Hultgren, Simon Jorgenson, Ardel Sebber and Kenneth Kivley and Nettie B. Krebs, as co-executors of the Last Will and Testament of A. O. Krebs, decedent, and a renewal of the motion for judgment made by the Northwestern State Bank of Appleton. At this hearing on February 17, 1967, the Court denied the motion to amend the complaint, refused to recognize the affidavit of prejudice as being untimely, and that it was not executed in conformity with Section 144, Title 28, United States Code. Thereafter, on March 10, 1967, plaintiff filed another motion seeking to disqualify the Court based upon Section 455, Title 28, United States Code, and upon the "Declaration of Independence and the Constitution of the United States." The Court denied the motion.

Obviously, the issues which plaintiff seeks to insert in the above proceeding in his amended complaint as to the alleged defendant banks, et al., in Exhibit A attached to the proposed amended complaint

are impertinent and are not relevant in any way to the issues in the above proceeding and none of the named defendants in said Exhibit A are proper parties to this proceeding. Plaintiff, by the proposed amended complaint, sought to inject a collateral action against certain banks and public officials as part of an action involving the alleged conversion of certain corn stored with Cargill, and an alleged dispute as to the ownership of land and the validity of encumbrances thereon. Under these circumstances, this Court could not allow the proposed amendment to the complaint or stultify itself by giving any credence to the attempt of the plaintiff to have this Court recuse itself from this proceeding.

With the foregoing preamble, the Court will now set forth its order with respect to the motions for summary judgment of dismissal filed by each of the moving defendants:

FIRST CAUSE OF ACTION

1. That during the year 1961 the plaintiff and one Harvey LaGrange were engaged in farming operations in Chippewa County under an arrangement whereby upon the sale of the crops thereon the plaintiff was to obtain one-third of the proceeds and LaGrange two-thirds.

2. That on November 11, 1961, there was delivered by the plaintiff some 2,726.79 bushels of corn to one of the elevators of the Cargill Company at Gluck, Minnesota, for the account of A. M. Joyce and H. LaGrange, and when the corn was dried and moisture removed, the bushels were reduced to 2,538.64, and as to which corn, warehouse receipt No. 3503 was issued to Joyce and LaGrange.

3. That thereafter Joyce and LaGrange on November 27, 1961, applied for a warehouse storage loan from the Commodity Credit Corporation through the Chippewa County Agricultural Stabilization and Conservation Office. At that time a note and loan agreement was signed for a disbursement to Joyce and LaGrange by the Northwestern State Bank

of Appleton in the amount of $2,564.03 less a service charge of $12.69 and less a charge to Cargill of $190.88, resulting in the sum of $2,551.34 to be disbursed as follows: $2,360.46 to Joyce and LaCrange and $190.88 to Cargill, Inc., Cluek, Minnesota.

4. That thereafter the Northwestern State Bank of Appleton on December 19, 1961, credited the plaintiff in payment of certain notes owed by him to the bank as follows:

Loan #9501	Principal	$ 400.00
do	Interest	17.05
Loan #8968	Principal	200.00
do	Interest	13.45
Loan #10169	Principal	156.32
		$ 786.82

For that amount, a receipt was duly issued by the bank to Joyce.

5. That the Northwestern State Bank of Appleton made a payment of $1,573.64 to Harvey LaCrange, which sum was deposited to his commercial account in the said bank and subsequently withdrawn by him.

6. That in consideration of the disbursement of said loan funds by the Northwestern State Bank of Appleton, the Commodity Credit Corporation issued a certificate of interest, No. B-4137810 to said bank, payable through the Federal Reserve Bank of Kansas City, in the amount of $2,551.34.

7. That plaintiff and said Harvey LaCrange assigned to the Commodity Credit Corporation as security for the loan made to them Warehouse Receipt No. 3503, dated November 11, 1961, issued by Cargill, Inc., at Cluek, Minnesota.

8. That the note and loan agreement matured July 31, 1962, prior to which the Chippewa ASCS County Office in behalf of Commodity Credit Corporation gave notice to said plaintiff and LaCrange of said loan being due, but neither plaintiff nor LaCrange repaid the loan nor redeemed said warehouse receipt. Thereafter, and on or about February 27, 1963, the Commodity Credit Corporation surrendered said warehouse

receipt and demanded delivery of said corn and the defendant Cargill complied with said demand and cancelled the warehouse receipt. The corn in question was thereafter delivered to the Commodity Credit Corporation to satisfy the indebtedness.

9. That the defendants Earl McNiel, Laurence Hultgren, Simon Jorgenson and Ardel Sebber are employees of Commodity Credit Corporation and any connection they may have had with reference to the corn in question was in fulfillment of their duties for Commodity Credit Corporation and there being no liability herein on the part of Commodity Credit Corporation, it must follow that there can be no liability to the plaintiff on the part of these individuals. Furthermore, it must follow that there can be no liability to plaintiff on the part of the Federal Reserve Bank of Kansas City.

10. That the defendants Oral Nelson and Nina Nelson are neighbors of plaintiff at his farm in Chippewa County and no allegation as to any unlawful conspiracy as to depriving plaintiff of his corn is alleged as to them.

SECOND CAUSE OF ACTION

1. The only defendants named in the second cause of action as being parties to a conspiracy to deprive plaintiff of his land, that is, the S 1/2 of the SE 1/4 of Section 23, etc., are Oral Nelson, Nina Nelson, A. O. Krebs, as agent of the Northwestern State Bank of Appleton, Earl McNiel, Lawrence Hultgren, Simon Jorgenson and Ardel Sebber, the latter four defendants being, as heretofore stated, employees of Commodity Credit Corporation. The Northwestern State Bank is alleged to have acted as the main conspirator by creating money and credit on its books and records a $12,000 mortgage against plaintiff's property. The bank, Oral Nelson and Nina Nelson, and A. O. Krebs as agent for said bank, are alleged to have entered into a conspiracy to deprive plaintiff of his property and obtain possession of said property

contrary to law. Obviously, McNiel, Haltgren, Jorgenson and Sebber, employees of Commodity Credit Corporation, in no way were involved with any plan to deprive plaintiff of his land in Chippewa County.

2. As to the remaining defendants, as stated above plaintiff commenced an action in Chippewa County, Minnesota, against Northwestern State Bank, Oral Nelson and Nina Nelson, Kenneth Kivley and Nettie B. Krebs, as co-executors under the Last Will and Testament of A. O. Krebs, deceased, and others not material here, seeking to determine adverse claims to the S 1/2 of the NE 1/4, the N 1/2 of the SE 1/4, and the S 1/2 of the SE 1/4 of Section 23, etc., and the judgment of that court as stated above is res judicata to any claim plaintiff attempts to set forth in said second cause of action. The Chippewa County court found that on April 16, 1964, plaintiff executed and delivered a quit claim deed to A. O. Krebs of the S 1/2 of the SE 1/4 of Section 23, etc.

3. The court found that on December 29, 1964, plaintiff executed another quit claim deed to Krebs conveying this same property. Later, A. O. Krebs executed, and the court found that he delivered, a warranty deed to the Nelsons of the S 1/2 of the SE 1/4, Section 23, etc., and that title to that property is vested in them, subject to a valid $12,000 mortgage. The Chippewa County court in the proceeding before it considered and disposed of the dispute between plaintiff and Krebs as to the validity of the two deeds to Krebs which plaintiff executed with reference to this property and the validity of the deed by Krebs to the Nelsons conveying the S 1/2 of the SE 1/4. In that the court found that as to the remaining property described, plaintiff was the owner subject to the mortgages referred to and that the mortgages were valid, that decision is controlling on this Court.

4. It is clear and convincing from the records, affidavits and depositions on file, together with a certified copy of the Findings

of Fact, Conclusions of Law and Order for Judgment of the State District Court of the Eighth Judicial District that there is no genuine issue as to any material fact which is involved in the first or second cause of action herein. The evasive, contradictory and confusing explanations attempted by Joyce and LaGrange as to the disposition of the corn loan proceeds lack any probative value whatsoever as against the showing made by the defendants herein.

From the foregoing, the Court determines that the defendants herein, and each of them, are entitled to summary judgment of this Court dismissing this action as to each of them with prejudice. It is so ordered. Judgment shall be entered accordingly. An exception is allowed.

Dated this 16th day of March, 1967.

BY THE COURT:

GUNNAR H.NORDBYE
Judge

EXHIBIT "G"

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF SCOTT — FIRST JUDICIAL DISTRICT

Alfred M. Joyce

Plaintiff, FILE No. 18777

vs. SUMMONS

For
Northwestern State Bank of
Appleton and its Directors
R. C. Krebs
Joel A. Lund
Robert H. Torvik
Ruth M. Arneson
Pearl M. Krebs
Carl A. Miller
Kenneth Kivley, individually and as
executor of the last will and test-
ament of A. O. Krebs.
First National Bank of Minneapolis
Northwestern National Bank of Minneapolis
Stockyards National Bank of South St. Paul
and its Director David L. Grannis, Jr.
American National Bank of St. Paul
and its Director John F. Nash and Fallon Kelly
Drovers State Bank and its
Director Ezra D. Lloyd
First National Bank of Montevideo
and its Director W. D. Prindle
Federal Reserve Bank of Minneapolis, Minnesota
Federal Reserve Bank of Kansas City, Missouri
Federal Reserve Bank of Dallas, Texas
Federal Reserve Bank of St. Louis, Missouri
Federal Reserve Bank of San Francisco, California
Federal Reserve Bank of Chicago, Illinois
Federal Reserve Bank of Atlanta, Georgia
Federal Reserve Bank of Richmond, Virginia
Federal Reserve Bank of Philadelphia, Pennsylvania
Federal Reserve Bank of New York, New York
Federal Reserve Bank of Boston, Massachusetts
Federal Reserve Bank of Cleveland, Ohio
Chase Manhattan National Bank of New York, New York
Bank of America, San Francisco, California
First Bank Stock Corporation of Minneapolis, Minnesota
Northwest Bancorporation of Minneapolis, Minnesota
Defendants in Board of Govenors of the Federal Reserve System,
Wm. McC. Martin, Jr., Chairman
J. L. Robertson, Vice Chairman
Chas. N. Shepardson, J. Dewey Daane
Sherman J. Maisel, George W. Mitchell
Andrew F. Brimmer
Defendants in the Chase Manhattan Bank of New York, New York
Eugene R. Black
C. Douglas Dillon
Joyce A. Swan, and
John Cowles, Minneapolis Star and Tribune Company,
Park National Bank of St. Louis Park and its Director
Phillip Neville
Earl McNeil, Patrick Foley, Sidney P. Abrahamson, Oral Nelson, Nina Nelson, (husband and wife), Commodity Credit Corporation of the United States.

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Petitioners Ex 7
2/9/70 ESM

Richard A. Nordbye, Cargill, Inc.
Gunnar H. Nordbye , National City Bank of Minneapolis
Edward J. Devitt, Lowell W. Andreas, Rodger L. Nordbye,
Miles W. Lord, Dwayne O. Andreas, Archer-Daniels-Midland Company
Earl R. Larson, Continental Bank of Chicago, Illinois
Earl Warren,
Abe Fortas,
Madison National Bank of Washington, D.C.
and Carolyn Agger Fortas, Director(and wife of
Abe Fortas),
American Express Company, Inc.
and its Director Eugene R. Black,
Brown Brothers Harriman Co., a partnership and
Robert V. Roosa, a partner thereof.
Lyndon B. Johnson,
Hubert Humphrey,
Henry Fowler,
Nicholas Katzenback
Ramsey Clark, Robert Kennedy
French America Banking Corporation and its Directors,
Henry Bizot, Chairman of the Board, Banque Nationale de Paris
Rene Bousquet, Deputy General Manager, Banque de l'Indochine
Michel Caplain, Deputy General Manager,
Compagnie, Financiere de Suez
Alexis C. Coudert, Coudert Brothers, Attorneys
Francois de Flers, Chairman of the Board
Banque de l'Indochine
Dominique de Grieges,
General Manager, Compagnie Financiere de Suez
Francois de Lajugie, President
Jean Denoyer, Exec. Vice President and Treasurer
Jacques Georges-Picot
Chairman of the Board and Managing Director,
Compagnie Financiere de Suez
Pierre Ledoux, General Manager, Banque Nationale de Paris
Gerard Llewellyn,
Deputy General Manager, Banque Nationale de Paris
Jean Maxime-Robert
General Manager and Director, Banque de l'Indochine
Yves P. Truffert, Chairman of the Board
Huntington M. Turner, President, Turner, Koster & Company, Inc.
Michel Legendre, French Foreign Consul in New York, New York
State of Minnesota, County of Chippewa of State of Minnesota
Charles J. Vogel, Chief Judge, Eighth Circuit Court of Appeals
and Associate Justices thereof
Martin D. Van Oosterhout,
M. C. Matthes,
Harry A. Blackmun,
Pat Mehaffy,
Floyd R. Gibson,
Donald P. Lay,
Gerald W. Heaney
Joseph W. Woodrough,
Harvey M. Johnsen and
Robert H. Tucker, Clerk of the Eighth Circuit Court of Appeals .

Defendants.

THE STATE OF MINNESOTA TO THE ABOVE-NAMED DEFENDANTS:

You, and each of you, are hereby Summoned and required to serve upon Plaintiff's Attorney an answer to the Complaint which is herewith served upon you, within 20 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Dated at Savage,Minnesota
January 11,1968

Jerome Daly
Plaintiff's Attorney
28 East Minnesota Street
Savage,Minnesota

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF SCOTT FIRST JUDICIAL DISTRICT

Alfred M. Joyce

Plaintiff,

vs. COMPLAINT

Northwestern State Bank of
Appleton and its Directors
R. C. Krebs
Joel A. Lund
Robert H. Torvik
Ruth M. Arneson
Pearl M. Krebs
Carl A. Miller
Kenneth Kivley, individually and as
executor of the last will and test-
ament of A. O. Krebs.
First National Bank of Minneapolis
Northwestern National Bank of Minneapolis
Stockyards National Bank of South St. Paul
and its Director David L. Grannis, Jr.
American National Bank of St. Paul
and its Director John F. Nash and Fallon Kelly
Drovers State Bank and its
Director Ezra D. Lloyd
First National Bank of Montevideo
and its Director W. D. Prindle
Federal Reserve Bank of Minneapolis, Minnesota
Federal Reserve Bank of Kansas City, Missouri
Federal Reserve Bank of Dallas, Texas
Federal Reserve Bank of St. Louis, Missouri
Federal Reserve Bank of San Francisco, California
Federal Reserve Bank of Chicago, Illinois
Federal Reserve Bank of Atlanta, Georgia
Federal Reserve Bank of Richmond, Virginia
Federal Reserve Bank of Philadelphia, Pennsylvania
Federal Reserve Bank of New York, New York
Federal Reserve Bank of Boston, Massachusetts
Federal Reserve Bank of Cleveland, Ohio
Chase Manhattan National Bank of New York, New York
Bank of America, San Francisco, California
First Bank Stock Corporation of Minneapolis, Minnesota
Northwest Bancorporation of Minneapolis, Minnesota
Defendants in Board of Govenors of the Federal Reserve System,
Wm. McC. Martin, Jr., Chairman
J. L. Robertson, Vice Chairman
Chas. N. Shepardson, J. Dewey Daane
Sherman J. Maisel, George W. Mitchell
Andrew F. Brimmer
Defendants in the Chase Manhattan Bank of New York, New York
Eugene R. Black
C. Douglas Dillon
Joyce A. Swan, and
John Cowles, Minneapolis Star and Tribune Company,
Park National Bank of St. Louis Park and its Director
Phillip Neville
Earl McNeil, Patrick Foley, Sidney P. Abrahamson, Oral Nelson, Nina Nelson, (husband and wife), Commodity Credit Corporation of the United States.

1.

Richard A. Nordbye, Cargill, Inc.
Gunnar H. Nordbye , National City Bank of Minneapolis
Edward J. Devitt, Lowell W. Andreas, Rodger L. Nordbye,
Miles W. Lord, Dwayne O. Andreas, Archer-Daniels-Midland Company
Earl R. Larson, Continental Bank of Chicago, Illinois
Earl Warren,
Abe Fortas,
Madison National Bank of Washington, D.C.
and Carolyn Agger Fortas, Director(and wife of
Abe Fortas),
American Express Company, Inc.
and its Director Eugene R. Black,
Brown Brothers Harriman Co., a partnership and
Robert V. Roosa, a partner thereof.
Lyndon B. Johnson,
Hubert Humphrey,
Henry Fowler,
Nicholas Katzenback
Ramsey Clark, Robert Kennedy
French America Banking Corporation and its Directors,
Henry Bizot, Chairman of the Board, Banque Nationale de Paris
Rene Bousquet, Deputy General Manager, Banque de l'Indochine
Michel Caplain, Deputy General Manager,
Compagnie, Financiere de Suez
Alexis C. Coudert, Coudert Brothers, Attorneys
Francois de Flers, Chairman of the Board
Banque de l'Indochine
Dominique de Grieges,
General Manager, Compagnie Financiere de Suez
Francois de Lajugie, President
Jean Denoyer, Exec. Vice President and Treasurer
Jacques Georges-Picot
Chairman of the Board and Managing Director,
Compagnie Financiere de Suez
Pierre Ledoux, General Manager, Banque Nationale de Paris
Gerard Llewellyn,
Deputy General Manager, Banque Nationale de Paris
Jean Maxime-Robert
General Manager and Director, Banque de l'Indochine
Yves P. Truffert, Chairman of the Board
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Floyd R. Gibson,
Donald P. Lay,
Gerald W. Heaney
Joseph W. Woodrough,
Harvey M. Johnsen and
Robert H. Tucker, Clerk of the Eighth Circuit Court of Appeals .

Defendants.

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 in-

juries 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 resuscitate 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 bands 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 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 Banks, named herein are a purported central banking system, is privately owned and controlled, 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 FederalReserve 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, who is also the Executive Vice President and Publisher of Defendant Minneapolis Star and Tribune Company.

III.

This suit is brought pursuant to, and for a Violation of the following privisions:

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

Minnesota Statutes Annotated, Article 1, 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 as a punishment of crime, whereof the party shall have been duly convicted."

Minnesota Statutes Annotated, Article 1, 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 November 8, 1904."

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

IV.

That this action is also brought pursuant to Title 42, U.S.C.A. Section 1983 and Section 1985 and Amendments 5 and 14 of the U.S. Constitution for Deprivation of Rights at the hands of the State of Minnesota and its creature, the Northwestern State Bank of Appleton.

V.

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 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.

VI.

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.

VII.

That all-times herein material, the Defendants Federal Reserve Banks 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.

IX.

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.

X.

The defendant banks through 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.

XI.

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.

XII.

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.

XIII.

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.

XIV.

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

XV.

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.

XVI,

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.

XVII.

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."

XVIII.

That Plaintiff is and has been a resident and citizen of the State of Minnesota and of the United States and owns and occupies a farm located in the County of Chippewa and State of Minnesota, described as follows:

> The South One-half (S 1/2) of the Northeast Quarter (NE 1/4) and all of the Southeast Quarter (SE1/4) of Section 23, Township 119, Range 42 West of the Fifth Principle Meridian,

where Plaintiff is and has been at all times herein material engaged in the business and occupation of farming.

XIX.

That Plaintiff was born on said farm in 1893 and has worked said farm or owned it all of his life. That Plaintiff has lived on said farm continuously since 1954 to date, and farmed it either by himself or by tenant and claims said farm and the whole thereof as his domicile and homestead.

XX.

That in the course of said farming operation, Plaintiff transacted business with the Northwestern State Bank of Appleton and its various officers and directors including the Defendants identified with said bank and more particularly with one A. O. Krebs, who has since deceased December, 1965. That Defendant Kenneth Kivley is Executor of Last Will and Testament of the A. O. Krebs, decedent.

XXI.

That the Defendant Northwestern State Bank of Appleton, Minnesota, is a state chartered bank organized and existing pursuant to the banking laws of the State of Minnesota.

That during the year 1961, Plaintiff grew and raised a crop of corn on his farm and harvested approximately three thousand five hundred (3,500) bushels of corn and delivered it to the Defendant, Cargill, Inc., who held it as a warehouseman. That the value of the corn is in the sum of Four Thousand Five Hundred ($4,500.00) Dollars, together with interest thereon at the rate of six (6%) percent since October 15, 1961. That Defendant, McNiel, is designated as agent of the Agricultural Stabilization Conservation Service, which is a purported division of the United States Department of Agriculture, but actually an agent of the Defendant, Commodity Credit Corporation. That Defendant, Northwestern State Bank of Appleton, Minnesota, is a state bank organized and existing under and by virtue of the laws of the State of Minnesota. That A. O. Krebs was, during his lifetime, president and director of said bank. That Defendant, Kenneth Kivley, is the duly appointed Executor of the Last Will and Testament of the A. O. Krebs, Decedent, having died in the month of December 1965. That Defendants, Oral Nelson and Nina Nelson, are neighbors to the south of the above described property owned by the Plaintiff. That the Defendants, Commodity Credit Corporation and Northwestern State Bank of Appleton, Minnesota, Federal Reserve Bank of Kansas City, Missouri, Gargill, Inc., A. O. Krebs, acting as director of Defendant, Northwestern State Bank of Appleton, Minnesota, and Defendant, McNiel, acting for Defendant, Commodity Credity Corporation, did unlawfully, willfully and wrongfully conspire to deprive Plaintiff to the right, title, and possession of said corn and the value thereof and have so converted the same to their own use ever since October 1, 1961, to Plaintiff's damage in the sum of Four Thousand Five Hundred ($4,500.00) Dollars, general damages. That Plaintiff has been deprived of the use of said corn by the fraud of Defendants and each of them and has never been paid for it in lawful money of the United States. That on or about April 18, 1966, Plaintiff demanded of the Defendant, Cargill, Inc., the delivery of the possession

of the said corn but they refused and still refuse to do so. The Plaintiff has been damaged in the sum of Nine Thousand ($9,000.00) Dollars, together with interest, because of detention of said corn.

SECOND CLAUSE OF ACTION

PLAINTIFF FOR HIS SECOND CAUSE OF ACTION HEREIN:

I.

Re-Alleges all of the foregoing with the same full force and effect as though herein set out in full.

II.

That the Defendants, Oral Nelson, Nina Nelson, A. O. Krebs, as agent of the Northwestern State Bank of Appleton, Minnesota, Earl McNiel, did during the years 1963, 1964, 1965 and 1966, conspire with each other and enter into a conspiracy to deprive Plaintiff of the right, title and possession of the South Eighty (S 80) of Plaintiff's farm to the Plaintiff's damage as hereinafter alleged.

III.

That Defendant, Northwestern State Bank of Appleton, Minnesota, acting as one of the main conspirators in the above described conspiracy, did create money and credit on its own books by bookkeeping entry, constituting aggravated forgery and recorded a Twelve Thousand ($12,000.00) Dollar mortgage on said property, slandering the title to Plaintiff's damage as is hereinafter alleged.

IV.

That the Defendant, Northwestern State Bank of Appleton, Minnesota, is a chartered bank, organized, existing and created under and by virtue of the laws of the State of Minnesota. That the Defendants, Oral Nelson and Nina Nelson and Northwestern State Bank of Appleton, Minnesota, and A. O. Krebs, acting as agent of the Northwestern State Bank of Appleton, Minnesota,

did conspire and did deprive the Plaintiff of the right, title and possession and use, including diverted acres, of said property and the use thereof by trespassing upon said property and taking and detaining the possession of said property from the Plaintiff without due process of law, contrary to the law of the land. That Plaintiff has been damaged as a result of said foregoing conspiracy in the sum of Twenty five Thousand ($25,000.00) Dollars, general damages.

V.

That in aggravation and in promotion of the theft of Plaintiff's land and crops, Plaintiff has good factual reason to believe, does believe and so states the the State, National and International Bankers played a major part in the murder of President John F. Kennedy and tried to murder Plaintiff's Lawyer in July of 1967.

VI.

That Chief Justice Earl Warren, Defendant herein, vacated his judicial responsibility and became and is an accessory after the fact to said murder along with Defendants Lyndon B. Johnson Robert Kennedy, Nicholas Katzenback and Ramsey Clark who have wilfully aided, abetted and concealed the principals to this crime. At critical and material times herein Robert Kennedy was Attorney General of the United States and actively fostered, aided and abetted said Bank Conspiracy.

VII.

That, as a good American citizen interested in the financial well being of the Republic, Plaintiff has been actively involved in taxpayers suits since November 7, 1963 when the first suit was filed in the United States District Court in St.Paul,Minnesota, by giving aid and comfort to parties attempting to set aside and declare United States securities held by Defendant banks null and void. Suit papers were served upon the Banks and the Government between November 12 and November 16,1963, 6 days later Kennedy was shot in Dallas. On every occassion the Government sent nothing but

callow, inexperienced lawyers to Court who said and did virtually nothing, but still obtained a result.

VIII.

That there is an interlocking Board of Directorate between the Minneapolis Star and Tribune and the Defendant Banks in Minneapolis. The said Minneapolis Star and Tribune has maliciously, consistently and actively aided and advocated the acts complained of herein by various newspaper articles and other propaganda, including Libel and Slander of any one in opposition to this treasonous Bank Conspiracy. The following true copy of an editorial dated January 9,1968 is only a mild example, it is as follows:

The Minneapolis Tribune

THE VOICE OF MINNESOTA AND THE UPPER MIDWEST

Published every morning of the year by the Minneapolis Star and Tribune Company at 425 Portland Av., Minneapolis, Minn. 55415. Telephone 372-4141.

OTHER NEWS OFFICES:

940 National Press Building
Washington, D.C. 347-9111

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8 Lindo Court, 36 Macdonnell Rd.
Hong Kong 239229

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Copacabana, Rio de Janeiro, Brazil



Established 1867

JOHN COWLES, President; JOYCE A. SWAN, Executive Vice-President and Publisher; JOHN COWLES JR., Vice-President and Editor; OTTO A. SILHA, Vice-President and General Manager; JOHN MOFFETT, Vice-President and Advertising Director; HOWARD MITHUN, Vice-President and Secretary; PHILIP VON BLON, Vice-President; CLARENCE B. McCUE, Treasurer.

BOWER HAWTHORNE
Executive Editor

DARYLE FELDMEIR
Managing Editor

LEONARD INSKIP
Editorial Editor

Circulation more than 235,000 Morning, 665,000 Sunday

4 VOLUME CI NUMBER 230 TUESDAY, JANUARY 9, 1968 2 2

Political Bombing on the Home Front

JOSEPH E. KARTH, Minnesota's 4th District Democratic congressman, has misgivings about the administration policy of bombing North Vietnam, but he recently dropped a few economic bombs of his own in talking about monetary problems.

As Congress was adjourning last month, Karth joined a group of representatives in a resolution calling for investigation of the Federal Reserve System to find out why interest rates are high. In Karth's words, "After President Truman left office, the Republican administration let the system run wild, and that's where our current troubles with high rates began."

We would not cavil at congressional prerogatives for indulging in political pomposity from time to time, but this is not just a case of verbal overkill: He hit the wrong target.

The Federal Reserve governors suffer from human fallibility, but they have not been running amuck for the past 15 years; nor, we suspect, do they derive any satisfaction out of monetary policies involving higher interest rates. The dilemma for the Fed, and for the country, is that interest rates are more a result than a cause of fiscal difficulties, and there are limits to the effectiveness of monetary controls in dealing with basic economic problems.

The problem at the moment is inflation, well stimulated by a federal budget imbalance which requires more federal borrowing, which increases competition for lendable funds, which drives interest rates upward, which spurs inflation.

In the view of Rep. Karth, "The entire federal budget is being complicated because of high interest." In our view, the entire interest rate problem is being complicated because of the high federal budget, without adequate revenue. A tax increase, rather than an investigation of the Fed, is the real need.

That Defendants Gunnar H. Nordbye, Edward J. Devitt, Miles W. Lord and Earl R. Larson are all U.S.District Judges for the District of Minnesota. These Judges have entered into a common plan and design and agreement to surpress and defeat Plaintiff's cause of action arising out of the fraudulent theft and taking of his farm and farm income.

IX.

That the Defendants Cargill Inc. and Archer Daniels Midland Company are Grain Terminal Warehousemen. They have been collaborating with the Commodity Credit Corporation which is for all practical purposes under the direct control of the Federal Reserve Banks and other Banks acting in conspiracy with them. Plaintiff is the victum of their activity.

X.

That Defendant Rodger L. Nordbye is on the Board of Directors and is General Counsel for Defendant Archer Daniels Midland Co., and is the son of Defendant Gunnar H. Nordbye. Another son, Defendant Richard A. Nordbye is one of the officers of the First National Bank of Minneapolis. That there is an interlocking directorate between Cargill Inc. and Archer Daniels Midland Co. with said Banking system generally. As an instance of this Defendants Lowell W. Andreas and Dwayne O. Andreas are each and both on the boards of directors of the National City Bank of Minneapolis and Archer Daniel Midland Co. Defendant National City Bank is a member of the Federal Reserve System. More particularly, Defendants Nordbye, Lord and Devitt have maintained a constant and persistent assault and trespass upon Plaintiff's life, liberty and property both on and off the bench. Defendant Phillip Neville is also a Bank director at all times herein material.

XI.

That Defendant Continental Bank of Chicago Illinois is a correspondent Bank with the N.W. State Bank of Appleton.

That Defendant Brown Brothers Harriman Company is a partnership and engages in the unlawful activity of creating money and credit upon their own books without the slightest consideration therefor.

XII.

That a World wide banking concern, Defendant American Express Company is directly engaged in this over all conspiracy.

XIII.

That Polk's Bank Directory of about 4000 pages contains a partial list of the persons, firms and corporations participating in this conspiracy.

XIV.

That Defendant Abe Fortas is one of the Justices on the Supreme Court of the United States which is the most advantageous position for the protection of this whole fraudulent scheme. He is married to and is engaged in a general joint adventure with his wife Carolyn A. Fortas who is on the Board of Directors of the Defendant Madison National Bank of Washington, D.C.

XV.

That action was commenced in the United States District Court in Minneapolis, Minnesota for the recovery of said corn and funds misappropriated in 1962 against defendant Commodity credit Corporaton, Cargill Inc., N.W.State Bank of Appelton and the Federal Reserve Bank of Kansas City Mo. Defendant Gunnar A. Nordbye refused to function in a lawful manner or at all. Thereafter Defendants Nordbye, Devitt, Lord and Larson signed an Order restraining the United States Marshall from serving any more papers for Plaintiff and threateneing Plaintiff's liberty and pursuit of happiness. Appeal was taken therefrom to the U.S.Court of appeals and Defendants connected with said Court listed in the caption including Clerk Tucker jointly and severally refused to function, except to advise Defendant to go to the Supreme Court of the United States if he was not satisfied.

That the United States Judges hereto fore listed and referred to jointly and severally refused to function and joined in active participation in the deprivation of Plaintiff's life, liberty, property and pursuit of happiness while acting wholly without jurisdiction in law or in fact, or even with a colorable invocation of jurisdiction and further procurred, commanded, directed, advised and encouraged, aided and abetted the commission of said acts complained of herein or ratified said acts after they were done.

XVI.

That defendants Patrick Foley and Sidney P. Abrahamson are at all times herein material connected with the U.S. Attorneys office in Minnesota and have actively commanded, advised, procurred and aided the acts complained of herein to Plaintiff's damage.

XVII.

That Plaintiff is being discriminated against by the Government of the United States, the Board of Governors of the Federal Reserve System named as Defendants herein along with the rest of the Defendant Banks named herein because Plaintiff is not able to obtain Federal Reserve notes for the cost of printing while the Defendant Banks obtain these notes, which are in use as money, from the U.S.Government printing office for the cost of printing only. The said Federal reserve notes which are in circulation since the Fall of 1963 are not redeemable in either gold or silver coin or otherwise, are illegal, null and void. The Board of Governors of the Federal Reserve System and the Federal Reserve Banks and their directors are in conspiracy with foreigners including the British and French Governments to steal the nation's gold by using said Federal Reserve Notes as an artifice, trick and device. Foreign aliens, including the French America Bank named herein and its directors, are permitted to redeem illegal Federal Reserve Notes at the Federal Reserve Bank in New York in Gold where it is surrendered to them and transported out of the jurisdiction of the United States. Plaintiff is being directly damaged by this continuing

and mounting theft.

XIX.

That the Defendant Michel Legendre is the French Foreign Minister or Counsel for the Republic of France stationed and operating out of the State of New York. Defendant Legendre takes part in the supervision, direction and control of Commerce, intercourse and attempted money exchanges between the Republic of France and persons residing in the United States and with certain officials of the Government of the United States located in the State of New York. Defendant Legendre is in active collaboration and participation with the French-America Banking Corporation and its directors named as Defendants herein.

XX.

That said French-America Banking Corporation is a foreign-owned Bank located in the City of New York which unlawfully acquires United States and State securities and obligations by manufacturing and creating money and credit upon their books by bookeeping entry similar to the rest of the Defendants named herein. That this Defendant, the French America Banking Corporation and its board of directors and Defendant Legendre is in active unlawful conspiracy in maintaining, fostering and cultivating the unlawful and unconstitutional activity of the Defendant Banks named herein including the N.W.State Bank of Appleton, which Bank and its agents have defrauded Plaintiff out of a part of his farm and income. That this has been to the direct benefit of the Defendant Legendre and his principal, the Republic of France. That these Defendants either know or ought to know that the said Federal Reserve Notes are void, worthless and illegal for any purpose.

XXI.

That the said N.W.State Bank of Appelton operates under the authority of the State of Minnesota while it is obtaining the aid and comfort of elected officials of the State of Minnesota knowingly in violation of the Minnesota and U.S. Constitutions. That the State of Minnesota and the Defendant County of Chippewa

impose a direct tax upon the lands of Plaintiff heretofore described which cannot possibly be retired in lawful money all to Plaintiff's damage and mental anguish, IN THE SUM OF $250,000.00

WHEREFORE, Plaintiff demands relief and Judgment as follows:

I.

That in the event any defendant named herein demands a removal of this case to a United States Court pursuant to Article Three of the United States Constitution or any law passed pursuant thereto, then Plaintiff demands that transfer of this case be made only to the United States Supreme Court acting as a Court of Original Jurisdiction, in which event Plaintiff demands a trial by a Jury of 12.

II.

General and special damages in the sum of $250,000.00 and punative damages for said fraud and theft alleged herein in the sum of $333,000,000,000.00 and costs.

Savage, Minnesota
January 11,1968

Jerome Daly
Plaintiff's Attorney
28 East Minnesota Street
Savage,Minnesota

ADDENDUM

Plaintiff further Complains and alleges:

I.

That Plaintiff is a dedicated American Citizen and believes that the Declaration of Independence was inspired by Jesus of Nazareth and written by the hand of his faithful servant, Thomas Jefferson.

That the Constitution of the United States was inspired by our creator and ordained and established by the American People as a divine organ of government.

That Plaintiff has been subjected to great mental suffering torture and anguish at the nullification of our Constitutions by

those sworn to and entrusted with the special duty of upholding, maintaining and supporting it as alleged herein, and by the murder of his President John F. Kennedy and the attempted assassination of Plaintiff's Lawyer, Jerome Daly.

Alfred M. Joyce

Dated at Savage,Minnesota
January 11,1968

Alfred M. Joyce Plaintiff
R.F.D. THE LAZY J
Milan, Minnesota Zip. 56262

PETITION

Come now the undersigned, pursuant to Amendment One, United States Constitution, and hereby petition their Government and more especially the legislative branch, for a redress of grievances as follows:

1. That the sole and exclusive power to creating the Nations money, credit and currency be taken from the Federal Reserve System and that said system be abolished. That by legislative act, only the Congress create the Nation's money, credit and currency.

2. That every public official named herein and every other public official giving aid and comfort to this Banking fraud be removed from office, be adjudged guilty of treason, be denaturalized, be given a reasonable amount of time to settle their affairs and be deported beyond and outside the territorial jurisdiction of the United States taking the shortest and quickest route to the border.

3. That every person participating in and in conspiracy with the Bank fraud as is heretofore alleged, be Indicted, Tried and convicted of larceny and deported in the same manner.

4. That all the Nations silver and gold be restored forthwith to the Treasurer of the United States.

Dated January 11, 1968

Alfred M. Joyce

Alfred M. Joyce, Petitioner

Jerome Daly

Jerome Daly, Petitioner

MOTION AND NOTICE OF MOTION

TO THE ABOVE NAMED DEFENDANTS AND EACH OF THEM:

SIRS:

You, and each of you, will please take notice that Plaintiff above named will move the above named Court at the Courthouse in the City of Shakopee, in the District Courtroom, at a Special Term thereof, before the District Judge in charge thereof, on the 2nd day of February,1968 at 10:00 A.M. or as soon thereafter as Counsel can be heard for the following Order:

1. That the Clerk of the District Court in and for the County of Scott, First Judicial District, State of Minnesota be restrained from transfering the above entitled action to any other District Court of the State of Minnesota or to any United States District Court in the State of Minnesota, except that said action may be transfered to the Supreme Court of the United States if so directed by said Court.

The said motion will be made upon all the files, records and proceedings herein, upon the fact that one of the Defendants Cargill inc., maintains a principal place of business and export port at Savage, County of Scott, State of Minnesota, upon the fact that the Defendant Michel Legendre is a Foreign Minister or Foreign Consul as within the purview of Article Three U.S.Constitution and upon the further fact that the State of Minnesota is a necessary and proper Defendant.

The said motion will be further made and based upon the Declaration of Independence, the Constitution, and the Laws of the United States which are made in pursuance thereof and the Constitution of the State of Minnesota.

Dated At Savage, Minnesota
January 15,1968

Jerome Daly
Plaintiff's Attorney
28 East Minnesota Street
Savage,Minnesota

Petitioners' Ex 8
ens 2/9/70

42174

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION
No. 3-68 Civil 32

ALFRED M. JOYCE,

Plaintiff,

vs.

NORTHWESTERN STATE BANK OF APPLETON, et al.,

Defendants.

PERMANENT INJUNCTION

The above entitled and numbered cause coming on to be heard on the 3rd day of May, 1968, upon the motion of the defendants to dismiss and for a restraining order, and all the parties thereto having appeared by counsel and the Court having heard the pleadings, the evidence and arguments of counsel, and upon due consideration thereof, it appearing to the Court that the defendants should be granted the relief prayed for in their motions,

It is therefore, on this 20th day of June, 1968,

ORDERED, ADJUDGED AND DECREED that the preliminary injunction heretofore granted and issued orally by this Court herein on the 3rd day of May, 1968, and affirmed in memorandum and order of the Court dated June 17, 1968, be and the same hereby is made perpetual and permanent and that the plaintiff Alfred M. Joyce and his attorney, Jerome Daly, are permanently enjoined and restrained from continuing, commencing or prosecuting any suit, action or proceeding, either in this Court or in any court, state or federal, upon any claim arising out of any claimed transaction between the parties hereto at and prior to

A true copy in two sheets
Certified January 30 1970
FRANK A. MASSON, CLERK
BY: Judith C Palmer
Deputy

Filed June 21 1968
Frank A. Masson, Clerk.
By Lawrence R. Tapper
Deputy

the date of this Order, or any claims regarding unlawful creation of money and credit, or an attempt to relitigate the same cause of action, and matters previously determined in respect to the same subject matter, or based upon any right, question or fact previously decided by this Court on March 16, 1967, and by the decision of the State District Court, Eighth Judicial District, at Montevideo, Minnesota, decided on March 14, 1966.

Dated this 20th day of June, 1968.

Roy L. Stephenson

~~Ed~~ Roy L. Stephenson
CHIEF JUDGE, UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF IOWA, (By assignment to the United States District Court, District of Minnesota, Third Division)

Exhibit "E"

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 19002 September Term, 1967

Alfred M. Joyce, Appellant, vs. Commodity Credit Corporation of the United States, et al.	Appeal from the United States District Court for the District of Minnesota.

The Court has examined the motion filed by certain appellees requesting dismissal of this appeal. In connection with that motion the Court has also examined the original files of the United States District Court for the District of Minnesota, and has read appellant's typewritten brief. Being fully advised in the premises, it is now here ordered that the motion to dismiss be and it is hereby sustained. The appeal is dismissed for failure of the appellant to comply with our Rule 11(b).

November 30, 1967

Petitioner's Ex 9 42174
2/9/70 dmf

Petitioner's Ex 8
2/19/70 ewg

42174 UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
No. 4-66 Civil 399

Leo Zurn, JoAnn Van Popperin,
William Wildanger, John Doe
and Richard Roe,

Plaintiffs,

v.

ORDER FOR JUDGMENT

Federal Reserve Bank of Minneapolis,
First National Bank of Minneapolis,
Northwestern National Bank of Minneapolis,
American National Bank of St. Paul,
First National Bank of St. Paul,
State of Minnesota, United States of America,
Lyndon Johnson, President of the United States,
Henry Fowler, Secretary of the Treasury of
the United States, Val Bjornson, Treasurer
of the State of Minnesota, Farmers and
Mechanics Savings Bank of Minneapolis,

Defendants.

The motion of the plaintiffs for a Three-Judge Court and for judgment by default, and the motions for summary judgment by the answering defendants came on for hearing before the undersigned Judge of the above named Court on the 7th day of March, 1967, at 10 o'clock in the forenoon on the motion day of the above named Court.

Stanley H. Green, Assistant United States Attorney, appeared on behalf of the United States; Jerome Daly appeared on behalf of the plaintiffs; Melvin L. Burstein appeared on behalf of Federal Reserve Bank of Minneapolis; Michael Gallagher, Assistant Attorney General of the State of Minnesota, appeared on behalf of the State of Minnesota and Val Bjornson, Treasurer of the State of Minnesota; John F. Kelly appeared on behalf of the American National Bank of St. Paul, Charles A. Geer appeared on behalf of First National Bank of Minneapolis and First National Bank of St. Paul, and Dennis L. Paul appeared on behalf of Northwestern National Bank of Minneapolis.

Filed MAR. 15 1967 10
Frank A. Massey, Clerk.
By HAZEL R. GABRIELSON
Deputy

January two 20 1970
By Judith E. Palmer
Deputy

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 — Review Publishing Co., 287 E. 6th St., St. Paul, Minn. 55101 — 224-7631

RESPONDENT'S EXHIBIT
2/12/70 L.M.F.
42174

IN THE

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

Distributed by
A. J. PORTH
P. O. Box 7083
Wichita, Kansas 67201
HE PAYS NO INCOME TAX, STATE OR FEDERAL

No. 18,906

CIVIL

Distributed by
A. J. PORTH
P. O. Box 7083
Wichita, Kansas 672
HE PAYS NO INCOME TAX, STATE OR FE

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

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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 Superviser

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, gratitudes, or exclusive privileges, to make the rich richer and the potent more powerful, the humble members of society—the farmers, mechanics and laborers—who have neither the time nor means of securing favors to themselves, have a right to complain of the injustice of their government.

"There are no necessary evils in government. Its evils exist only in its abuses. If it could confine itself to equal protection, and, as Heaven does its rain, shower its favors alike on the high and 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-existant 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 nations 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 offhand. 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

Respondents' br SSS
2/18/70 dmf

38740

STATE OF MINNESOTA
In Supreme Court

42174

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

RECORD

JEROME DALY
Attorney for Appellant
325 Cedar Street
St. Paul, Minnesota

JOHN A. MCEACHRON
Attorney for Defendant
Hastings National Bank
812 First National Bank
Building
Minneapolis, Minnesota

GANFIELD & O'CONNELL
Attorneys for Respondent
Masonic Building
Hastings, Minnesota

CA. 2-2701 — Review Publishing Co., 141 E. 5th St., St. Paul 1, Minn. — CA. 2-2701

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STATE OF MINNESOTA
In Supreme Court

State of Minnesota — In District Court
County of Dakota — First Judicial District

MARY KATHERINE LOWE, formerly MARY K. MILLS,

Plaintiff,

vs.

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

Defendants.

COMPLAINT

Plaintiff for her cause of action against defendants, alleges:

I

That she is the owner in fee simple of the following described real estate in the County of Dakota, State of Minnesota, to-wit:

An undivided one-half (½) of Lot Eight (8) and an undivided one-half (½) of the East Twenty-one (21) feet of Lot Seven (7), All

in Block Three (3) of the Original Town of Hastings.

II

That defendant Helen A. Patterson, formerly Helen A. Kleis, is the owner in fee simple of the other undivided one-half (½) of said property.

III

That defendant Hastings National Bank of Hastings, Minnesota, is the record owner of a mortgage in the sum of $11,750.00 dated June 22, 1959, and recorded July 20, 1950, in Book 224 of Mortgages on Page 70, which mortgage is a lien on Lot Eight (8) in Block Three (3) aforesaid.

IV

That there are no other liens or encumbrances or record on said premises, and, as plaintiff is informed and believes, there are no other persons having any estate or interest therein or lien thereon.

V

The cash value of said premises is $170,000.00.

VI

A hotel and tavern are located upon said premises and cover the greater portion thereof and the same is so constructed and located that said

premises cannot be divided or partitioned without great loss to all parties interested.

WHEREFORE, plaintiff demands judgment:

(1) For a partition of said premises by a sale thereof and that the proceeds of such sale be brought into court and divided among the parties according to their respective rights and interests as provided by statute.

(2) That the costs, charges and disbursements of this action be apportioned and paid as provided by statute.

GANFIELD AND O'CONNELL
By Millett V. O'Connell
Masonic Building
Hastings, Minnesota
Attorneys for Plaintiff

(Verification)
(Served Aug. 25, 1960)

(Title of Cause)

AMENDED COMPLAINT

Plaintiff for her cause of action against defendants, alleges:

I

That she is the owner in fee simple of the following described real estate in the County of Dakota, State of Minnesota, to-wit:

An undivided one-half (½) of Lot Eight (8) and an undivided one-half (½) of the East Twenty-one (21) feet of Lot Seven (7), All in Block Three (3) of the Original Town of Hastings.

II

That defendant Helen A. Patterson, formerly Helen A. Kleis, is the owner in fee simple of the other undivided one-half (½) of said property.

III

That defendant Hastings National Bank of Hastings, Minnesota, is the record owner of a mortgage in the sum of $11,750.00 dated June 22, 1959, and recorded July 20, 1959, in Book 224 of Mortgages on Page 70, which mortgage is a lien on Lot Eight (8) in Block Three (3) aforesaid.

IV

That the cash value of said premises is $170,000.00.

V

That a hotel and tavern are located upon said premises and cover the greater portion thereof and the same is so constructed and located that said premises cannot be divided or partitioned without great loss to all parties interested.

VI

That defendant Helen A. Patterson has had exclusive possession of said premises since January 3rd, 1949. That she has operated her own business on said premises and has failed and refused to pay plaintiff rental therefor. That she has rented out the balance of said premises and collected and retained the rents therefrom all during said period and has failed and refused to account to plaintiff for the rentals so collected.

VII

That the reasonable rental for said premises is the sum of $20,400.00 per year and that one-half of said rental or the sum of $10,200.00 per year for said premises is due and owing from said defendant, Helen A. Patterson, to plaintiff.

VIII

That there are no other liens or encumbrances of record on said premises, and, as plaintiff is informed and believes, there are no other persons having any estate or interest therein or lien thereon.

WHEREFORE, plaintiff demands judgment:

1. For a partition of said premises by a sale thereof and that the proceeds of such sale be brought into court and divided among the parties according to their respective rights and interests as provided by statute.

2. That the costs, charges and disbursements of this action be apportioned and paid as provided by statute.

3. For a determination of the rentals due from the defendant, Helen A. Patterson, to plaintiff.

4. For an equitable lien on defendant Helen A. Patterson's share of the proceeds of said partition sale for the amount of rent due from her to plaintiff.

MILLETT V. O'CONNELL
GANFIELD AND O'CONNELL
Attorneys for Plaintiff

(Verification)
(Served Oct. 5, 1960)

(Title of Cause)

ANSWER

Now comes the defendant, the Hastings National Bank of Hastings, Minnesota, and for his separate answer to the complaint of the plaintiff herein, alleges:

1. That it is without knowledge or information sufficient to form a belief as to the truth of any or all of the allegations set out in paragraphs IV, V, and VI of the said complaint.

2. Admits the allegations and matter contained in paragraphs I, II, and III of the said complaint.

3. That there is due and owing on the mortgage as described in paragraph III of said complaint, at the date hereof, on principal, interest and insurance premiums advanced by the mortgagee, the sum of $14,204.09.

WHEREFORE, this defendant prays judgment:

I

That its mortgage be declared and adjudged to be a first lien against the said premises.

II

That the said sum of $14,204.09, together with interest from the date hereof, be ordered paid out of the first monies received from the sale of

the said premises, if sale thereof be ordered and adjudged.

Dated September 12, 1960.

JOHN A. McEACHRON, JR.
Attorney at Law
812 First National Bank Building
Minneapolis 2, Minnesota
Attorney for Defendant
Hastings National Bank

(Verification)

(Title of Cause)

SEPARATE ANSWER OF
HELEN A. PATTERSON
(FORMERLY HELEN A. KLEIS)
TO AMENDED COMPLAINT

Defendant for her Separate Answer to the Amended Complaint of the plaintiff herein alleges as follows:

I

Denies each and every allegation, matter, and thing in said complaint contained save as is hereinafter admitted or qualified.

II

Admits that plaintiff and this answering defendant are each owners of record of an undivided one-half interest as tenants in common of the real estate described in Paragraph I of said amended complaint, but this defendant alleges affirmatively that she is entitled to an equitable lien on said premises in the amount of $20,000.00 for capital improvements made by her in the building located on said premises.

III

Admits the allegations of Paragraph III of said complaint, but alleges affirmatively that the plaintiff received $8,250.00 out of the proceeds of said $11,750.00 mortgage and note and that this defendant has paid the interest on the entire obligation since it was executed.

IV

Admits the allegation of Paragraph VIII of said amended complaint, save that there is a judgment entered against this answering defendant by Day Holmes in the above said District Court in the amount of $2,017.60.

WHEREFORE, this answering defendant prays for judgment of the Court as follows:

1. For a partition of the premises by a sale thereof and that the proceeds of such sale be

brought into Court and divided among the parties according to their respective rights and interest as alleged above.

2. That the costs, charges and disbursements of this action be apportioned and paid as provided for by statute.

3. For such other and further relief as to the Court appears just and equitable.

McMENOMY & HERTOGS
By Samuel H. Hertogs
Attorneys for Defendant
First National Bank
Building
Hastings, Minnesota

(Title of Cause)

REPLY

Plaintiff for her reply to the Separate Answer of Helen A. Patterson herein:

I

Denies on information and belief that said defendant made capital improvements of $20,000.00 or any other such amount and that if such expenditures were made denies that they contributed to the value of the premises.

II

Denies on information and belief all the allegations in Paragraph IV of said Answer and alleges that if said judgment has been filed it is an individual judgment against defendant and not a lien upon the plaintiff's share of the premises.

WHEREFORE, this plaintiff prays for judgment as prayed for in her complaint herein.

GANFIELD AND O'CONNELL
By Millett V. O'Connell
Attorneys for Plaintiff
Masonic Building
Hastings, Minnesota

(Verification)
(Served Nov. 8, 1960)

(Title of Cause)

STIPULATION

IT IS HEREBY STIPULATED by and between the attorneys for the parties herein that the property involved in this action cannot be partitioned in kind and that it is necessary that a sale of the said property be made by the Referee to be appointed by the Court:

IT IS FURTHER STIPULATED that the Court may enter its order appointing said Referee and selling said property.

Dated at Hastings, Minnesota, this 15th day of November, 1960.

GANFIELD AND O'CONNELL
By Millett V. O'Connell
Attorneys for Plaintiff
Masonic Building
Hastings, Minnesota

McMENOMY & HERTOGS
By Samuel H. Hertogs
Attorneys for Defendant
First National Bank Building
Hastings, Minnesota

(Filed Nov. 15, 1960)

(Title of Cause)

ORDER

The above entitled matter came duly on to be heard before the undersigned Judge of the above named Court on the 20th day of December, 1960, upon motion by the plaintiff for a finding of the Court that the property involved in the above entitled action cannot be partitioned in kind and that it is necessary that a sale of the said property be made by a referee to be appointed by the Court:

AND, WHEREAS, a stipulation has been entered into by and between the attorneys for the parties herein, which stipulation is on file herein, agreeing that the property involved in this action cannot be partitioned in kind and that it is necessary that a sale of said property be made by the referee to be appointed by the Court, it being further stipulated that the Court may enter its order appointing said referee and selling said property;

NOW, THEREFORE, pursuant to said stipulation and upon motion of Millett V. O'Connell, attorney for the plaintiff, and Samuel H. Hertogs, attorney for the defendant:

IT IS HEREBY ORDERED that Allen Burt be, and hereby is, appointed referee for the purpose of selling the property involved herein pursuant to the statute in such case made and provided.

IT IS FURTHER ORDERED that said referee is authorized to sell said property at either public or private sale.

IT IS FURTHER ORDERED that R. W. Fitch and Elmer Pederson be, and they hereby are, appointed appraisers to appraise said property and file their appraisal with this Court pursuant to the statutes in such case made and provided.

Dated at Hastings, Minnesota, this 20th day of December, 1960.

By the Court:
W. A. SCHULTZ
Judge of District Court

(Filed Jan. 19, 1961)

(Title of Cause)

OATH OF APPRAISERS
AND APPRAISAL

State of Minnesota
County of Dakota—ss.

I, R. W. FITCH, and ELMER PEDERSON, do solemnly swear that I will honestly, faithfully and impartially perform all the duties of the office and trust which I now assume as appraiser of the real estate in the above entitled matter to the best of my ability. So HELP ME, GOD.

R. W. FITCH
ELMER PEDERSON

(Jurat)

CERTIFICATE OF APPRAISERS

State of Minnesota
County of Dakota—ss.

We, the undersigned appraisers, duly appointed by the District Court of the First Judicial District, Dakota County, Minnesota, to appraise the following described property lying and being in Dakota County, Minnesota, to-wit:

Lot 8 and East 21 ft. of Lot 7, All in Block 3 of the Original Town of Hastings,

having first duly taken and subscribed the oath prescribed by law and hereto attached, hereby certify and return, that we have carefully examined all of the said property and have faithfully and impartially and to the best of our knowledge and ability appraised the said property and we hereby appraise all of said property at the sum of $130,000.00.

Dated this 5th day of April, 1961.

ELMER PEDERSON
R. W. FITCH
Appraisers

(Filed Apr. 7, 1961)

22 July 1961

To John M. and Mary Katherine Lowe:

About a week ago I was in Hastings on business and stopped at the House of Kleis. I was disturbed at what I saw and heard. For 50 years I have been associated with it and have always helped to protect it from greedy jealous enemies.

My files still disclose many of the long drawn out terrific battles that were fought to a finish and a win.

I very much dislike now to see it once more falling on to the hands of lawyers and bankers.

If I could talk to you even briefly I am sure I could suggest a simple solution that will relieve the wants and anxieties of all parties and protect all interests, avoid wrecking the place with the loss of a great deal of money and restore a united loving family all without any charge to anyone.

If you will meet me outside Hastings—at perhaps Minneapolis or Red Wing, away from the interlopers and trouble makers, I will ask Helen and let you know. In fact, I will send her a copy of this letter.

No lawyers, no drinking—just good will and common sense.

At Hastings I was very happy to meet your perfectly gorgeous daughter.

Very truly yours,
A. M. JOYCE
RFD The Lazy J
Milan, Minnesota

South St. Paul, Minnesota
January 31, 1962

Re: Mary Katherine Lowe, formerly Mary K. Mills, Plaintiff

vs.

Helen A. Patterson, formerly Helen A. Kleis, and the Hastings National Bank of Hastings, Defendants

As Referee in the above entitled proceedings, appointed by the District Court of Dakota County by Order of December 20, 1960, I have received an offer as follows:

"January 30, 1962

"I hereby offer the sum of $105,000.00 for the following described land lying and being in Dakota County, Minnesota, to-wit: Lot 8 and the East 21 feet of Lot 7, All in Block 3 of the Original Town of Hastings, together with all improvements and appurtenances.

"The condition of this offer is as follows: That if my offer is accepted I am to receive a good and sufficient deed to all of said property accompanied by an abstract showing good title and free and clear of all taxes, assessments, liens, judgments and encumbrances and that said deed and abstract will be delivered to me within 30 days from date hereof."

Since being appointed Referee I have contacted numerous prospective purchasers, this being the only reasonable offer accompanied by earnest

money. It is my intention to submit this offer to the Court with a request for a re-appraisal and an Order Confirming the Sale.

In the event that either of the parties hereto, or any other interested purchaser submits a bona fide offer to me within twenty (20) days from the date hereof, in excess of the foregoing, I shall apply to the Court for an Order Confirming the best sale.

Very truly yours,

ALLAN E. BURT

(Title of Cause)

OATH OF APPRAISERS AND
AMENDED APPRAISAL

State of Minnesota
County of Dakota—ss.

R. W. FITCH and ELMER PEDERSON, being first duly sworn, do depose and say: That they were appointed appraisers by the above named Court on the 20th day of December, 1960, to appraise the property embraced in the above entitled proceedings.

That thereafter they took their oath as appraisers and appraised said property.

That through misunderstanding and mistake they appraised all of said property, including the personal property, and included the liquor license as

a going business at the sum of $130,000.00 and at the time of said appraisal they itemized the same as follows:

Tavern	$ 20,000.00
Hotel	80,000.00
Kitchen fixtures	5,000.00
Bar room fixtures	5,000.00
Fixtures in hotel rooms	5,000.00
Miscellaneous	5,000.00
Liquor license	10,000.00
TOTAL	$130,000.00

all of which were shown by their original figure the statement of which has been marked Exhibit "A" and made a part hereof.

That they have been informed that said appraisal should have been limited to the real estate described in the complaint and that it should not have included the liquor license and fixtures.

That affiants are amending their appraisal to show the value that they have placed upon the real estate alone, to-wit $100,000.00, and that said amended appraisal is filed herewith and made a part hereof.

R. W. FITCH
ELMER PEDERSON

(Jurat)

(Title of Cause)

OATH OF APPRAISERS AND
AMENDED APPRAISAL

State of Minnesota
County of Dakota—ss.

I, R. W. FITCH, and ELMER PEDERSON, do solemnly swear that I will honestly, faithfully and impartially perform all the duties of the office and trust which I now assume as appraiser of the real estate in the above entitled matter to the best of my ability. So HELP ME, GOD.

R. W. FITCH
ELMER PEDERSON

(Jurat)

CERTIFICATE OF APPRAISERS

State of Minnesota
County of Dakota—ss.

We, the undersigned appraisers, duly appointed by the District Court of the First Judicial District, Dakota County, Minnesota, to appraise the following described property lying and being in Dakota County, Minnesota, to-wit:

Lot 8 and East 21 ft. of Lot 7, All in Block 3 of the Original Town of Hastings,

having first duly taken and subscribed the oath prescribed by law hereto attached, hereby certify and return, that we have carefully examined all of the said property and have faithfully and impar-

tially and to the best of our knowledge and ability appraised the said property and we hereby appraise all of said property at the sum of One Hundred Thousand and No/100 Dollars ($100,000.00).

Dated this 7th day of March, 1962.

R. W. FITCH
ELMER PEDERSON

EXHIBIT "A"

App.	
70,185.00	20,000.00 — Tavern
45–100	80,000.00 — Hotel
	100,000.00
	5,000. — K. Fix.
	5,000. — Fix. Bar R.
	5,000. — Fix. in Rooms
	5,000. — Misc.
	120,000.00
	10,000. — L. L.
	130,000.

	150,000	S.P. G.H.	225
1	30,000	D.P.	12
	120,000	Bal.	450
			225
			2700
			300
		20 –158.16	15 per mo.
2		6	
		948.96	mo. Int. P.
		250.00	Taxes & Inc.
		1198.96	mo.
		300.00	mo. Lic.
		1498.96	
		200.00	Heat
3		200.00	Elec.
		1898.96	mo.

(Filed Mar. 8, 1962)

(Title of Cause)

DISCHARGE

To Eugene Casserly, Clerk of the above named Court:

NOTICE IS HEREBY GIVEN that any and all authority in Sam Hertogs, and Hertogs and McMenomy, attorneys at law of the Bar of Minnesota, to represent me at any time or for any purpose in any matter is hereby denied, cancelled, revoked and terminated.

TAKE NOTICE and govern yourselves accordingly.

Dated at Hastings, Minnesota, this 23rd day of February, 1962.

HELEN A. PATTERSON

HELEN A. KLEIS NEE PATTERSON

cc: Millett O'Connell, Hastings, Minnesota
Sam Hertogs, Hastings, Minnesota

(Filed Feb. 26, 1962)

(Title of Cause)

REPORT OF SALE OF
REAL ESTATE

The Referee herein reports that, pursuant to an Order heretofore entered directing a sale of the real estate herein, he did on the 7th day of March, 1962, sell at private sale the following described real estate situated in Dakota County, Minnesota, to-wit:

Lot 8 and the East 21 feet of Lot 7, in Block 3 of the Original Town of Hastings,

to Gervase Schaffer and Jean Schaffer as joint tenants and not as tenants in common who have offered the sum of One Hundred Five Thousand and No/100 Dollars ($105,000.00), and this being the highest price offered, and not less than its value as fixed by the amended appraisal for the purpose of such sale, the same was then sold to Gervase Schaffer and Jean Schaffer as joint tenants and not as tenants in common for the sum of One Hundred Five Thousand Dollars ($105,000.00) on the following terms and conditions, to-wit:

Cash on delivery of deed.

That there is a mortgage on Lot 8 in Block 3 of said property to the Hastings National Bank of Hastings, Minnesota, in the face amount of Eleven Thousand Seven Hundred Fifty Dollars ($11,750.00), which mortgage is dated June 22,

1959, and recorded July 20, 1959, in Book 224 of Mortgages on page 70.

That in addition to the foregoing there are the following judgments on file in the office of the Clerk of Court in and for Dakota County, Minnesota:

Lynn Johnson Co., Inc. vs. Helen Patterson, individually and dba Gardner Hotel, which judgment is dated July 12, 1960, docketed the same day in the sum of $116.55.

Day Holmes vs. Helen Patterson, dba Gardner Hotel, which judgment is dated August 5, 1960, docketed the same day in the sum of $2017.60.

State of Minnesota vs. Helen Patterson et al., dba Gardner Hotel, dated August 8, 1960, docketed same day in the sum of $235.18.

Griggs Cooper & Co., Inc., a Corp. vs. Helen Patterson, judgment dated December 13, 1960, docketed February 9, 1961, in the sum of $297.87 with increased costs $3.50. This latter judgment shows a partial satisfaction in the sum of $114.31.

Louis Milani Foods, Inc., a Corp. vs. Helen A. Patterson, judgment dated April 12, 1961, docketed April 26, 1961, in the sum of $57.56 with increased costs of $3.50.

McKesson and Robbins, Inc., a Corp. vs. Helen A. Patterson, dba Gardner Hotel, dated March 27, 1961, docketed March 29, 1961, in the sum of $700.22 with increased costs of $4.25.

State of Minnesota vs. Helen Patterson, et al., dba Gardner Hotel, dated October 30, 1961, docketed same day in the sum of $464.09.

The following federal tax liens are filed in the office of the Register of Deeds in and for Dakota County, Minnesota:

United States of America vs. Helen Patterson, taxed as Gardner Hotel — Lien dated May 15, 1961, filed May 19, 1961 in the sum of $2358.87.

United States of America vs. Helen Patterson, taxed as Gardner Hotel — Lien dated November 14, 1961, filed November 15, 1961, in the sum of $1731.99.

United States of America vs. Helen Patterson, taxed as Gardner Hotel — Lien dated July 12, 1961, filed July 20, 1961, in the sum of $2406.44.

United States of America vs. Helen Patterson, taxed as Gardner Hotel — Lien dated December 5, 1961, filed December 8, 1961, in the sum of $821.21.

United States of America vs. Helen Patterson, taxed as Gardner Hotel — Lien dated February 21, 1962, filed February 26, 1962, in the sum of $1618.86.

The Referee further reports that he is not directly or indirectly interested in the purchase of any part of the real estate and that said sale was fairly conducted and legally made.

WHEREFORE, the Referee prays that the said sale be confirmed and that he be directed to execute and deliver to the purchasers an instrument of

conveyance according to law upon the purchasers compliance with the terms and conditions of said sale.

Dated at Hastings, Minnesota, this 7th day of March, 1962.

ALLAN BURT
Referee

(Verification)

(Title of Cause)

ORDER TO SHOW CAUSE

To Helen A. Patterson, formerly Helen A. Kleis:

The above entitled matter having come on to be heard before the Court in chambers on the 12th day of March, 1962, upon the affidavit of Allan Burt, referee herein, and upon his report of sale of the real estate herein and prayer for an order of this Court confirming the sale reported herein, upon said affidavit, report of sale, petition for and order confirming said sale, and upon all of the files and records herein,

IT IS ORDERED that you, Helen A. Patterson, formerly Helen A. Kleis, be and appear before this Court at the Court House in the City of Hastings, Dakota County, Minnesota, on the 16th day of March, 1962, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, to

show cause, if any there be, why said sale should not be confirmed.

IT IS FURTHER ORDERED that this Order to Show Cause and attached affidavit be served on the defendant, Helen A Patterson, on or before the 12th day of March, 1962.

Dated at Hastings, Minnesota, this 12th day of March, 1962.

R. C. NELSEN
Judge of District Court

(Served Mar. 12, 1962)

(Title of Cause)

AFFIDAVIT

State of Minnesota
County of Dakota—ss.

ALLAN BURT, being first duly sworn, deposes and says: that he is the duly appointed, qualified and acting Referee appointed by the Court in the above entitled matter.

That he has been offered the sum of $105,000.00 for the following described property, to-wit:

Lot 8 and the East 21 feet of Lot 7 in Block 3 of the Original Town of Hastings

which is the real estate described in the complaint herein.

That said offer was made to him on January 30, 1962. That affiant sent written notice of said offer to plaintiff and defendant Helen A. Patterson, formerly Helen A. Kleis, on January 31, 1962, but to this date has not heard from either the plaintiff or the defendant, Helen A. Patterson, formerly Helen A. Kleis.

That said offer is $5,000.00 more than the amended appraisal filed herein and that this is the only offer accompanied by earnest money that affiant has been able to obtain on said property.

That affiant herewith files his report of sale in said matter.

That affiant is informed that defendant Helen A. Patterson, formerly Helen A. Kleis, no longer has an attorney in said matter.

That affiant makes this affidavit for the purpose of supporting an Order to Show Cause as to why said sale reported herewith should not be confirmed.

Dated at Hastings, Minnesota, this 7th day of March, 1962.

ALLAN BURT

(Jurat)

(Title of Cause)

SPECIAL APPEARANCE
AND MOTION

Specially appearing, Helen A. Patterson demands discharge of the Order to Show Cause dated March 8, 1962, 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, report of sale, petition for an order confirming sale has been received by the undersigned.

HELEN A. PATTERSON
Gardner Hotel
Hastings, Minnesota

Dated at Hastings, Minnesota, March 10th, 1962.

(Filed Mar. 14, 1962)

(Title of Cause)

SPECIAL APPEARANCE, MOTION
AND AFFIDAVIT OF
DEFENDANT PATTERSON

State of Minnesota
County of Dakota—ss.

HELEN A. PATTERSON, being duly sworn, says that she is a defendant; that she has been served with two unjustified orders to show cause herein and objects to the procedure herein as oppression.

That no verified answer on her behalf has ever been served and filed herein; and no answer of any kind was filed until long after the date of the purported sale; and then by an unauthorized person.

That her interests are correctly alleged in the complaint in this court, Patterson vs. Lowe, No. 56704. That defendant verily believes that her equities will extinguish any estate claimed by plaintiff herein.

That there is a defect of parties plaintiff and defendant.

That no Findings of Fact, Conclusions of Law or Interlocutory Decree determining the rights of the parties has been made upon which to base partition or sale; nor any abstract or proof upon which to base the same has been filed herein.

That this defendant never authorized nor consented to the stipulation herein dated Nov. 15, 1960, nor was she aware of its existence.

That said property can be partitioned in kind and no sale is necessary and if it is necessary the parties can sell it without a court proceeding.

That this defendant particularly objects to a private sale and that if a judicial sale is to be made it must be an open competitive sale and that this defendant wants at least an opportunity to bid it in.

That the interests of justice require that the rights of the parties be determined PRIOR TO ANY forced or judicial sale, in order to determine whether plaintiff has any interest in the property which would give the court jurisdiction in a partition proceeding.

That the property has never been competently appraised; that this defendant has never been consulted as to appraisal or appraisers and that the appraisal is about 1/2 of the value of the property.

That prior to the sale of the real estate some provision must be made as to the large amount of personal property located therein.

Specifically denies that Allan E. Burt is a duly appointed, qualified and acting referee in this matter or at all.

That no showing has been made as to an exigency requiring an order to show cause instead of a notice of motion, and that there is nothing pending before the court.

That no copies of order appointing appraisers, appraisal, motion and order for re-appraisal, memorandum of sale or report of sale have been served upon her.

That defendant requires additional time within which to retain a lawyer herein, brief him and prepare the matter for hearing, because the file is in such an ungodly state of confusion.

FURTHER AFFIANT SAITH NOT except that this affidavit is made in support of affiant's motion that the orders to show cause herein be discharged or in lieu thereof that the whole matter be continued to the next special term.

HELEN A. PATTERSON

(Jurat)

To the Honorable, the Above Named Court:

Specially appearing, defendant Helen A. Patterson moves the court for its order discharging the orders to show cause herein returnable March 16, 1962; or in lieu thereof for a continuance of the whole matter to next special term.

Said motions are based upon the foregoing affidavit, and all the files, records and proceedings herein except the answer of this defendant which is inadequate and unauthorized; and upon the further grounds that no party in interest has applied to the court for relief at this time; and

(2) there is nothing pending before the court upon which it can rule.

Dated this 15th day of March, 1962.

HELEN A. PATTERSON
ON HER OWN BEHALF
Hastings, Minnesota

15 March 1962

Mr. Gene Casserly, Clerk of the District Court:

Re Lowe vs. Patterson

Inclosed herewith is defendant's affidavit, special appearance and motion in response to orders to show cause in this matter returnable tomorrow.

Will you kindly file same and bring them to the attention of Judge Nelsen when the matter comes on at special term.

Very truly yours,
JEROME DALY

(Filed Mar. 16, 1962)

(Title of Cause)

ORDER CONFIRMING SALE
OF REAL ESTATE

The above entitled matter having come on to be heard before the Court at a Special Term thereof held in the Court House at the City of Hastings, Dakota County, Minnesota, on the 16th day of March, 1962, upon an Order to Show Cause why the Court should not confirm the sale of real estate herein, as reported to the Court by the Referee in the above entitled matter, pursuant to the Order of this Court for sale thereof; and the Court having considered the said report, and having been advised relative to the same, and having examined the files and records in said matter, finds herein the following facts, to-wit:

FIRST — That pursuant to a written stipulation entered into by and between the attorneys for the parties herein, an order for sale in said above entitled matter was duly made and filed in this Court whereby Allan Burt, the Referee appointed by said Court in said matter, was authorized and directed to sell at either public or private sale the real estate hereinafter described.

SECOND — That pursuant to said order for sale, the Referee before making the sale of real estate specified in said report and hereinafter referred to, complied with all the conditions and provisions in said order contained.

THIRD — That the Referee, before making said sale, did cause the real estate hereinafter and in said order for sale described to be appraised by the persons appointed for that purpose in said order for sale, and their appraisal thereof to be filed in this Court.

FOURTH — That on the 7th day of March, 1962, the said Referee, pursuant to said order for sale, did sell, at private sale, to Gervase Schaffer and Jean Schaffer as joint tenants and not as tenants in common, the tracts of land, described in said order for sale, lying and being in the County of Dakota, State of Minnesota, described as follows, to-wit:

> Lot Eight (8) and the East Twenty-one (21) feet of Lot Seven (7), in Block Three (3) of the Original Town of Hastings,

for the sum of One Hundred Five Thousand ($105,000.00) Dollars, said land to be free and clear of all encumbrances, with all real estate taxes on said property due and payable in 1962 and prior years paid by seller, and State Deed Tax in the sum of $115.50 and Federal Revenue Stamps in the sum of $115.50 affixed to said deed and an abstract of title furnished to the buyers.

FIFTH — That the sum for which said land so sold is not disproportionate to the value thereof, nor less than the value thereof as appraised by said appraisers appointed by this Court to appraise the same, and said sale was honestly and fairly

made, and that said Referee was not a purchaser at said sale, and was not interested, directly or indirectly, in the purchase of said real estate at said sale thereof.

IT IS THEREFORE ORDERED that said sale be, and the same hereby is, in all things confirmed; and that the said Referee in this matter be, and he hereby is, authorized and directed:

1. To execute and deliver to said purchasers a good and sufficient deed of conveyance of said land upon compliance by them with the terms of said sale.

2. To procure and deliver an abstract of title on said premises to the purchasers.

3. To forthwith pay all real estate taxes due and payable on said premises in the year 1962 and all prior years.

4. To buy and affix state deed stamps in the sum of $115.50 and Federal Revenue Stamps in the sum of $115.50 to said deed.

5. To deposit with the Clerk of this Court his receipts for the payments specified above and to deposit the balance of the proceeds of said sale with the Clerk of this Court to remain on deposit with said Clerk of Court until further Order of the Court directing payment to the proper parties.

Dated at Hastings, Minnesota, this 23rd day of March, 1962.

By the Court:

R. C. NELSEN

Judge of the District Court

(Filed Mar. 23, 1962)

(Title of Cause)

MOTION

To: McMenomy and Hertogs, First National Bank Building, Hastings, Minnesota

To: The above named Plaintiff and her attorneys, Ganfield and O'Connell, Masonic Building, Hastings, Minnesota

To: Hastings National Bank, Hastings, Minnesota, and its attorney, John A. McEachron, Jr., 812 First National Bank Building, Minneapolis, Minnesota

PLEASE TAKE NOTICE, that the undersigned will bring on for hearing before the court at a Special Term thereof to be held at the Court House in the city of Hastings, on the 6th day of April, 1962, at 11:00 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, the following motions:

Defendant, Helen A. Patterson, moves the court for the following orders:

I

For an order discharging McMenomy and Hertogs, and more specifically, Samuel H. Hertogs, as her attorneys in fact and of record.

II

For an order dismissing the above entitled action on the following grounds:

1. That the complaint fails to state a cause of action which will support the prayer for relief.

2. On the grounds of misjoinder and non-joinder of indispensable parties, plaintiff and defendant.

III

In lieu thereof defendant moves the court for an order staying all proceedings herein until the action of Patterson vs. Lowe, now on file in this court, No. 58013, is heard and finally determined.

IV

Defendant moves the court for an order striking from the record all statements made and motions offered by Mr. O'Connell at the Special Term of this court on March 16, 1962, on the grounds that said motions and statements were entirely and completely outside of the record and were made without notice to defendant Patterson, and were illegal, and constituted an imposition on the court and the defendant.

V

The defendant moves the court for its orders striking the following:

A. The purported answer of this defendant herein over the signature of attorneys McMenomy and Hertogs, and filed in this court on March 12, 1962, upon the grounds that the answer is not veri-

fied and was filed by a person not authorized to make or file it.

B. The reply filed March 12, 1962, upon the grounds that it is not verified.

C. Strike the amended complaint, dated September 23, 1960, and filed herein 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.

D. Expunging from the file a certain purported stipulation, dated November 15, 1960, upon the grounds that it was never authorized by defendant Patterson and it is not supported by the record for any purpose.

E. Setting aside the order of this court, dated December 20, 1960, appointing Allan Burt as referee and Fitch and Pederson as appraisers, upon the grounds that there was no foundation for it upon which the court could act or upon which the order could be made and because it was made without knowledge of defendant Patterson who under no circumstances would have permitted Judge W. A. Schultz to act in this matter for any purpose.

F. For vacating 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 and upon the further grounds that their appointment is completely unnecessary as the parties are not in dispute as to the value of the property.

G. For an order striking from the file the oath of appraisers and appraisal, dated April 7, 1961, upon the grounds that it is illegal, incompetent, irrelevant, without foundation and not served upon the defendant; and for an order striking the oath of appraisers and 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 for re-appraisal.

H. For an order striking the report of sale, dated March 7, 1962, and filed March 8, 1962, from the record herein upon the grounds that it is without foundation and made by an unqualified, unauthorized person without authority, and was never served upon the defendant.

I. Defendant moves the court for its order striking from the complaint and amended complaint the prayer for partition on the grounds that the defendant Patterson is, therefore, the owner of an undivided one-half of the fee and has liens and claims against the undivided one-half of the record fee of the plaintiff Lowe in excess of the value thereof and defendant Patterson is, therefore, the equitable owner of the undivided one-half record of the plaintiff Lowe and is, therefore, the legal and equitable owner of the entire fee.

VI

Defendant renews her special appearance and motion dated March 10, 1962, and also her special appearance and motion dated March 15, 1962.

The above motions will be based upon all of the files, records, and proceedings herein and upon the affidavit of defendant hereto attached.

Dated at St. Paul, Minnesota, March 22, 1962.

HELEN A. PATTERSON
Defendant

JEROME M. DALY
Attorney for Defendant
406 Degree of Honor Building
Saint Paul 1, Minnesota

(Jurat)

(Title of Cause)

AFFIDAVIT OF DEFENDANT PATTERSON

State of Minnesota
County of Dakota—ss.

HELEN A. PATTERSON, being first duly sworn, deposes and says that she is the named defendant. That she is the sole survivor of the original farmily of John Kleis, who, at the "turn of the century," owned and operated the Hotel

St. John in Hastings, Minnesota. Hastings, the first incorporated city of the state of Minnesota, was at the "head of navigation" of the Mississippi River. The Germain-American Bank supplied the life blood of its commerce. At the confluence of the Minnesota and Mississippi Rivers, Henry Hastings Sibley maintained a fur trading post under the protection of the guns of Fort Snelling at a point, then known as St. Peter, now known as Mendota, Minnesota. The Hastings and Dakota Railroad (now the H. and D. Division of the Chicago Milwaukee and Puget Railway) was building straight west went thru Farmington.

Up the river Ignatius Donnelly, the sage of Nininger, was platting and building the new "head of navigation"; and spending much of his time on trips to England trying to prove that Sir Roger Bacon was the actual author of Bill Shakespeare's writings. Farther north, where the river made a bend to the west, Galtier built a log cabin, known as St. Paul's Chapel, nearby "Pigs-Eye" was peddling whiskey in Carver's Cave; and on the west bank" was a growing community later identified as West St. Paul. South St. Paul and Minneapolis were unheard of.

Hastings and surrounding territory became the First Judicial District of Minnesota; young lawmakers were arriving; Ernest Otte was making an annual trek, by foot, over the old Indian trail to Red Wing and return; Clarley Lowell was laughing loudly and "slapping his knee" at the spir-

ited contest for Congress between Donnelly and
1 Washburn; another young lawyer, Patrick Henry O'Keefe, was hiking from Douglas town to the University of Minnesota to attend the lectures of Maria Sanford.

Great log booms floated down the river guided by small steam packets.

Social and business life of mid-eastern Minnesota centered in the Lowell House, Stillwater; the Gardner House (now hotel), Hastings; Hotel St. James, Red Wing; and other river town hostelries;
2 each of which then and since maintained, in the very best tradition, the hospitality and stamina of early American pioneering.

In 1907, John Kleis acquired and improved the property now known as the Gardner Hotel.

Presently, the Gardner Hotel is comprised of three businesses: (1) The Gardner Hotel; (2) The dining room and kitchen; (3) The Tavern, which is located on a separate piece of property, free from encumbrance. The Tavern could be sold free
3 of lien and separately from the other property.

The record title ownership of the entire real estate is in plaintiff, Mary Lowe, and defendant, Helen Patterson, this affiant.

That pursuant to M.S.A. 272.45 affiant has made, executed and recorded in the office of the registrar of deeds a Notice of lien against the whole property in an amount exceeding the sum of Forty-two Thousand Three Hundred Thirty-five Dollars and Thirty-two Cents ($42,335.32). Affiant has further

supplied additions and improvements to the premises in excess of the sum of Thirty-four Thousand 1
($34,000.00) Dollars; and has advanced for the account of plaintiff in cash and goods, wares, and merchandise, the sum of Five Thousand ($5,000.00) Dollars. In addition there are other liens and charges against said real estate out of which the sum of Eight Thousand Five Hundred ($8,500.00) Dollars is chargeable solely to the record title of plaintiff. Thus it is easily possible that the interest of plointiff in the fee title has been extinguished and that this defendant is the legal and equitable 2
owner of the entire fee in said real estate. Thus it is imperative that the court determine the rights and interests of the parties in the action Patterson vs. Lowe No. 58 013 in this court to determine whether it has jurisdiction to proceed to partition and sale under M.S.A. Chapter 558. THAT ANY ATTEMPT BY THE COURT TO PROCEED IN THE ABOVE ENTITLED MATTER CAN ONLY RESULT IN IRREPARABLE INJURY AND DAMAGE TO THIS AFFIANT. Aside from the real estate but indispensably connected there- 3
with, are the three businesses, each of which is a going concern with fixtures, personal and mixed property with valuable good will, and independently of good will, an additional value as a GOING CONCERN. In addition to this there is an over-all value to the whole property as a SINGLE INTEGRATED BUSINESS, which gives the whole still an additional value. Obversely the separation of any part from the whole detracts from the value of the whole.

Thus all parts and elements of the whole must be
1 INVENTORIED and appraised separately to arrive at the grand total value.

FURTHER AFFIANT SAITH NOT except that this affidavit is made together with affiant's affidavit herein dated March 15, 1962, and all the files, records and proceedings herein and in the file No. 58 013, said court, in support of defendant Patterson's motion for dismissal without prejudice of the above entitled matter.

HELEN A. PATTERSON

2 (Jurat)

(Served Mar. 23, 1962)

(Title of Cause)

ORDER TO SHOW CAUSE
RESTRAINING ORDER

Upon reading the attached affidavit, and upon
3 all the files and records and proceedings herein, the Court being fully advised in the premise and upon motion of Jeroma Daly, attorney for defendant Patterson, and it appearing that an exigency exists in that all parties are in need of a speedy determination of this matter;

IT IS FURTHER ORDERED that you, Messrs. Millett O'Connell, John A. McEachron, Samuel Hertogs and Allan Burt be and appear before this Court in open Court at the Court House in the

City of Hastings on the 30th day of March, 1962, at 10:00 a.m., and show cause, if any you have, 1
why this Court should not grant any or all motions dated March 22, 1962, made by defendant Patterson, now on file, notice of which have heretofore been given, and to hear the motion attached hereto to vacate the order confirming sale dated March 23, 1962.

IT IS FURTHER ORDERED that each of you are hereby restrained from interfering with defendant Patterson in the use and enjoyment of the premises described in the complaint until 2
further Order herein.

Dated at St. Paul, Minnesota, March 26, 1961.

R. C. NELSEN
District Judge

(Jurat)

(Title of Cause)

AFFIDAVIT OF
JEROME DALY 3

State of Minnesota
County of Ramsey—ss.

JEROME DALY, being duly sworn, deposes and states that he is a member of the bar of Minnesota and is a resident in Dakota County and the State of Minnesota.

That on March 17, 1962, affiant appeared in this
1 case by calling Judge Nelsen over the phone; and discussed personally with Judge Nelsen the above entitled matter and at that time objected specifically to the statements and motions presented without notice by Millett O'Connell, attorney for plaintiff, whose appearance was noted for the record, on the March 16, 1962, special term; and that affiant understood from Judge Nelsen that he would hold up any Orders in the matter, and particularly the proposed Order confirming sale, until
2 affiant had served, filed and presented his appearance and motions herein on behalf of defendant Patterson, which motion your affiant did file on March 23, 1962, but apparently after Order filed herein.

That on March 23, 1962, the said Judge, without further word or notice to this affiant, made an Order confirming sale without opportunity for affiant's motions to be filed, heard and considered by the Court.

3 This affidavit is made for the purpose of expediting consideration and determination of this matter upon a complete and submitted record in accordance with the declared wishes of all concerned including the defendant Patterson.

That affiant desires a speedy determination of all motions at one and the same time so that affiant's client may either proceed to a final determination of all motions at one and the same time and proceed to a final determination in the trial

Court or promptly appeal to the Supreme Court in which event defendant Patterson be afforded an 1
appeal from a single Order which will include rulings on all objections of the defendant Patterson.

FURTHER YOUR AFFIANT SAITH NOT except that this affidavit is made in support of the attached Order to Show Cause, Order Vacating Order and restraining Order subjoined thereto.

JEROME DALY
325 Cedar Street
St. Paul, Minnesota

(Jurat) 2

(Title of Cause)

MOTION AND NOTICE OF MOTION

To the above named Defendants and to Messrs. Millett O'Connell, John A. McEachron Samuel Hertogs and Allan Burt: 3

You and each of you will please take notice that pursuant to Order to show cause dated March 26, 1962, a copy of which is hereto attached and the contents of which is hereby included by reference, defendant Helen A. Patterson will move the Court for an Order setting aside this Court's Order confirming sale dated March 23, 1962. This motion and all motions dated March 22, 1962, and which were returnable before the Court on April 6, 1962,

will be brought on for hearing before the Court at the Court House in the District Court Room before the Honorable Roy C. Nelsen on March 30, 1962, at 10:00 a.m., in the City of Hastings, Minnesota.

This motion is made upon all of the files and records and proceedings herein and upon the additional grounds to set aside and expunge from the record that certain stipulation dated November 15, 1960, that said stipulation is unlawful and also not verified by defendant Patterson.

Dated at Hastings, Minnesota, March 26, 1962.

HELEN A. PATTERSON
JEROME DALY
Defendant Patterson's
Attorney
325 Cedar Street
St. Paul, Minnesota

(Title of Cause)

SPECIAL APPEARANCE
AND MOTION

Specially appearing, Helen A. Patterson demands discharge of the Order to show cause dated March 8, 1962, 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, report of sale, petition for an Order confirming sale has been received by the undersigned.

Dated at Hastings, Minnesota, March 10, 1962.

HELEN A. PATTERSON
Gardner Hotel
Hastings, Minnesota

(Title of Cause)

SPECIAL APPEARANCE, MOTION
AND AFFIDAVIT OF
DEFENDANT PATTERSON

State of Minnesota
County of Dakota—ss.

HELEN A. PATTERSON, being duly sworn, says that she is a defendant; that she has been served with two unjustified orders to show cause herein and objects to the procedure herein as oppression.

That no verified answer on her behalf has ever been served and filed herein; and no answer of any kind was filed until long after the date of purported sale; and then by an unauthorized person.

That her interests are correctly alleged in the complaint in this court, Patterson vs. Lowe, No. 58013. That defendant verily believes that her equities will extinguish any estate claimed by plaintiff herein.

That there is a defect of parties plaintiff and
1 defendant in that the plaintiff's husband, John Lowe, has an interest in said property and is an indispensable party herein.

That no Findings of Fact, Conclusions of Law or Interlocutory Decree determining the rights of the parties has been made upon which to base partition or sale; nor any abstract or proof upon which to base the same has been filed herein.

That this defendant never authorized nor consented to the stipulation herein dated Nov. 15,
2 1960, nor was she aware of its existence.

That said property can be partitioned in kind and no sale is necessary and if it is necessary the parties can sell it without court proceeding.

That this defendant particularly objects to a private sale and that if a judicial sale is to be made it must be an open competitive sale and that this defendant wants at least an opportunity to bid it in.

That the interests of justice require that the
3 rights of the parties be determined prior to any forced or judicial sale, in order to determine whether plaintiff has any interest in the property which would give the court jurisdiction in a partition proceeding.

That the property has never been competently appraised; that this defendant has never been consulted as to appraisal or appraisers and that the appraisal is about 1/2 of the value of the property.

That prior to the sale of the real estate some provision must be made as to the large amount of 1
personal property located therein.

Specifically denies that Allan E. Burt is a duly qualified and acting referee in this matter or at all.

That no showing has been made as to an exigency requiring an order to show cause instead of a notice of motion, and that there is nothing pending before the court.

That no copies of order appointing appraisers, appraisal, motion and order for re-appraisal, memorandum of sale or report of sale have been served 2
upon her.

That defendant requires additional time within which to retain a lawyer herein, brief him and prepare the matter for hearing, because the file is in such an ungodly state of confusion.

FURTHER AFFIANT SAITH NOT except that this affidavit is made in support of affiant's motion that the orders to show cause herein be discharged or in lieu thereof that the whole matter be continued to the next special term. 3

HELEN A. PATTERSON

(Jurat)

To the Honorable, the Above Named Court:

Specially appearing, defendant Helen A. Patterson moves the court for its order discharging the orders to show cause herein returnable March 16,

1962; or in lieu thereof for a continuance of the whole matter to the next special term.

Said motions are based upon the foregoing affidavit, and all the files, records and proceedings herein except the answer of this defendant on file which is inadequate and unauthorized; and upon the further grounds that no party in interest has applied to the court for relief at this time; and (2) there is nothing pending before the court upon which it can rule.

Dated this 26th day of March, 1962.

HELEN A. PATTERSON
JEROME DALY
Defendant Patterson's
Attorney
325 Cedar Street
St. Paul, Minnesota

(Served Mar. 26, 1962)

(Title of Cause)

AFFIDAVIT AND OBJECTIONS
TO STIPULATION OF
NOVEMBER 15, 1960

State of Minnesota
County of Dakota—ss.

HELEN A. PATTERSON, being sworn, deposes and says that she is a defendant; that affiant objects to the purported stipulation herein dated November 15, 1960, and filed herein, which came to her attention within the past two weeks upon the following grounds:

1. That she was not consulted about the content of the stipulation or the stipulation itself; that she did not authorize or consent to or ever ratify to said stipulation, which was signed by Sam Hertogs, completely unbeknown to affiant.

2. That said stipulation and its contents never has, does not now, and never will express her desires, wish or intent as to the disposition of her property herein.

3. Upon the further grounds that said stipulation is illegal, unlawful, not signed by the parties affected thereby. That she is one of the parties affected thereby. That said attempted stipulation is also not verified.

4. That upon all and each of these grounds, said attempted stipulation is therefore null and void; and amounts to an unauthorized conversion of her property.

FURTHER AFFIANT SAITH NOT except that this affidavit is made in support of her motion herein to strike and expunge from the record a certain purported stipulation dated November 15, 1960, upon the grounds that it never was authorized by defendant Patterson and it is not supported by the record for any purpose.

HELEN A. PATTERSON

(Jurat)

(Served Mar. 27, 1962)

(Title of Cause)

ORDER TO SHOW CAUSE

Upon reading the attached affidavit of Samuel H. Hertogs and upon all the files and records and proceedings herein, and the Court being fully advised in the premises and upon motion of Samuel H. Hertogs, attorney:

IT IS HEREBY ORDERED, that Helen A. Patterson appear before this Court at the Courthouse in the City of Hastings on the 30th day of March, 1962, at ten o'clock a.m., or as soon thereafter as counsel can be heard, and show cause, if any she has, why this Court should not grant to McMenomy and Hertogs, an attorney's lien upon the personal property of Helen A. Patterson as the same is now located in the Gardner Hotel and upon the real estate involved in the above entitled

matter in the sum of Four Hundred Ninety-five Dollars ($495.00) for legal services rendered as are set forth in the affidavit attached hereto, and further to show cause why judgment should not be entered thereon and the property sold to satisfy the lien or, in the alternative that said lien be paid out of the proceeds of the partition sale pending herein.

IT IS FURTHER ORDERED, that service of a copy of this order shall be made upon Helen A. Patterson personally and that copies thereof shall be served by mail upon Allan Burt, referee herein, Millett V. O'Connell, attorney for plaintiff, Mary Katherine Lowe, and Jerome Daly, attorney at law, 325 Cedar Street, Saint Paul, Minnesota.

Dated at Hastings, Minnesota, this 28th day of March, 1962.

R. C. NELSEN
District Judge

(Title of Cause)

AFFIDAVIT OF
SAMUEL H. HERTOGS

State of Minnesota
County of Dakota—ss.

SAMUEL H. HERTOGS, being first duly sworn, upon oath deposes and says: That from 1956 to February, 1962, your affiant had occasion to represent Helen A. Patterson in various legal matters; that in the summer of 1960 Mary Katherine Lowe, owner of an undivided one-half interest in the fee simple title to the property described in the above entitled matter, expressed a desire that the property be sold and that the proceeds be divided between herself and Helen A. Patterson as their respective interests might indicate; that in this connection your affiant was employed by Helen A. Patterson and rendered legal services consulting with Helen A. Patterson and various prospects for the purchase of the hotel; that subsequent to this time a partition was commenced by Mary Katherine Lowe and that your affiant represented Helen A. Patterson in said matter until on or about March 1, 1962, when he was discharged. That your affiant's services are as follows:

September and October, 1960

Conferences with Helen A. Patterson; Richard L. Stoffel; M. V. O'Connell;
Preparation of Answer;
Preparation of Amended Answer;
Order pursuant to Stipulation;

December, 1960

Conferences with Mr. Jansen; Mr. Montrail;

January and February, 1961

Various office conferences with Allan Burt; Millett V. O'Connell; Helen A. Patterson;

January, 1962

Conferences with Helen A. Patterson; Prospects for purchase from Wabasha, Minnesota; M. V. O'Connell;

February, 1962

Conferences with Helen Patterson; Gervase Schaffer; Millett V. O'Connell.

Total hours of legal services rendered were Thirty-three (33) at Fifteen Dollars ($15.00) per hour. The total amount would be Four Hundred Ninety-five Dollars ($495.00).

FURTHER YOUR AFFIANT SAYETH NOT.

SAMUEL H. HERTOGS

(Jurat)
(Filed Mar. 29, 1962)

(Title of Cause)

AFFIDAVIT OPPOSING MOTION TO VACATE ORDER CONFIRMING SALE

State of Minnesota
County of Dakota—ss.

ALLAN BURT, being first duly sworn, deposes and says:

That he is the Referee appointed by the Court in the above entitled proceedings. That since the date of his appointment on December 20, 1960, he has worked diligently to sell the property herein.

That Defendant Helen A. Patterson is in possession of the premises. That she has refused to give affiant any facts or figures that would help affiant to sell the property.

That affiant has contacted over one hundred people in addition to several realtors; that he has followed up all contacts; that he has shown the premises to everyone that had sufficient interest to even look at the property.

That none of the people he has contacted or been able to contact has shown any further interest in the property except Gervase Schaffer and Jean Schaffer from whom he received the offer of $105,000.00.

That affiant, after working for over a year in trying to sell this property, is convinced that this is the highest and best price that can be obtained for said property.

That affiant has been in the business of appraising real estate, has been appointed numerous times as an appraiser by the District Court to appraise property in Dakota County, Minnesota; and affiant avers that based upon his knowledge of real estate values, the sale represented and confirmed herein is for an amount more than equal to the full value of the real estate involved.

That there are now numerous judgments and liens against the property, and that also makes it more difficult to sell to prospective purchasers.

That upon receipt of the offer from the Schaffers affiant immediately sent a letter to the parties involved, a copy of which letter is attached hereto marked Exhibit A and made a part hereof.

That Plaintiff Mary K. Lowe immediately informed affiant that she was satisfied with the sale and the terms thereof.

That Defendant Helen A. Patterson never notified affiant as to whether she was or was not satisfied with the sale, but that she never made an offer of any kind to buy the property from affiant at any price nor did she ever contact affiant.

That affiant dealt with the Schaffers in good faith; that he did everything in his power to obtain the best possible price for the parties to the action. That if this Order Confirming this Sale is vacated and then the Schaffers refuse to deal further in the matter affiant believes that the parties to the action will never be able to sell this property for this amount again.

That affiant makes this affidavit in opposition to the Motion to Vacate the Order Confirming the Sale herein, which order is dated March 23, 1962.

ALLAN BURT

(Jurat)

(Title of Cause)

AFFIDAVIT OF
HELEN A. PATTERSON

State of Minnesota
County of Dakota—ss.

HELEN A. PATTERSON, having been first duly sworn, deposes and states that the real estate now under consideration before the Court is now and has been her homestead continuously since the year 1907.

That your affiant has known Alfred M. Joyce for the past forty-five years and has always relied upon him as a dependable friend.

That because the real estate herein is her homestead it is exempt from any judgments against this affiant.

That your affiant never has excluded plaintiff from said premises at any time.

That the value of the real estate herein is $170,000.00 or in excess thereof.

Any loss to plaintiff herein is dependent upon whether she has any real interest remaining in the property.

Further affiant saith not.

HELEN A. PATTERSON

(Jurat)
(Served Mar. 30, 1962)

(Title of Cause)

ORDER

The above entitled matter came on on an order to show cause dated March 26, 1962, for the purpose of hearing a motion made to vacate the order of this court confirming the sale of real estate involved herein, which said order confirming sale was dated March 23, 1962; and also to hear the motion of the defendant herein, dated March 22, 1962, and which said motion was originally set for hearing on the 6th day of April, 1962, but by agreement was advanced to be heard on Friday, March 30, 1962, together with the motions previously referred to. Millett V. O'Connell appearing and opposing said motions on behalf of plaintiff Mary Katherine Lowe, and Jerome Daly appearing in support of said motions on behalf of the defendant Helen A. Patterson. The Court having heard the arguments herein and having considered the affidavits in sup-

port of and against the allowance of the motions,
1 and having in all things carefully considered the same,

Now, therefore, makes its order denying in all respects the motions of the defendant dated March 22, 1962, and March 26, 1962.

Dated April 2, 1962.

R. C. NELSEN
Judge of District Court

(Filed Apr. 2, 1962)

2 ———

(Title of Cause)

NOTICE OF APPEAL TO
THE SUPREME COURT
OF MINNESOTA

To the Plaintiff above named and to her attorney, Millett O'Connell, and to the Clerk of the above named Court, Eugene Casserly, and to Samuel
3 Hertogs and to the Defendant Hastings National Bank and its attorney, John A. McEachron, and to Allan Burt:

PLEASE TAKE NOTICE: That the above named defendant, Helen A. Patterson, hereby appeals to the Supreme Court of the State of Minnesota from the Order Confirming Sale of Real Estate dated and filed herein March 23, 1962, and from each and every part and from the whole thereof; and likewise and in the same manner also

appeals from the Order herein denying motions of defendant Patterson dated and filed herein April 2, 1
1962, and from each and every part and from the whole thereof from the said District Court above entitled.

Dated at Hastings, Minnesota, April 3, 1962.

HELEN A. PATTERSON
Defendant
JEROME DALY
Attorney for Defendant
325 Cedar Street
St. Paul, Minnesota 2

(Served Apr. 3, 1962)

3



RECORD

IN THE

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

17,683

CIVIL

W. FRANK HORNE, LEO ZURN, JOAN VAN POPERIN, WILLIAM MCNEELY, P. A. DEL VALLE, JOHN DOE AND RICHARD ROE

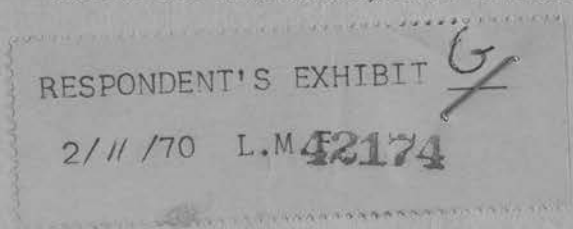
Appellants

VS.

FEDERAL RESERVE BANK OF MINNEAPOLIS, FIRST NATIONAL BANK OF ST. PAUL AND COMMERCIAL STATE BANK, ST. PAUL, NORTHWESTERN NATIONAL BANK, MINNEAPOLIS, LYNDON B. JOHNSON, PRESIDENT, UNITED STATES, DOUGLAS DILLON, SECRETARY, U.S. TREASURY, AND UNITED STATES OF AMERICA

Appellees

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



Hayward-Court Brief Ptg. Co., Mpls 15, Minn.

IN THE

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

17,683

CIVIL

W. FRANK HORNE, LEO ZURN, JOAN VAN POPERIN, WILLIAM MCNEELY, P. A. DEL VALLE, JOHN DOE AND RICHARD ROE

Appellants

VS.

FEDERAL RESERVE BANK OF MINNEAPOLIS, FIRST NATIONAL BANK OF ST. PAUL AND COMMERCIAL STATE BANK, ST. PAUL, NORTHWESTERN NATIONAL BANK, MINNEAPOLIS, LYNDON B. JOHNSON, PRESIDENT, UNITED STATES, DOUGLAS DILLON, SECRETARY, U.S. TREASURY, AND UNITED STATES OF AMERICA

Appellees

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

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United States District Court
District of Minnesota
Third Division

3-63-332
Civil

W. Frank Horne, Leo Zurn, Joan Van Poperin, William McNeely, P. A. Del Valle, John Doe and Richard Roe,
Plaintiffs,

vs.

Federal Reserve Bank of Minneapolis, First National Bank of St. Paul and Commercial State Bank, St. Paul, Northwestern National Bank, Minneapolis, Lyndon B. Johnson, President, United States, Douglas Dillon, Secretary, U.S. Treasury, and United States of America,
Defendants.

Amended Complaint

(Filed December 9, 1963.)

I.

That plaintiffs are residents, freeholders, voters, citizens and taxpayers of the United States of America. That plaintiffs bring this action as representative taxpayers, on behalf of, in the interest of, and representing the people of the United States to enforce the primary right of the people of the United States to have the Constitution of the United States followed by their Government. That the object of this action is to adjudicate the claims of the defendant banks

against the defendant U. S. Government by virtue of the purported obligations of the United States of America, held by said banks in the form of U. S. Securities, bonds and other purported obligations. That there is a common question of law and fact at hand and the several rights here asserted and the relief sought are common to and affect all of the taxpayers of the United States as a class; that plaintiffs above named are fully representative of this class of taxpayers, so numerous as to make it impracticable to bring them all before the court.

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 50% 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.

II.

That by virtue of the Declaration of Independence all sovereign power is vested in and consequently is derived from the people. That the individual and not the state, is the source and basis of our social compact and sovereignty now resides in the individual; that the defendant U. S. Government exists through a delegation by the people collectively as a nation of a portion of their governmental powers based upon their natural and inherent rights.

III.

That the defendant Douglas Dillon is the Secretary of the Treasury of the United States and is the appointee and agent of the defendant Lyndon B. Johnson, President of the United States of America.

That the office of President of the United States is a public trust and that the treasury of the United States is directly under his control. As legally authorized by lawful authority the President is the executive officer of the Government of the U. S. with authority through his Secretary of the Treasury for the regular disbursement of lawful money of the United States for the retirement of legal obligations of the Government of the United States on behalf of its people.

IV.

More specifically, the people vested all legislative power granted, by the Constitution, in a Congress of the United States a part of which is the power to coin money, regulate the value thereof, and of foreign coin. That this power to coin and create the nation's money has unconstitutionally been attempted to be delegated to the Federal Reserve Corporation, National Banks and member State Banks dominated and controlled by foreign financiers, set up by dishonest means, using a Congress stuffed with time serving legislators who act in behalf of the de facto banker-government to the detriment of the de jure government of the United States of America for the purpose of robbing the American Public for the Bankers' selfish gains.

V.

That the defendant banks named herein are attempted

corporations, without legal existence, attempted to be created under and by virtue of one or all of the following, to-wit: The unconstitutional ultra vires, void National Banking Act of 1863 and all amendments thereto and/or the unconstitutional, ultra vires, void Federal Reserve Act of 1913 and all amendments thereto and/or unconstitutional Minnesota State Laws. That said banks are unlawfully uttering, issuing and circulating unlawful money in the deluding and deceiving form of authentic U. S. Currency all contrary to the Constitution, which activity amounts to a nuisance as defined by common law.

VI.

That at all times herein material the defendant banks are creating money and credit on their own books without the slightest consideration therefore, 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 have been and are, all without consideration, acquiring U. S. Bonds and other securities and obligations of the U. S. Government, and are illegally receiving interest thereon.

VII.

That said purported Bonds, Securities and obligations and the whole thereof, for which no legal consideration was paid, the exact amount and number of which are not presently known to the plaintiffs are in the possession, actual or constructive of and run in favor of the defendant banks, jointly and/or severally, as attempted obligations of the United States Government, which bonds are unlawful, void, worthless and no obligation owing.

VIII.

That as a result of the aforementioned unconstitutional activity the United States Government, States, and consequently the people appear to be indebted to the bankers, National and International, in a sum in the neighborhood of some 1500 billion dollars. That the people of the United States have petitioned and entreated the elected officials of the United States to correct this unconstitutional activity, which have been flagrantly disregarded and ignored.

IX.

As and for a cause of action on behalf of plaintiff Leo Zurn, individually. Plaintiff Zurn alleges that on November 5, 1963, he presented 363 dollars in Canadian currency for exchange at the Foreign Exchange Department of the Northwestern National Bank of Minneapolis, defendant herein, and that he received in exchange therefore $4.87 lawful money of the United States as and for his return.

X.

As and for a cause of action on behalf of plaintiff Joan Van Poperin, individually, plaintiff Van Poperin alleges that on November 5, 1963, she presented 287 dollars in Canadian Currency for Exchange at the Foreign Exchange Department of the Northwestern National Bank of Minneapolis, defendant herein, and that she received in exchange therefore $4.76 in lawful money of the United States as and for her return.

XI.

In conjunction with unlawful combination of bankers,

foreign and domestic, the bankers, including the defendant Northwestern Bank, undertake to and do control the rate of foreign exchange by defendant in combination with other banks which control is unconstitutional and unlawful to the damage of the plaintiff Zurn in the amount of 363 dollars in actual damage and $250,000.00 in punative damages; and to the damage of plaintiff Van Poperin in the amount of 287 dollars actual damage and punative damages in the sum of $250,000.00.

Wherefore, plaintiffs, as citizens and taxpayers demand judgment as follows:

1. That the National Banking Act of 1863 and the Federal Reserve Act of 1913, including all amendments to each, be declared unconstitutional and void.

2. That the Court determine the number, nature, extent and amount of the purported United States Securities and obligations held by the defendant banks and each of them whether jointly or severally and the same be declared null, void and no obligation owing by the United States Government to the said defendant banks named herein.

3. That the nuisance activity which said banks are engaged in unconstitutionally usurping the power of Congress to coin money and regulate the value thereof and of foreign exchange be abated and enjoined.

4. That the defendant Lyndon B. Johnson, as President, and the defendant Douglas Dillon, as Secretary of the Treasury, of the United States, and each of them be enjoined from applying any of the monies, tax or otherwise, of the Government of the United States of America toward the payment of said purported obligations and any interest thereon.

5. That said banks be enjoined from creating money or credit by bookkeeping entries upon their books and that they be enjoined from circulating private notes as money.

Wherefore, plantiffs Zurn and Van Poperin demand judgment individually as follows:

1. Plaintiff Zurn in the sum of $250,363.00 and his costs and disbursements.

2. Plaintiff Van Poperin in the sum of $250,287.00 and her costs and disbursements. All plaintiffs demand such further other relief as the Court may deem fitting and proper, including reasonable fees and suit money to plaintiff's attorney, together with their costs and disbursements incurred herein.

Dated this 26th day of November, 1963.

DALY and DALY,
By JEROME DALY,
28 E. Minnesota Street,
Savage, Minnesota,
Attorneys at Law.

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.

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 nations currency to a private corporation than it has the right to surrender the power to declare war to a private corporation.

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 and currency all pursuant to law passed by Congress; 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 it 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. Gov. 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 in 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 quality 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.

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 without 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 uninhibited abandon with which some senators and congressmen ride down the provisions of 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 wisdcm 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 harassed 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. A 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 Wall, the Rhine, the Channel or the ocean that can arrest its progress; it will march on the horizon of the world; it will conquer.

Dated November 29, 1963.

JEROME DALY.

Note: (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.)

Separate Answer of Defendant The First National Bank of Saint Paul

(Filed December 6, 1963.)

Defendant The First National Bank of St. Paul, for answer to the complaint herein states:

First Defense

The complaint fails to state a claim against this answering defendant upon which relief can be granted.

Second Defense

(1) As to paragraph I of the complaint, this answering defendant is without knowledge or information sufficient to form a belief as to truth of the allegations of fact contained therein, and therefore denies the same.

(2) As to paragraph II of the complaint, the answering defendant assumes that said paragraph II is merely a statement of a political philosophy.

(3) As to paragraph III of the complaint, this answering defendant admits that Douglas Dillon is the Secretary of the Treasury of the United States.

(4) As to paragraph IX of the complaint, this answering defendant is without knowledge or information sufficient to form a belief as to truth of the allegations of fact contained therein, and therefore denies the same.

(5) As to paragraph X of the complaint, this answering defendant is without knowledge or information sufficient to form a belief as to truth of the allegations of fact contained therein, and therefore denies the same.

(6) Except as hereinabove admitted, qualified, or otherwise denied, denies each and every allegation contained in said complaint.

Third Defense

The case presents no justiciable controversy.

Fourth Defense

Plaintiffs have no such interest in the subject matter nor is any such injury alleged to be inflicted or threatened as to give plaintiffs' standing to sue either in an individual or representative capacity.

Wherefore, this answering defendant prays that plaintiffs be denied any relief herein and that plaintiffs' action be dismissed on the merits with costs and disbursements.

FRANK HAMMOND,
RICHARD H. KYLE,
First National Bank Building,
St. Paul, Minnesota 55101
Attorneys for Answering Defendant.

Briggs and Morgan
Of Counsel.

Separate Answer of Defendant Northwestern National Bank of Minneapolis

(Filed January 14, 1964.)

Defendant Northwestern National Bank of Minneapolis for its answer to the complaint herein alleges and states that:

First Defense

The complaint fails to state a claim against this answering defendant upon which relief can be granted.

Second Defense

The complaint fails to present a justiciable controversy.

Third Defense

Plaintiffs have no sufficient interest in the subject matter, nor is sufficient injury alleged to have been inflicted or threatened as to give plaintiffs standing to sue, either in an individual or representative capacity.

Fourth Defense

The complaint fails to join each of the Federal Reserve Banks of the United States and each of the national banking associations in the United States orgnized under and pursuant to U. S. Rev. Stat. § 5133, Title 11, U.S.C. § 21, all of which are indispensable parties to the action.

Fifth Defense

I.

Answering paragraph I of the complaint, this answering defendant is without knowledge or information sufficient to

form an opinion or belief as to the truth of the allegations contained therein, and therefore expressly denies each and every allegation, matter or statement contained therein.

II.

Answering paragraph III of the complaint, this answering defendant admits that Douglas Dillon is the Secretary of the Treasury of the United States.

III.

Except as hereinbefore expressly admitted, qualified, or otherwise answered, this answering defendant expressly denies each and every allegation, matter or statement contained in said complaint.

Wherefore, this answering defendant prays that plaintiffs take nothing by their pretended complaint, and either that plaintiffs' action be dismissed on the merits or that this answering defendant be awarded judgment in its favor, together with its costs and disbursements herein.

FAEGRE & BENSON,
By JAMES A. HALLS,
LAWRENCE C. BROWN,
1260 Northwestern Bank Building,
Minneapolis 2, Minnesota,
Attorneys for Defendant Northwestern National Bank of Minneapolis.

Separate Answer of Defendant Commercial State Bank, St. Paul

(Filed December 12, 1963.)

Comes now the defendant, Commercial State Bank, St. Paul, and for its separate answer to the complaint of the plaintiffs herein states:

First Defense

The complaint fails to state a claim against this answering defendant upon which relief can be granted.

Second Defense

(1) As to paragraphs I, IX and X of plaintiffs' complaint, this answering defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of fact contained therein, and therefore denies the same.

(2) That the plaintiffs' complaint is argumentative and defamatory.

(3) Save and except as herein admitted, qualified or otherwise denied, this answering defendant denies each and every other allegation contained in said complaint.

Third Defense

The plaintiffs are not the proper parties plaintiff to said action.

Wherefore, this answering defendant prays that plaintiffs take nothing by their purported cause of action and that the same be dismissed with prejudice and this answering de-

fendant be awarded its costs and disbursements and attorney's fees herein.

A. I. LEVIN and ALBERT D. LEVIN,
By ALBERT D. LEVIN,
611-12 Commerce Building,
St. Paul 1, Minnesota,
Attorneys for Defendant Commercial State Bank, St. Paul.

Motion and Notice of Motion

(Filed January 9, 1964.)

To Mr. Miles W. Lord, United States Attorney and Sidney P. Abramson, assistant United States Attorney, 596 U. S. Court House, Minneapolis, Minnesota; Mr. Frank J. Hammond, Briggs & Morgan, attorneys for First National Bank of St. Paul, defendant, W-1st National Bank Building, St. Paul Minnesota; Mr. A. I. Levin, attorney for Commercial State Bank, St. Paul, defendant, Commerce Building, St. Paul, Minnesota; Mr. Leonard O. Langer, Faegre & Benson, attorneys for Northwestern National Bank, Minneapolis, defendant, Northwestern National Bank Building, Minneapolis, Minnesota; Roland Gorman, Attorney at Law, Federal Reserve Bank, Minneapolis, Minnesota.

Please take notice that the plaintiffs above named will move the Court on January 27, 1964, at 10:00 a. m. in the District Courtroom in the Federal Courts Building, St. Paul, Minnesota, before a legally constituted three judge court for the following orders and injunctions, as the case may be:

I.

For an order requiring the United States Marshal for the District of Columbia, forthwith serve copies of the amended summons and complaint upon Lyndon B. Johnson, President of the United States.

II.

For interlocutory summary judgment for the relief demanded against the defendants, Federal Reserve Bank of Minneapolis and Northwestern National Bank of Minneapolis, upon the grounds that each defendant has failed to answer the complaint herein; for further order that the court appoint a referee to hold a hearing and determine the nature and extent of any and all United States Securities running in favor of said defendant, whether said securities are in their possession or not; and that the same be declared null and void and no obligation owing to the defendant, United States Government.

III.

For an interlocutory injunction against the defendant, Lyndon B. Johnson and Douglas Dillon, enjoining them and each of them from causing any of the monies, tax or otherwise of the Government of the United States of America to be paid toward the payment of any of the purported obligations or interest thereon held by the defendant banks and each of them.

Dated this — day of January, 1964.

DALY and DALY,
By JEROME DALY,
28 E. Minnesota Street,
Savage, Minnesota,
Attorneys for Plaintiff.

Affidavit of Jerome Daly

State of Minnesota,

ss.

County of Scott.

Jerome Daly, having been first duly sworn, deposes and states that he is the attorney for the plaintiffs herein and is a resident and citizen of the United States.

That affiant prepared and executed the amended complaint herein and knows the contents thereof; that upon information and belief the said amended complaint on file herein and contents thereof, including the memorandum attached thereto, is true and correct.

This affiant is informed by the United States Marshal's office in St. Paul, Minnesota, that the United States Marshal's office in Washington D. C. refuses to serve the President of the United States without stating any grounds for such refusal.

JEROME DALY.

Subscribed and sworn to before me this 11th day of January, 1964.

ROBERT E. DALY,
Notary Public,
Scott County, Minn.

My commission expires Feb. 1, 1968.

Notice of Motion

(Filed January 14, 1964.)

To Mr. Jerome Daly, Daly and Daly, attorneys for plaintiffs, 28 E. Minnesota Street, Savage, Minnesota; Mr. Frank J. Hammond, Briggs & Morgan, attorneys for First National Bank of St. Paul, defendant, W-1st National Bank Building, St. Paul, Minnesota; Mr. A. I. Levin, attorney for Commercial State Bank, St. Paul, defendant, Commerce Building, St. Paul, Minnesota; Mr. Leonard O. Langer, Faegre & Benson, attorneys for Northwestern National Bank, Minneapolis, defendant, Northwestern National Bank Building, Minneapolis, Minnesota.

Please take notice that Federal Reserve Bank of Minneapolis, Lyndon B. Johnson, President of the United States, Douglas Dillon, Secretary, U. S. Treasury, and the United States of America, defendants above named, will move the Court on Monday, January 27, 1964, at 10:00 a. m. or as soon thereafter as counsel can be heard, at the Federal Courts Building, St. Paul, Minnesota, for summary judgment, or in the alternative for an order dismissing the complaint filed by the plaintiffs in the above matter in accordance with the attached motion.

MILES W. LORD,
United States Attorney,
By SIDNEY P. ABRAMSON,
Assistant United States Attorney,
Attorneys for Lyndon B. Johnson, President, United States, Douglas Dillon, Secretary, U. S. Treasury, and United State of America.
ROLAND GRAHAM,
Attorney for Federal Reserve Bank of Minneapolis.

Motion for Summary Judgment

(Filed January 16, 1964.)

To the plaintiffs in the above entitled action and to their attorneys:

To the defendants in the above entitled action and to their attorneys:

Please take notice that the defendant, The First National Bank of St. Paul, will move the Court on Monday, January 27, 1964, at 10:00 o'clock a. m., or as soon thereafter as counsel can be heard, for an order pursuant to Rule 56, Federal Rules of Civil Procedure, granting summary judgment in favor of defendant, The First National Bank of St. Paul, and dismissing plaintiffs' action on the ground that there is no genuine issue as to any material fact and that plaintiffs' action should be dismissed as a matter of law.

Said motion will be based upon all the files, records and proceedings herein.

FRANK HAMMOND,
RICHARD H. KYLE,
W-First National Bank Building,
St. Paul, Minnesota 55101,
Attorneys for The First National Bank of St. Paul.

Briggs and Morgan,
Of Counsel.

Notice of Motion and Motion

(Filed January 16, 1964.)

To the plaintiffs in the above entitled action and to Daly and Daly, their attorneys:

To the defendants in the above entitled action and to their attorneys:

Please take notice that the defendant Commercial State Bank in St. Paul will move the Court on Monday, January 27, 1964, at 10:00 o'clock a. m. or as soon thereafter as counsel can be heard, in the Federal Courts Building, St. Paul 1, Minnesota for an order pursuant to Rule 56, Federal Rules of Civil Procedure, granting summary judgment in favor of defendant, Commercial State Bank, and for an order dismissing plaintiffs' action on the ground that the complaint fails to state a claim against the Commercial State Bank in St. Paul upon which relief can be granted and that the plaintiffs are not the proper parties plaintiff to said action, and for such other relief as the Court deems fair and just in the premises.

Said motion will be based upon all the files, records and proceedings herein and upon the affidavit of Stanier E. Mason.

Dated January 14, 1964.

A. I. LEVIN and ALBERT D. LEVIN,
By ALBERT D. LEVIN,
611-12 Commerce Building,
St. Paul 1, Minnesota,
Attorneys for Commercial State Bank in St. Paul.

Affidavit of Stanier E. Mason

(Filed January 16, 1964.)

State of Minnesota

ss.

County of Ramsey.

Stanier E. Mason, being first duly sworn, on oath deposes and says that he is the executive vice-president of Commercial State Bank in St. Paul. That the Commercial State Bank in St. Paul is not a member of the federal reserve system and is the only defendant bank in the above entitled action which is non-affiliated with the federal reserve system. That the Commercial State Bank in St. Paul is locally owned and is not affiliated with any other bank.

That affiant makes this affidavit for the purpose of supporting the motion of Commercial State Bank attached hereto.

STANIER E. MASON.

Subscribed and sworn to before me this 14th day of January, 1964.

ALBERT D. LEVIN,
(Seal) Notary Public,
Ramsey County, Minn.

My commission expires May 27, 1965.

Notice of Motion and Motion of Defendant Northwestern National Bank of Minneapolis for Summary Judgment

(Filed January 16, 1964.)

To the above named plaintiffs and to Daly and Daly and Jerome M. Daly, attorneys for plaintiffs, 28 E. Minnesoto Street, Savage, Minnesota:

You will please take notice that on Monday, January 27, 1964, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, at the United States Court House in the City of St. Paul, Minnesota, the undersigned attorneys for defendant Northwestern National Bank of Minneapolis will move the Court at a special term thereof for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure granting summary judgment in favor of said defendant Northwestern National Bank of Minneapolis. The ground for the motion is that there is no genuine issue as to any material fact and that defendant Northwestern National Bank of Minneapolis is entitled to judgment in its favor as a matter of law. The motion will be made upon the files, records and proceedings herein.

FAEGRE & BENSON,
By LAWRENCE C. BROWN,
1260 N. W. Bank Building,
Minneapolis 2, Minnesota,
Attorneys for Defendant Northwestern National Bank of Minneapolis.

Motion

(Filed January 27, 1964.)

The defendants, Federal Reserve Bank of Minneapolis,

Lyndon B. Johnson, President of the United States, Douglas Dillon, Secretary, U. S. Treasury, and the United States of America, move the Court for summary judgment, or in the alternative for an order dismissing the complaint filed by the plaintiffs, and in support thereof assigns the following reasons:

1. The Court lacks jurisdiction since the action constitutes an unconsented suit against the United States, and Federal Reserve Bank.

2. Plaintiffs have no standing to maintain this action.

3. The complaint fails to present a justiciable controversy.

4. The Court lacks jurisdiction to compel or restrain official action relating to discretionary governmental functions.

5. As to defendants Lyndon B. Johnson, President of the United States and Douglas Dillon, Secretary of the Treasury of the United States, venue is improper.

Dated January —, 1964.

MILES W. LORD,
United States Attorney,
By SIDNEY P. ABRAMSON,
Assistant United States Attorney,
Attorneys for Lyndon B. Johnson, President, United States, Douglas Dillon, Secretary, U. S. Treasury, and United States of America.
ROLAND GRAHAM,
Attorney for Federal Reserve Bank of Minneapolis.

Notice of Motion

(Filed January 27, 1964.)

To Mr. Jerome Daly, Daly and Daly, attorneys for plaintiffs, 28 E. Minnesota Street, Savage, Minnesota; Mr. Frank J. Hammond, Briggs & Morgan, attorneys for First National Bank of St. Paul, defendant, W-1st National Bank Building, St. Paul, Minnesota; Mr. A. I. Levin, attorney for Commercial State Bank, St. Paul, defendant, Commerce Building, St. Paul, Minnesota; Mr. Leonard O. Langer, Faegre & Benson, attorneys for Northwestern National Bank, Minneapolis, defendant, Northwestern National Bank Building, Minneapolis, Minnesota:

Please take notice that Federal Reserve Bank of Minneapolis, Lyndon B. Johnson, President of the United States, Douglas Dillon, Secretary, U. S. Treasury, and the United States of America, defendants above named, will move the Court on Monday, January 27, 1964, at 10:00 a. m., or as soon thereafter as counsel can be heard, at the Federal Courts Building, St. Paul, Minnesota, for summary judgment, or in the alternative for an order dismissing the complaint filed by the plaintiffs in the above matter in accordance with the attached motion.

MILES W. LORD,
United States Attorney,
By SIDNEY P. ABRAMSON,
Assistant United States Attorney,
Attorneys for Lyndon B. Johnson, President, United States, Douglas Dillon, Secretary, U. S. Treasury, and United States of America.
ROLAND GRAHAM,
Attorney for Federal Reserve Bank of Minneapolis.

Transcript of Proceedings

(Filed February 19, 1964.)

Transcript of proceedings had in the above-entitled matter before the Honorable Dennis F. Donovan, one of the judges of said Court, in his court room at the Federal Courts Building, St. Paul, Minnesota, on the 27th day of January, 1964, at 10:40 o'clock a. m.

Present: Daly and Daly, Savage, Minnesota, by Mr. Jerome Daly, appearing on behalf of the plaintiffs;

Mr. Miles W. Lord, United States attorney, Minneapolis, Minnesota, by Mr. Sideny P. Abramson, assistant United States attorney, appearing on behalf of defendants United States of America, Lyndon B. Johnson, president of the United States, Douglas Dillon, Secretary of the United States Treasury, and the Federal Reserve Bank of Minneapolis;

Briggs and Morgan, St. Paul, Minnesota, by Messrs. Frank Hammond and Richard H. Kyle, appearing on behalf of defendant First National Bank of St. Paul;

Messrs. A. I. Levin and Albert D. Levin, St. Paul, Minnesota, by Mr. Albert D. Levin, appearing on behalf of defendant Commercial State Bank, St. Paul;

Faegre and Benson, Minneapolis, Minnesota, by Mr. Lawrence C. Brown, appearing on behalf of defendant Northwestern National Bank of Minneapolis.

Proceedings

The Court: W. Frank Horne, et al., versus Federal Reserve Bank of Minneapolis. The matters presently pending are motions for summary judgment and pleadings in the file in the case.

Mr. Abramson: Your Honor, I don't know if I am presumptuous, but the Government, I think, filed the first motion to dismiss here and would appreciate the opportunity of proceeding first, and perhaps other counsel who have like motions on behalf of their own clients would then wish to either add or subtract from what the Government says, if that is agreeable with everyone.

Mr. Hammond: That is agreeable.

The Court: No objection, Mr. Daly?

Mr. Daly: Well, I am not going to go on record as consenting to anything that he says.

The Court: You are neutral.

Mr. Daly: No, no, definitely not neutral.

Mr. Court: All right. Well, go ahead. I know you belong in the other court room anyway.

Mr. Abramson: All right, sir. Your Honor, I am not going to argue at any length. I have submitted a memorandum to the Court earlier, just before the Court commenced here, and I have given, I believe, everyone a copy, including counsel for the plaintiffs. In the interest of time, I would indicate to the Court that it is our contention that that memorandum contains adequate authorities for the propositions that we assert in our motion, our motion being one for summary judgment, or, in the alternative, to dismiss the action brought by Mr. Daly on behalf of his clients.

There are just a few observations that I think must be made, your Honor, and in some part they have been made in the brief in reference to the historical background of the entire Federal Reserve System. It historically has been a stablizing factor—at least this is the contention of the Gov-

ernment—in the economy, both the business economy of the United States and the economy of the world as a whole. We would indicate to the Court that we have reviewed the history of the Federal Reserve System in our memorandum and would indicate that its history is one which is bottomed in a series of financial panics in the United States in the early 1900's and late 1800's. The System as established today through the forties and fifties is thought to act as a factor stabilizing the American dollar in the world markets, and a very graphic illustration of this is one which I would like to bring to the attention of the Court because I think that it is one that both the Court should consider in determining this motion and perhaps Mr. Daly ought also to consider.

The Court: Now, which defendant are you making this motion for?

Mr. Abramson: I am making this motion, your Honor, on behalf of the United States, on behalf of the President of the United States, Lyndon Johnson, Douglas Dillon, the Secretary of the Treasury, and also the Federal Reserve Bank.

Mr. Daly: Well, I am going to object to him making any motions on behalf of the President of the United States unless he is going to consent to answer for him. He hasn't been served yet.

The Court: Objection overruled. You may proceed.

Mr. Abramson: Your Honor, I think the one graphic illustration of the effect of the System, which counsel seeks here to attack, is an incident of perhaps some insignificance in relation to the totality of the operation of the Government, but an incident which occurred, as the Court will

recall, last November, 1963, specifically on the 22nd of November, the day that—as a matter of fact, I believe I was in court before this Court when the news first came of the President having been shot in Dallas. Shortly thereafter, as a matter of fact, as I am advised, within 15 or 20 minutes after the first news releases of this tragic occurrence in Dallas took place, the Federal Reserve Bank of the State of New York, or the New York district, was in the market, in the world market, purchasing currency on behalf of the United States to stabilize in the eyes of the world the currency of America and thereby, we believe, would have averted what could have been a very tragic disaster financially as well as to the citizens of the United States and to the citizens of the world—even more tragic than it was.

This, I think, is an example of the system which counsel seeks here to attack, and I think that it is an incident, or a history with an incident, that the Court must consider in determining the validity of both counsel's action and the merits of the motion that the Government brings here this morning. That would be all that I have to say, your Honor, other than the fact that I think our memorandum sufficiently sets out the law to demand the relief that we are demanding here, either for summary judgment or, in the alternative, for dismissal of the complaint here.

Mr. Hammond: May it please the Court, I suppose we have, at the outset, a question of whether or not all those who are making motions for summary judgment should be heard here seriatim and Mr. Daly should be permitted then to respond at the end of all of those motions, or whether he wants to respond to each one of them as they are made.

The Court: That may be the order.

Mr. Hammond: Mr. Kyle and I represent the First National Bank of St. Paul. In accordance with the notice of the motion on file with the Court, we, on behalf of our client, move for summary judgment in favor of the First National Bank of St. Paul.

There is little to be said in addition to those matters covered by the memorandum which has been filed on behalf of the United States, President, Secretary of Treasury, and the Federal Reserve Bank, except to note two things briefly.

We are, I believe, at such point confronted by an amended complaint. It is my understanding that the rules do not permit the service of an amended complaint without an order permitting the same. Unless I am mistaken, no such order has been made. This, I think, however, is not a matter of substance but rather of form, and I have no objection if such an order is entered at some place along the line, if it turns out in view of the Rules of Procedure that such is necessary, so we don't have to go back and start this all over again.

The Court: Well, you don't understand there has been any order made?

Mr. Hammond: I do not. I do not understand there has been an order made permitting the filing of an amended complaint, your Honor, but I have no objection if one is made nunc pro tunc upon proper application, if I am correctly informed of the facts.

Second, on behalf of the First National Bank of St. Paul, we ask for summary judgment in that with respect to this defendant no particular offense is charged which would permit a cause of action to be asserted on behalf of these

plaintiffs. With respect to the First National Bank of St. Paul, the only questions which are raised are constitutional questions involving generally political questions of separation of powers of the Federal Government and operation of the theory of the separation of powers, and those, we submit, cannot properly be presented against this defendant in this kind of action since there is no specific loss charged as a result of any act of this defendant, First National Bank.

Mr. Levin: Your Honor, in behalf of the Commercial State Bank we join in this motion, and the argument that Mr. Hammond gave applies to the Commercial State Bank as well. We are only named in the heading of the case and not specifically referred to in the body of the complaint.

Furthermore, the Commercial State Bank is not a member of the Federal Reserve System, does not hold stock in the Federal Reserve System or the Federal Reserve Bank, does not borrow from the Federal Reserve Bank; it is a bank that Mr. Daly is referring to in his complaint. We locally-owned independent bank in contradistinction to the feel that there is no cause of action stated against the Commercial State Bank. The Commercial State Bank, as I say, is not a member of the Federal Reserve System and has no place in this action, and we move for dismissal against the Commercial State Bank.

Mr. Brown: Your Honor, Lawrence C. Brown of the firm of Faegre and Benson. We represent the Northwestern National Bank of Minneapolis. We, too, have sought the same relief that the other defendants are here seeking today, and I would only wish to add two points to what they have already said.

I would like to bring to the Court's attention a similar action which was attempted in the District Court of the United States for the District of Columbia, in 1936. I have a photocopy of the various papers from the court's file. The number is 62585. It was an action which attacked the Federal Reserve System. A motion to dismiss the complaint was made, and the motion was granted in all respects, the grounds being quite similar to the basis for the Government's motion here today, that the plaintiff had no standing or capacity, that the complaint does not state a cause of action, and it also mentioned a third ground which was presented in the separate answer of the Northwestern National Bank of Minneapolis, namely, that the Federal Reserve Banks and all of them are indispensable parties to any suit affecting the powers and rights conferred upon them by the Federal Reserve Act.

The Court: Is that case reported in Federal Supplement?

Mr. Brown: I do not believe it is, your Honor. I was unable to find a citation to it.

The Court: Have you copies for counsel?

Mr. Brown: This is the only copy that I have at this time. If you like, we would be happy to submit copies of the file that we have obtained to counsel and to the Court.

The Court: I was going to say it is not of much help to me unless I have it.

Mr. Brown: Well, at the time, when we got these, the only thing I was able to do was just get the copy, but I would be happy to submit them to you.

The Court: You are proposing to submit a duplicate to Mr. Daly and to the Court?

Mr. Brown: That is right.

The Court: And any other counsel that may request it. All right.

Mr. Brown: The second point that I would like to make, your Honor, is that from the complaint it appears that the plaintiffs came to the Northwestern National Bank of Minneapolis with some Canadian currency, and of all the various banks in the Twin Cities selected the Northwestern to perform their exchange, and I take it that the gravamen under their complaint is that in exchange for the Canadian currency they received a certain amount of lawful money of the United States, that amount being less than they claim they exchanged in Canadian currency. There is no allegation, in my reading of the complaint, that there has been an actual loss to any of the plaintiffs as a result of this exchange, and I can only imagine that what happened was that in the exchange the plaintiffs involved received Federal Reserve notes as part of the exchange for the Canadian currency. I do not find any allegation in the complaint which indicates that such Federal Reserve notes were of no value to the plaintiffs, or that they were unable to exchange those Federal Reserve notes for goods, commodities, or service of an equivalent value.

So that we have joined in these motions and we seek the same relief that is sought by the other defendants.

The Court: All right, Mr. Daly.

Mr. Daly: Your Honor, this is in the nature of a taxpayers' suit brought to set aside the National Banking Act of 1863 and the Federal Reserve Act of 1913 and all amendments thereto. Now, I will take up the motions brought by the defendants first.

As I understand it, the Federal Reserve Bank of Minneapolis is a private corporation, and I note that there is no answer—they have been served, but there is no answer in the file from them yet, but that the United States Government through its United States Attorney has made a motion on behalf of the Federal Reserve Bank of Minneapolis, which is in fact and in law a private corporation separate and distinct from the Government of the United States; that is, the Government of the United States does not own one share of stock in the Federal Reserve Bank of Minneapolis. Their grounds, as I see it from their pleadings, or from their motion, is that the Court lacks jurisdiction since the action constitutes an unconsented suit against the United States and the Federal Reserve Bank; that plaintiffs have no standing to maintain this action; that the complaint fails to present a justiciable controversy; that the Court lacks jurisdiction to compel or restrain official action relating to discretionary governmental functions; and that the venue so far as the defendants Lyndon Johnson, President of the United States, and Douglas Dillon, Secretary of the Treasury, is improper.

Now, I would like a complete record of all of the proceedings here today, if you will, and I want to read the complaint into the record.

Paragraph I. "That plaintiffs are residents, freeholders, voters, citizens and taxpayers of the United States of America. That plaintiffs bring this action as representative taxpayers, on behalf of, in the interest of, and representing the people of the United States to enforce the primary right of the people of the United States to have the Constitution of the United States followed by their Government."

Mr. Abramson: Excuse me, Mr. Daly. Your Honor, the Government at least and the defendants I represent are willing to stipulate the complaint into the record, to be put into the record at this time rather than read into the record, in the interest of time.

Mr. Hammond: We are agreeable to that, your Honor.

Mr. Brown: We are also agreeable, your Honor.

Mr. Levin: We, too.

The Court: Is that satisfactory?

Mr. Daly: No, that is not satisfactory with me, your Honor. I want to take this complaint paragraph by paragraph.

The Court: Isn't that what is attached to the complaint?

Mr. Daly: No, no, the complaint itself.

The Court: You are reading something printed there, aren't you?

Mr. Daly: Yes. Well, the memorandum, I want to read part of that. I don't think it will be necessary to read it all. They have a copy of that.

The Court: Have I got a copy of it?

Mr. Daly: Oh, yes, there is a copy in the file.

Mr. Hammond: If the Court please, this is the complaint itself, as I understand it, that Mr. Daly proposes to read verbatim.

The Court: If it is the complaint in the file, I see no reason for encumbering the record with it. It is a part of the proceedings and there isn't any dispute about it.

Mr. Daly: Quite a serious situation exists here from where I sit. I have alleged the Declaration of Independence in the complaint and the Constitution of the United States and the fact that the individual and not the state is the source and basis of our social compact.

The Court: Well, I see all that.

Mr. Daly: And they have denied—one of them said it was merely a political philosophy, and the rest of them denied it in their answers. The Northwestern National Bank of Minneapolis and the Commercial State Bank of St. Paul denied the Declaration of Independence and the fact that sovereignty resides in the individual in their answer, and came out and said that my complaint was defamatory. The only thing that is—I don't know which one it is—the only thing that is defamatory, as I see it, is the answer.

The Court: That isn't attached to the original complaint, you say?

Mr. Daly: The answer?

The Court: This, what you are reading now, in your hand. Isn't that a copy of some pleading?

Mr. Daly: Yes, that is attached to the original file.

The Court: Well, it is in here.

Mr. Daly: Okay.

The Court: Yes. The Court will take judicial notice of the fact that that is in this file and the Court will have it in mind. It won't be necessary for you to read it, Mr. Daly.

Mr. Daly: All right. Well, I want to refer to parts of it.

The Court: Yes, certainly. You may refer to anything

along the line of your oral argument, anything you wish to emphasize. I was just trying to impress on you that it is in the file and the Court will have access to it in all respects, and you can refer to anything you wish to emphasize.

Mr. Daly: All right. With reference to their claim that the Court lacks jurisdiction because the action constitutes an unconsented suit against the United States and the Federal Reserve Bank, well, number one, the Federal Reserve Bank is a private corporation, and I have no knowledge of any law that says a private corporation can't be sued without its consent, in this country. Number two, I take the position that we do not need to have consent to sue the United States because this is a suit not sounding in tort; it is a suit based upon a contract.

Now, 91 Corpus Juris Secundum, Section 177 states that: "The United States may be sued on its express or implied contracts."

While the United States has the power to withhold its consent to be sued, the withholding of consent to sue will not be readily attributed to the United States where it has created a claim against itself. That is Moreno versus the United States, 93 Federal Supplement 607. Now, here is in effect what this Federal Reserve Act and National Banking Act did. You see, the Constitution of the United States, Article I, Section 1, states: "All legislative powers herein granted shall be vested in a Congress of the United States".

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

We take the position that this provision gives Congress

the exclusive right to do three things, and these rights are of equal importance: The right to coin money—the denial of that right to the states or to individuals is unquestioned; the right of Congress to regulate the value of domestic money and foreign coin—the denial of that right to the states or to individuals is equally beyond question.

Now, these two Acts that I refer to give these private bankers the right to coin and create money on their own books which does not exist, and I take the position that the coining and creating of the money is a legislative function.

Now, here is what they do in effect. They have got these United States bonds sitting in the Federal Reserve Bank in Minneapolis and in these banks here in the cities—sitting in blank form. They just fill their name in on it, "First National Bank of St. Paul,"—they just fill their name in on that bond, and they credit the United States Government's account with the full amount, and that money that they credited to the account of the United States Government did not exist. They manufactured it right out of thin air, and the only thing they paid for it was the ink that it cost to make the ledger book entry. They paid absolutely nothing else for it.

Now, these are obligations of the United States Government and, consequently, of the people and taxpayers of the United States. These are obligations which, as the law exists, as it is now set up, the people, that is, the working people, have got to meet and pay. Now, I take the position that they paid absolutely nothing for it. There is no consideration for what they got. As a matter of fact, it is unlawful for them to do that, to coin and create money, that is, providing that the Declaration of Independence and

the Constitution of the United States is in full force and effect in this United States. It is unlawful for them to do that, and they can acquire absolutely no rights by virtue of this activity.

Now, getting back to the question of whether or not consent is necessary to name the United States as a defendant: Number one, this is not a suit against the United States. This is a suit in favor of and in benefit of the United States. This is a suit to set aside obligations of the United States. Section 1346 says: "The district courts shall have original jurisdiction, concurrent with the Court of Claims of:

"(1) Any civil"—well, Section 1 relates to tax claims.

"Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution or any Act of Congress, or any regulation of an executive department, or by any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort."

Now, as I said before, actually this section, as I see it, is not applicable. The Constitution of the United States extends the judicial power of the United States to any suit in which the United States shall be a party. Without any statute whatsoever, the Constitution gives these plaintiffs, as taxpayers, the right to start this action.

Furthermore, the Ninth Amendment of the Constitution of the United States specifically states—the Ninth and the Tenth are applicable here—the Ninth says: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

"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."

There is nothing in the Constitution of the United States that states that a taxpayer or a citizen of the United States cannot sue the United States. As a matter of fact, that is one of the natural rights guaranteed by the Declaration of Independence, and as such a citizen of the United States has got a right to sue the United States without their consent or without any statutory authority whatsoever.

The Court: I think we will take a ten-minute recess, gentlemen.

(A brief recess was taken.)

The Court: You may resume, Mr. Daly.

Mr. Daly: With reference to the consent of the United States to be sued—before I proceed, as I understand it, I will have a right to file a brief on this matter on all points?

The Court: Yes.

Mr. Daly: Then it won't be necessary for me to go into it in great detail. But 91 Corpus Juris Secundum, Section 178, states: "The court will look beyond the designation of the parties on the record and determine who are the real parties to the litigation in deciding if the suit is one against the United States."

Now, their second contention is that the plaintiffs have no standing to maintain this action. Well, number one, the power to coin and create money is a power which the people through the Constitution of the United States have vested in the hands of Congress as a legislative power. Once the legislative power is placed in the hands of Congress,

the Congress cannot abdicate, that is, they cannot surrender this power to even another department of government, let alone private corporations or foreign interests.

Now, 91 Corpus Juris Secundum, Section 125, states specifically: "Congress has the power, under Article I, Section 8, clause 5, of the constitution to coin money and regulate the value thereof; and it has broad, comprehensive national authority over the subjects of revenue, finance, and currency, derived from the aggregate of powers granted under other constitutional provisions; and pursuant to these powers Congress is authorized to establish, regulate, and control the national currency and to make that currency legal tender for all purposes."

Now, part of the relief asked for in the complaint is that this nuisance activity that these banks jointly and severally are engaged in, coining and creating money on their own books and in passing Federal Reserve notes—and in passing I note that we now have a new Federal Reserve $1.00 bill which is redeemable in nothing and is issued by the Federal Reserve Banks for the cost of printing—that that nuisance activity be stopped, halted, and brought to an end. Only Congress—according to this section, only Congress—has the power to issue obligations such as Treasury notes and make them legal tender for the payment of debts and obligations.

Further, the suit against the Commercial State Bank of St. Paul asks that the Commercial State Bank be stopped from this activity also. Now, the Commercial State Bank of St. Paul, as I understand it, is a state-chartered institution, chartered under and by virtue of the laws of the State of Minnesota. Now, Article I, Section 10, of the Constitution states that "No State shall * * * coin Money, emit Bills

of Credit; make any Thing but gold and silver Coin a Tender in Payment of public debts."

Now, certainly if no state can do that, then no state-created corporation or agency can do it. That follows the same as day follows night. And they are also coining and creating money on their own books and acquiring United States securities by virtue of this unlawful activity. So the Commercial State Bank of St. Paul is in worse shape than the rest of them, notwithstanding their affidavit that they don't belong to the Federal Reserve System. The only thing that they said is that these national banks, the Federal Reserve System has some control over them, the Federal Government has some control over them; but these state banks, they have no control at all. The affidavit merely states that they have no control, or there is no control over them whatsoever in their activity.

Now, their claim that the Court lacks jurisdiction to compel or restrain official action relating to discretionary governmental functions is absurd. The Constitution of the United States is not discretionary with them.

As to the claim that the venue is improper as to Lyndon Johnson and Douglas Dillon, counsel for the government cites 28 USC 1391, which provides that "A civil action in which each defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, may, except as otherwise provided by law, be brought in any judicial district in which: The defendant in the action resides * * *". Well, these defendants reside in this district. Then he goes on and says: "If suits against government officials that would bind the United States are construed as suits against the sovereign, it should

follow that in such suits the government officials may not be joined with other defendants." Well, sovereignty resides in people and not in the government of the United States.

Now, I have made an application for a legally-constituted three-judge court to hear and determine this matter. I believe there is an affidavit of mine on file that the United States Marshal for the District of Columbia has refused to serve Lyndon B. Johnson, the President of the United States, with a copy of the amended summons and complaint, and for that matter, refused to serve, as I understand it, Kennedy with the original one. Now, over the Supreme Court Building of the United States there is a statement that we have a government of laws and not of men. If there is anybody in the confines of the United States that cannot be served, then we don't have a government of laws, we have a government of men. The President is a proper party to these proceedings because he is actually the one in charge of the United States Treasury. His agent could be restrained, but unless there is a restraining order against the President it doesn't have the legal effect which it should have.

I have also asked for an interlocutory summary judgment for the relief demanded against the defendant Federal Reserve Bank of Minneapolis and Northwestern National Bank of Minneapolis upon the grounds that the defendants have failed to answer the complaint herein—well, the Federal Reserve Bank of Minneapolis has not answered; the Northwestern National Bank of Minneapolis has put in their answer—and for further order of the Court to appoint a referee to hold a hearing and determine the nature and extent of any and all United States securities running in

favor of said defendants, whether said securities are in their possession or not, the same to be declared null and void and no obligation owing to the defendant United States Government. The state of the record at the present time is certainly in order for appointment of a referee to determine the extent and nature of the securities held by the Federal Reserve Bank of Minneapolis, and I am now so moving.

For an interlocutory judgment against the defendant Lyndon B. Johnson and Douglas Dillon, enjoining them and each of them from causing any of the moneys, tax or otherwise of the government of the United States of America to be paid toward the payment of either purported obligations or interest thereon held by the defendant banks and each of them.

That in substance is the issues pending before the Court this morning.

The Court: This last motion you mentioned, have you a notice of that motion in the file?

Mr. Daly: Yes. I believe there is also an application in the file for a three-judge court.

The Court: Yes. The first thing, Mr. Daly, before taking up the matter of a three-judge court, the Court will have to give serious thought to whether or not a constitutional question is presented. I merely mentioned that in passing.

Mr. Abramson: In that regard, your Honor, the Government would ask leave of this Court to submit a brief memorandum in the next day or so relative to that particular request that counsel has made on behalf of his clients.

The Court: I think Mr. Daly has asked to file a memorandum or brief—or are you satisfied with what you have?

Mr. Daly: No, I have a lot of law here which is applicable.

The Court: Well, perhaps you can sort of summarize what you have in mind and any additional authorities that you have.

Mr. Daly: In a brief?

The Court: Yes. How much time do you want for that, Mr. Daly?

Mr. Daly: Oh, 20 days.

The Court: Is that satisfactory?

Mr. Abramson: It is all right with me.

Mr. Hammond: It is agreeable with me, your Honor.

Mr. Levin: Yes.

The Court: All right. Then each counsel in the case opposing, I suppose, can respond by letter to me, a copy of the letter to you, and we will consider the matter submitted then. Is that satisfactory?

Mr. Daly: If I receive copies of all of their memorandums.

The Court: Yes. Well, I will direct counsel after they receive a copy of your memorandum to acknowledge it and either respond or advise you that the matter is being submitted. After 20 days I expect to hear from all parties and I will go to work on it.

(Whereupon, the proceedings in the above-entitled matter were concluded at 11:45 o'clock a. m.)

Reporter's Certificate

(Filed February 10, 1964.)

I, Oswald C. Breviu, one of the official court reporters of the United States District Court for the District of Minnesota, do hereby certify that I recorded in stenotype the proceedings had in the case of W. Frank Horne, et al., plaintiffs, versus Federal Reserve Bank of Minneapolis, et al., defendants, on the 27th day of January, 1964, at 10:40 o'clock a. m., at St. Paul, Minnesota, before the Honorable Dennis F. Donovan; and thereafter caused to be transcribed into typewriting the foregoing pages of transcript, which I hereby certify is a true and correct transcript of such proceedings.

OSWALD C. BREVIU,
Official Court Reporter.

Memorandum Order

(Filed March 9, 1964.)

To Daly and Daly, by Jerome Daly, Savage, Minnesota, for plaintiffs; Miles W. Lord, United States attorney, by Sidney P. Abramson, assistant United States attorney, Minneapolis, Minnesota, for defendants United States of America, Lyndon B. Johnson, President of the United States, Douglas Dillon, Secretary of the United States Treasury, and Federal Reserve Bank of Minneapolis; Briggs and Morgan, by Frank J. Hammond and Richard H. Kyle, St. Paul, Minnesota, for defendant First National Bank of St. Paul; A. I. Levin and Albert D. Levin, St. Paul, Minnesota, for defendant Commercial State Bank; Faegre and Benson, by Lawrence C. Brown, Minneapolis, Minnesota, for defendant Northwestern National Bank of Minneapolis.

The instant case comes before the Court on motions by all defendants for summary judgment.

The amended complaint alleges that plaintiffs are citizens, taxpayers and voters of the United States and, as such, bring this action to enforce the primary right of the people of the United States; that on two occasions one of the plaintiffs presented amounts of foreign currency to defendant Northwestern National Bank for exchange, and goes on to allege:

> "As and for a cause of action on behalf of plaintiff Leo Zurn, individually. Plaintiff Zurn alleges that on November 5, 1963, he presented 363 dollars in Canadian currency for exchange at the Foreign Exchange Department of the Northwestern National Bank of Minneapolis, defendant herein, and that he received

in exchange therefor $4.87 lawful money of the United States as and for his return.

"As and for a cause of action on behalf of plaintiff Joan Van Poperin, individually, plaintiff Van Poperin alleges that on November 5, 1963, she presented 287 dollars in Canadian currency for Exchange at the Foreign Exchange Department of the Northwestern Bank of Minneapolis, defendant herein, and that she received in exchange therefor $4.76 in lawful money of the United States as and for her return."

The Declaration of Independence and the Constitution of the United States are also pleaded.

Plaintiffs base their claim specifically on the Constitution of the United States, Article I, Section 8, Clause 5, which states that Congress shall have the power to coin money and regulate the value thereof. It is plaintiffs' contention that notes issued by the Federal reserve banks constitute an illegal coining of money.

Plaintiffs also bring this suit as a class action for the benefit of all taxpayers. They seek an injunction that would prevent the use of tax money to pay interest on bonds purchased with illegal money.

For the purpose of this motion defendants admit the alleged transactions and the amounts as set forth in the complaint. They admit that the remainder must have been paid in Federal reserve notes. It must be assumed that the difference between the small amount alleged to be received and the total value of the foreign money was paid to plaintiffs in Federal reserve notes. If this were not true, plaintiffs would have no grounds on which to attack the Federal Reserve System.

Summary judgment is an extreme remedy.[1] On motion for summary judgment, the Court must assume all facts alleged in the complaint to be true. In this case, the motions will be granted only if the facts alleged will not justify relief as prayed for.[2]

The questions raised by defendants on their motions for summary judgment are:

1. Do plaintiffs have standing to raise the question of the constitutionality of the statutes involved? (National Banking Act and the Federal Reserve Act.)

2. Does the complaint properly raise a justiciable question?

3. Does the Court have power to restrain the President and the Secretary of the Treasury in this case?

In order to grant the motions for summary judgment, these questions must be answered in the negative.

A person challenging the constitutionality of a statute must show that the challenger has sustained injury by the operation of the challenged statute.[3] This injury must be specific, not speculative, or in the realm of conjecture. It is

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1 *Warner v. First National Bank of Minneapolis,* 8 Cir., 236 F. 2d 853.

2 Plaintiffs cite as authority to bring this action:
Mine Safety Co. v. Forrestal, 326 U.S. 371, 66 Sup. Ct. 219, 90 L. Ed. 140;
Guaranty Trust Co. v. Henwood, 307 U.S. 247, 59 Sup. Ct. 847, 83 L. Ed. 1266;
Carter v. Carter Coal Co., 298 U.S. 238, 56 Sup. Ct. 855, 80 L. Ed. 1160;
Norman v. B. & O. R. Co., 294 U.S. 240, 55 Sup. Ct. 407, 79 L. Ed. 885;
Phillips v. Brandt, 231 Minn. 423, 43 N. W. 2d 285;
Brainerd Dispatch Newspaper Co. v. Crow Wing County, 196 Minn. 194, 264 N. W. 779;
Burt v. Clague, 183 Minn. 109, 235 N. W. 620;
Bowen Imp. Co. v. Van Hafften, 209 Mo. App. 629, 238 S. W. 147;
Lindstrom v. National Life Ins. Co., 84 Ore. 588, 165 Pac. 675.

3 *Fairchild v. Hughes,* 258 U.S. 126, 42 Sup. Ct. 274, 66 L. Ed. 499.

well-established that a taxpayer may not attack an expenditure measure without more specific injury than is indicated in the present case.[4] Examination of the file contents discloses that plaintiffs have not shown justiciable injury required to give them basis in law to attack the expenditure of tax money for the purpose of paying interest on United States government bonds. Plaintiffs claim that the Federal reserve notes are worthless and that they were injured when they received them in exchange for foreign currency. By act of Congress these notes are legal tender in the United States.[5] When plaintiffs received these questioned notes, they received the exact value that they would have received if treasury certificates had been offered to them.

It has long been law and tradition that Congress has the power to create and regulate banks.[6] The National Banking Act and the Federal Reserve Act are the acts which create and regulate the national banks. Congress undeniably has the power to so legislate.

The Court has considered all that plaintiffs' counsel has said in oral argument and by brief against the granting of the present motions.

To summarize, it appears from the file, oral arguments and briefs in the case at bar that plaintiffs do not have the right and requisite standing to bring this action and the motions for summary judgment must therefore be granted.

The above disposition abates the necessity for a three-judge hearing.[7]

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4 *Massachusetts v. Mellon*, 262 U.S. 447, 43 Sup. Ct. 597, 67 L. Ed. 1078.
5 31 U.S.C.A. § 462.
6 *McCulloch v. Maryland*, 4 Wheat. 316.
7 *Water Service Co. v. Redding*, 304 U.S. 252, 58 Sup. Ct. 865, 82 L. Ed. 1323;
White v. Gates, D.C. App., 253 F. 2d 868;
Wicks v. Southern Pacific Co., 9 Cir., 231 F. 2d 130.

It is so ordered.
Exceptions are allowed plaintiffs.

Dated this 5th day of March, 1964.

DENNIS F. DONOVAN,
United States District Judge.

Clerk's Notice Under F.R.C.P. Rule 77d

(Filed March 9, 1964.)

To Daly and Daly, Attorneys at Law, Savage, Minnesota, attorney for plaintiffs; Miles W. Lord, U. S. attorney, 596 U. S. Courthouse, Minneapolis, Minn., attorney for defts. U.S.A., Lyndon B. Johnson, President, Douglas Dillon, Secy., of the Treasury, and the Fed. Res. Bank of Mpls., Briggs and Morgan, First National Bank Building, St. Paul, Minn., attorney for Deft. 1st Nat. Bank of St. Paul, A. I. Levin and Albert D. Levin, Commerce Building, St. Paul, Minn., attorney for Deft. Commercial State Bank, Faegre and Benson, 1260 Northwestern Bank Building, Minneapolis, Minn., attorney for Deft. N.W. Nat. Bk.

You are hereby notified that in the above entitled cause on the 9th day of March, 1964, we have received and filed Judge Dennis F. Donovan's memorandum order granting the motions by all defendants herein for summary judgment, and that judgment has been entered pursuant thereto.

FRANK A. MASSEY,
Clerk,
By LAWRENCE R. TAPPER,
Deputy Clerk.

Judgment

(Filed March 9, 1964)

This action came on for hearing before the Court on motions by all defendants for summary judgment, Honorable Dennis F. Donovan presiding, and the issues having been heard and a decision having been duly rendered granting said motion, it is

Ordered and adjudged that the above named plaintiffs, W. Frank Horne, Leo Zurn, Joan Van Poperin, William McNeely, P. A. Del Valle, John Doe and Richard Roe, take nothing, that the action be dismissed on the mertis, and that the above named defendants, Federal Reserve Bank of Minneapolis, First National Bank of St. Paul and Commercial State Bank, St. Paul, Northwestern National Bank, Minneapolis, Lyndon B. Johnson, President, United States, Douglas Dillon, Secretary, U. S. Treasury, and the United States Government, do recover of the above named plaintiffs their costs of action.

Dated at St. Paul, Minn., this 9th day of March, 1964.

FRANK A. MASSEY,
Clerk,
By LAWRENCE R. TAPPER,
Deputy.

Notice of Appeal

(Filed March 18, 1964.)

To the clerk of the United States District Court, District of Minnesota, Third Division; Miles W. Lord, United States Attorney, United States Court House Building, Minneapolis, Minnesota; Briggs and Morgan, attorneys for defendant, First National Bank, St. Paul, Minnesota; A. I. Levin and A. D. Levin, attorneys for defendant, Commercial State Bank, St. Paul, Minnesota; Faegre and Benson, attorneys for defendant, Northwestern National Bank, Minneapolis, Minnesota:

Sirs:

You will please take notice that plaintiffs hereby appeal to the United States Circuit Court of Appeals for the Eighth Circuit from the judgment made and entered herein on March 9, 1964, and from the whole thereof.

Dated this 17th day of March, 1964.

DALY and DALY,
By JEROME DALY,
23 East Minnesota Street,
Savage, Minnesota,
Attorney for Plaintiffs.

Statement of Relevant Docket Entries

Nov. 7, 1963—

Filed Complaint.

Issued Summons.

Dec. 6, 1963—

Filed Separate Answer of Defendant The First National Bank of St. Paul, with aff. of service by mail on 12-4-63.

Dec. 9, 1963—

Filed Amended Complaint.

Issued Summons to Lyndon B. Johnson, President of the United States.

Dec. 12, 1963—

Filed Separate Answer of Commercial State Bank, St. Paul, with affidavit of service by mail 12-5-63.

Jan. 9, 1964—

Filed Notice of Motion returnable at St. Paul 1-27-64 on motion by defendants Lyndon B. Johnson, President of the U.S., Douglas Dillon, Secretary, U.S. Treasury, the United States of America, and the Federal Reserve Bank of Minneapolis, for summary judgment, or, in the alternative, dismissal. Aff. of service by mail on 1-8-64 is attached.

Jan. 14, 1964—

Filed Separate Answer of defendant NW National Bank of Minneapolis with aff. of service by mail on 1-10-64.

Filed Notice of Motion and Motion by plaintiffs for order requiring the U.S. Marshal to forthwith serve copies of amended summons and complaint upon Lyndon B. Johnson, President of the U.S.; for interlocutory summary judgment against Federal Reserve Bank of Minneapolis and NW National Bank of Minneapolis; for

appointment of a referee to hold hearing and determine the nature and extent of any and all U.S. Securities running in favor of said defendants, and a declaration that same be null and void; and for an interlocutory injunction against the defendants Lyndon B. Johnson and Douglas Dillon, enjoining them and each of them from causing any of the monies of the U.S. Govt. to be paid toward payment of any purported obligations or interest thereon held by the defendant banks and each of them. Affidavit of Jerome Daly is attached, as is aff. of serv. by mail on 1-11-64 and on 1-13-64. Motion is returnable 1-27-64 at St. Paul, Minn.

Filed application for three-judge District Court and for notice to interested parties; aff. of serv. by mail on 1-13-64 is attached.

Jan. 16, 1964—

Filed Motion for Summary Judgment by deft. First National Bank of St. Paul, returnable at St. Paul 1-27-64, with aff. of serv. by mail on 1-14-64.

Filed Notice of Motion and Motion of deft. NW National Bank of Mpls., for Summary Judgment, returnable at St. Paul 1-27-64, with aff. of serv. by mail on 1-15-64.

Filed Notice of Motion and Motion of deft. Commercial State Bank of St. Paul for order granting summary judgment in favor of said deft., and for dismissal. Aff. of Stanier E. Mason, and aff. of serv. by mail on 1-15-64 are attached. Matter returnable at St. Paul 1-27-64.

Jan. 27, 1964—

Entered record of hearing on the following motions: (a) By defts. Federal Reserve Bank of Minneapolis, Lyndon B. Johnson, President of the U.S., Douglas Dillon, etc., and the U.S. for summary judgment, or in the alternative, dismissal; (b) by deft. NW National Bank of Mpls. for summary judgment; (c) by deft. First National Bank of St. Paul, for summary judgment; (d) by deft. Commercial State Bank of St. Paul for summary judgment and for dismissal. The motions are argued, submitted, taken under advisement. Entered record of hearing on motion by plaintiffs in re service of amended summons and complaint on the President of the U.S., for an interlocutory summary judgment as to Federal Reserve Bank of Mpls. and NW National Bank of Mpls.; for appointment of a referee; for interlocutory injunction against defts. Lyndon B. Johnson and Douglas Dillon. Said motions argued, submitted and taken under advisement. Counsel for U.S. and plfts. to submit briefs on the subject of a three-judge court, etc., within 20 days. Other counsel may submit briefs if they so desire; otherwise to acknowledge receipt of other briefs by letter to the Court and to Mr. Daly. (Donovan-J.).

Feb. 10, 1964—

Filed Reporer's Transcript of Proceedings had January 27, 1964.

Mar. 9, 1964—

Filed and entered Memorandum Order granting the motions by all defts. herein for summary judgment (Donovan-J.; 3-5-64).

Filed and entered judgment pursuant to the foregoing Memorandum Order.

Mailed Notice to counsel pursuant to Rule 77d.

Mar. 18, 1964—

Filed Notice of Appeal from the judgment entered herein 3-9-64.

Mailed c/copy of Notice of Appeal to U.S. Attorney, 596 U.S. Courthouse, Minneapolis; Briggs and Morgan, First National Bank Bldg., St. Paul; Levin and Levin, Commerce Bldg., St. Paul; and Faegre and Benson, 1260 NW National Bank Bldg., Minneapolis; Roland Graham, Federal Reserve Bank, Minneapolis.

Mar. 19, 1964—

Filed Summons returned served 11-13-63 United States Atty.; 11-13-63 Federal Reserve Bank, NW National Bank; 11-15-63 First National Bank of St. Paul, Commercial State Bank and Douglas Dillon, Sec. U.S. Treasury.

Mar. 31, 1964—

Filed Plaintiff's Cost Bond on Appeal.
