

Case Files, General Index, and Briefs of the Supreme Court and the Court of Appeals

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Version 3
August 20, 2018

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

In the Matter of the Suspension of)
)
) ORDER
JEROME M. DALY)
An Attorney At Law)

It appearing to the satisfaction of the Court that by an order of the Supreme Court of the State of Minnesota, filed September 5, 1969, Mr. Jerome M. Daly residing at Savage, Minnesota, who had heretofore been duly admitted as an attorney and counselor at law in such state, and duly licensed to practice in all the courts therein, was suspended effective October 1, 1969, provided that the said Jerome M. Daly might, prior to October 1, 1969, apply for limited exceptions to the order of temporary suspension; and it appearing that said Jerome M. Daly was admitted to practice as an attorney in this court on February 23, 1954.

IT IS ORDERED, subject to the conditions hereinafter set forth, that effective October 1, 1969, and until the further order of this Court, said Jerome M. Daly is suspended from further practice before this Court.

IT IS FURTHER ORDERED, that at any time within thirty days of the date hereof, the said Jerome M. Daly shall have leave to appear and show cause before this Court why this order should be vacated and set aside.

IT IS FURTHER ORDERED, that within five days from the date hereof, the Clerk of this Court shall cause this order to be served upon said Jerome M. Daly by mailing a copy thereof to him at his last known address, and that he cause proof of such service to be made and filed herein.

DATED THIS 10 day of Sept., 1969.

BY THE COURT

Chief Judge, United States District

Filed SEP 10 1969 19
Frank A. Massey, Clerk

By _____ Deputy

Respondent's Ex GGGG
Imy 3/18/70

12174

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
OFFICE OF THE CLERK
ST. PAUL 55101

FRANK A. MASSEY, CLERK

September 10, 1969

Mr. Jerome M. Daly
28 East Minnesota St.
Savage, Minn.

Dear Mr. Daly:

Please find enclosed herewith a copy of Judge Devitt's order signed and filed this date suspending you from further practice in this court effective October 1, 1969.

Sincerely,

Lawrence R. Tapper

Lawrence R. Tapper,
Deputy Clerk.

State of Minnesota
District Court, Fourth Judicial District
Minneapolis

CHAMBERS
IRVING R. BRAND
JUDGE

December 16, 1964

Jerome M. Daly, Esq.
28 Minnesota
Savage, Minnesota

Kermit A. Gill, Esq.
Rand Tower
Minneapolis, Minnesota

Samuel Saliterman, Esq.
Foshay Tower
Minneapolis, Minnesota

Robert W. Dygert, Esq.
Northwestern Bank Building
Minneapolis, Minnesota

James P. Rorris, Esq.
Rand Tower
Minneapolis, Minnesota

Mr. Paul L. Halvorson
208 South 4th
Stillwater, Minnesota

Re: Peterson v. Peterson

Gentlemen:

The above-entitled matter came on for hearing with respect to plaintiff's motions and with respect to the Court's order of December 4, 1964. Mr. Dygert and Mr. Rorris, attorneys for plaintiff, appeared; also, Mr. Kermit A. Gill and Mr. Samuel Saliterman appeared in connection with their claim of a lien on the trust for attorneys' fees. There was no appearance by Mr. Jerome M. Daly, attorney for defendant Palmer A. Peterson, nor was there any appearance by defendant Halvorson. The Court waited until 11:20 A.M. in an effort to ascertain whether there would be any further appearances.

42174

Respondent's Ex V
ltr 2/12/70

This is to advise you that the matters that were to come on for hearing this morning have been continued until Thursday, December 31, 1964, at 1:00 o'clock P.M.

All parties and their respective counsel are requested to appear before the Court at that time for a full hearing on the above-mentioned matters, and the parties are hereby required to comply with any previous orders of this Court.

Very truly yours,

Irving R. Brand
District Judge

cc: Dr. Palmer A. Peterson
7856 Portland Avenue South
Minneapolis, Minnesota

AN EASTER TENET

The following are religious beliefs which ought to be held sacred:

I believe that the question of religion is a question which every man must settle for himself.
I believe that I should have an open mind governed by reason.
I believe that my own mind is my own church.
I believe that there is one God and only one, who made all things, governs the World by His providence, who ought to be worshipped by adoration, prayer and thanksgiving and served by doing good to the human race.
I believe that the equal rights of each individual in the World are derived from the creator by natural endowment, including freedom, life, liberty and the pursuit of happiness.
I believe that religious duties consist in doing Justice, loving mercy, and endeavoring to make our fellow creatures free and happy.
I believe that the Soul is immortal and hope for happiness beyond this life.
I believe that God will certainly reward virtue and punish vice, either here or hereafter.
I believe that the altar of God is all of creation and have sworn upon it eternal hostility against every form of tyranny and oppression over the mind of man.
I accept and acknowledge the moral teachings and principles of Jesus of Nazareth.
I acknowledge all persons and institutions of churches and their organizations and afford them their proper worth as creations of my fellow man. I condone their creeds, organizations and activities in so far as they are not human inventions, arrogating attributes of Deity to themselves, for the purpose of terrifying and enslaving the human race to monopolize power and profit, in conflict with the terms of the Declaration of Independence and the subsequently established inviolate rights secured by the Constitution of the United States.

LY

JEROME DA

Respondentia Ex T 1
2/16/50 lmg

42174

STATE OF MINNESOTA 566224 DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Faye V. Peterson,

Plaintiff,

-vs-

Palmer A. Peterson, et al,

Defendants.

REPORTER'S CERTIFICATE

I, Clarence D. Hall, do hereby certify that I am one of the official Court Reporters of the District Court of the Fourth Judicial District of the State of Minnesota; that as such reporter I reported in stenotype the testimony and proceedings had on the trial of the above-entitled action on January 4, 1965; that thereafter I transcribed the foregoing 22 pages of typewritten matter, which constitutes a full, true and correct transcript of the excerpt of said proceedings.

Dated at Minneapolis, Minnesota, February 24, 1965.

Clarence D. Hall

Petitioner's Exhs

17 thru 24

Jerome Daly
28 East Minnesota Street
Savage, Minn. 55378

June 16,1969

Mr. George Ramier, Esq.,
Practice of Law Committee
100 Minnesota Federal Bldg.
Minneapolis, Minnesota

Sir: In Re your Letter of 6-12-69

This will acknowledge yours of June 12,1969.

Client, Alfred Joyce, did commence actions to try to recover the possession of 80 acres of his land back from the N.W.Bank of Appleton and its President R.C.Krebs and one Olson who the Bank sold the land to. Joyce's position was that he was in the process of selling to the Bank for cash when in the spring of 1964 Olson came onto Joyce's land without permission and ran Joyce's hired man off of the 80 acre plot when he was working the ground. Joyce at no time transfered the possession or the seizen to any one. He was thus divested of his possession contrary to the Law of the Land and without a Jury trial. He has not been paid for the land that I know of and is still entitled to a Jury trial. I have not seen him for quite some time now. The last I recall is that he signed his own pleadings in the last case. He is handeling it himself except for the actual Jury trial which I agreed to handel for him. I do not know if the client has dropped the litigation or not.

As regards the complaint made by Mr. Melby, U.S.District Judge Miles Lord gave me a copy of the complaint that Melby has forwarded to you. Justice Martin V. Mahoney was in charge of the trial. I do not know what Melby is complaining about as far as I am concerned. He lost the case and has not chose to appeal in the manner provided by Law nor has he made any further application to Mahoney. I am enclosing a copy of my publication of February 7,1969 which explains the proceedings had so far in the Justice Court along with copies of Meyers' Finance Review of May 27,1969, June 4,1969 and June 9, 1969 which are all self explanatory.

As regards that Faye V. Peterson matter, the case was sent out to trial without notice to me before a Judge I have filed an affidavit of prejudice against. I am enclosing a copy of the brief that I filed in the Supreme Court where the matter is now pending. This should make a satisfactory explanation.

As regards Judge Fredrich, client directed me to disqualify him in an action that was pending before him which I did. The Judge had no business blowing up. He has, however, cooled off by now and we are back on speaking terms, so I see no reason to belabor the point.

42174.

Petitioners Ex 17
2/10/70 ems

I note that it is only Judges and Lawyers who are complaining here and adversary ones at that so I think the enclosures should be a satisfactory explanation of these complaints. They are in open, avowed and hostile rebellion against the Constitutions of the United States and the State of Minnesota contrary to the express provisions of Title 18, Sec. 2381 thru 2383, and Title 42, Sections 1983 et seq.

Furthermore, I am not a Member of the Minnesota State Bar Association and am of the opinion that this Union does not have any Jurisdiction to hold a hearing on me or any other Lawyer. No one in it are elected by the people of the State of Minnesota nor are they operating pursuant to the Constitutions of the U.S. or the State of Minnesota or any laws made in pursuance thereof. The State of Minnesota is the only real party in interest and the State can act only thru its authorized Attorneys.

I have to be in Kansas City on Wednesday the 18th so I will not be able to attend. However, I do feel friendly and if the enclosures do not satisfy your employers please let me know what dates will be available in July and I will try to attend one of your meetings. Also before I can talk about any of my client's affairs I will have to obtain their permission from them in writing which I do not have at this time. It would also be help ful if you would send me copies of the Complaints filed and also exactly who is complaining. I do have Melby's Complaint though.

I might further explain that after the foreclosure proceedings were started by the First National Bank of Montgomery and before the Sheriff's sale I sent them $750 in Federal Reserve Notes which they agreed to take and did appropriate to themselves upon the oral agreement with me that they would stop the foreclosure proceedings and re-instate the mortgage. They took the $750.00 applied it to the Notes and went thru with the sale any way in breach of their agreement; so when I get areund to it I am going to sue the Bank for Slander of Title.

I remain,

Respectfully yours,

Jerome Daly

Jerome Daly

h/

$ 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

under the constitution so collect.

Precedents in court are plentiful. AM JUR 2D #8 says "the term dollar means money. Since it is the unit of the money of the country... it cannot mean promissory notes or other evidences of debt.

"Bank notes... are a good tender as money unless specifically objected to.

"Money includes only such bank notes... in actual and general circulation at par with coin as a substitute for coin, interchangeable with coin."

"Bank notes circulate as such only by general consent and usage.. consent and usage is based on the convertibility of such notes into coin at the pleasure of the holder upon presentation to the bank for redemption. But... upon the failure... or inability of the bank to redeem its bills they instantly lose their character as money... the notes become the mere dishonoured and depreciated evidences of debt."

Under Article 1 Section 10 the several states are prohibited from coining money, emitting bills of credit, or making anything but gold and silver coin a tender in payment of debt.

YOU AND THE CONSTITUTION

If you sell 1000 shares of General Motors through Merrill Lynch in Minneapolis for $80,000 -- Merrill Lynch owes you $80,000. They will offer you a cheque. You will take this to a state bank and demand $80,000 in silver coinage of face value. The bank either pays or loses its charter, and closes its doors.

The next day you may buy 1000 shares of General Motors and issue a cheque. Nothing prevents anyone from accepting paper money. Bankers and brokers love paper money and credit. Give it to them. Accept your stock.

The next day you may sell your new General Motors and again demand gold and silver -- under the constitution.

This gives you silver at $1.29 per oz. on face value of coin and gold at $35 per oz. on the standards set earlier by the Congress. Of course they would have the right to pay in either silver or gold since both are legal tender.

If many do this of course, Merrill Lynch will go crazy. Soon Merrill Lynch would refuse to buy any stocks unless paid in gold and silver.

The result is the INTERNAL COLLAPSE OF THE AMERICAN PAPER $.

* * *

If you have money on deposit in the bank you can demand the bank pay you in gold and silver. It seems to me this is true, under your inalienable rights under the United States constitution.

CAN A JUDGE STOP IT?

Will your court judges nevertheless deny you these rights? Here is a precedent.

L. O. Cooke V. Samuel G. Iverson -- 108 Minnesota Report.

"When the language of the constitution is positive and free from all ambiquity, all courts are not at liberty by a resort to the refinement of legal learning to restrict its obvious meaning and to avoid the hardships of particular cases. We must accept the constitution as it reads when its language is unambiquous for it is the mandate of the sovereign power."

Well, it reads 'No state shall make anything but gold and silver coin a tender in payment of debt."

The constitution Article VI -- "The Senate and Representatives.. all executive and judicial officers, both of the United States and the several states shall be bound by oath or affirmation to support the constitution.

CONCLUSION -- No judge or group of judges under his oath can logically rule against Article I Section 10 of the constitution and it is not his business in any way to consider the consequences which may result from his sworn duty to rule for the constitution.

The Edwards V. Kearzey -- Supreme Court of the United States -- "Policy and humanity are dangerous guides in the discussion of a legal proposition. He who follows them far is apt to bring back the means of error and delusion. The prohibition (here) contains no qualifications and we have no judicial authority to interpolate any. Our duty is simply to execute it."

* * *

Likewise it is clear that Article I Section 10 of the constitution contains no qualification, and no judge has any right to interpolate any. His duty is simply to execute it.

The Supreme Court reference above also says this: "Anything that is forbidden by the constitution is void."

I believe it is quite clear and it is my interpretation that the Henry Fowler paper money is strictly and specifically forbidden -- and must therefore be void according to the U.S. constitution and precedent in law.

* * *

16AM JUR 2D #219 -- "When a court is created the judicial power is conferred by the constitution."

The only power the court has is therefore to affirm the constitution.

F.D.R. AND GOLD

From the constitution it becomes crystal clear that Franklin Delano Roosevelt never did have the authority to prohibit U.S. citizens from owning gold. It was and remains their fundamental right under their constitution.

16AM JUR 2D #212 -- "No arbitrary and unlimited power is vested in any department; such power is regarded as a condition subversive to the constitution, and the chief character and evil of tyrannical and despotic forms of government."

Justice Mahoney -- "There is no such thing as the idea of a compact between the people on one side and the government on the other. The compact is that of the people with each other to produce and constitute a government.

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

USURPATION

Franklin Delano Roosevelt forgot that he was an employee. He usurped the power of the U.S. constitution, defied it and abolished the fundamental guarantee. The U.S. constitution, Article V, says that no person shall be "deprived of... property, without due process of law...."

Roosevelt could legally have deprived people of their gold only by AMMENDING the constitution. He would have had to secure two-thirds majority in both houses and the approval of three-quarters of the legislatures of the various states. Of course, he never could have succeeded, so he circumvented the constitution and took and assumed the power of a despot.

The usurpation of this authority, and the despotism continued for 35 years, and still exists in defiance of the constitution under Mr. Nixon, the newest presidential servant of the constitution of the United States. By continuing to allow this usurpation Mr. Nixon condones and becomes a party to it.

I refer you to your historical DECLARATION OF INDEPENDENCE.

"When a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them (the people) under absolute despotism, it is their right, it is their duty to throw off such government and to provide new guards for their future security."

The usurpations were as follows:

Your paper money first lost its gold convertibility.

Your paper money next lost its 100% gold backing -- reduced to 40%.

Your paper money next lost gold backing -- reduced to 25% gold cover.

Your paper money next lost its silver convertibility.

Your paper money which promised to pay the sum of one dollar lost even that promise and is now simply entitled "one dollar".

All this amounts to, and qualifies as a "long train of usurpations."

Of course, your guaranteed authoritative right exists in the constitution. It is already there and should not have to be fought for. The wonder of it is that 200 million Americans would stand still like docile sheep in a slaughterhouse.

THE CONGRESS

The case in Minnesota (MFR #67) where Justice Mahoney refused to accept Federal Reserve notes as lawful money, and where he thereby denied an appeal by a Federal Reserve Bank is a breakthrough back to the constitution. Like the ghost of the murdered king, it will continue to haunt Macbeth (the money managers) -- unless someone can reverse Mahoney.

The fact that Jerome Daly of Savage, Minnesota defied a Federal Reserve Bank -- refused to pay his mortgage -- and has rendered the bank impotent to recover real property with unconvertible credit is a ghost that will not rest -- unless someone can take Daly's land away.

Now the U.S. Congress all know about it, and each one knows that the other one knows. I know they know, and you know they know, because I have told them. And I also KNOW that a considerable readership of this letter exists in Washington.

The BIG PRESS has withheld from you the truth about your money which your servants have squandered.

But now the press knows about the Minnesota case -- and they know that each other knows.

Since the Minnesota story is hard news of COMPLETE FACT (not opinion) they have no excuse not to publish this news.

Failure to tell you that a U.S. court* has rejected U.S. currency as money, and made the rejection stick, would amount to strong evidence of press censorship, if not complicity with the BIG money interests.

Now the Congress knows. What are they going to do to support their solemn oath of office to UPHOLD their constitution and yours?

* It has been objected that a Justice of the Peace Court is not a court of record. It IS a court of record in Minnesota -- indeed the oldest court.

WHAT CONGRESS CAN DO

Gold and silver must back the U.S. $. This is inherent in the constitution. Congress must set the measure -- say how much. Congress has not said how much since 1878. Now there isn't enough silver and gold to support the previous standards set by Congress. Article I of the constitution says Congress is to "coin money... and fix a standard of weights and measures." Making a new set of standards for the amount of gold and silver in a United States $ is mandatory. Whatever that amount is set at, will be the new convertible AMERICAN $. Unless Congress does this -- there is no constitution in the United States -- AND YOUR COUNTRY HAS BEEN DESTROYED!

WHAT YOU CAN DO TO PRESERVE THE U.S.A.

Write Congressmen and Senators.

Claim your right under the constitution and choose a decision by jury. If you have a G.I. insurance policy which you intend to cash in, DEMAND gold and silver coin and show them Article I Section 10 of the constitution.

If you do not claim, indeed DEMAND the rights granted you in your constitution, there will be no United States of America for your children.

THE SILVER PRICE

Now it is plain to see why U.S. authorities were so desperate to hold the price of silver; to sell off hundreds of millions of oz. -- all of its stockpile -- and then the melted coins besides.

BECAUSE of the inseparable siamese attachment "gold and silver specie" in the constitution. The silver price of $3 for example, in the light of the developments shown in this letter, would have been capable of bringing down the whole $ structure in short order. People could demand silver specie in payment of debt at $1.29 and sell later at $3.

Even at current prices the paper $ is in peril.

Last spring MFR made the accusation that the U. S. Treasury was selling silver short on the New York Commodity Exchange, and this came from a source in the N.Y.C.E. The Treasury denied this. That does not preclude the probable cooperation of the Treasury with Engelhard Industries and perhaps others to suppress the silver price on the N.Y.C.E. Engelhard obtained half of the dumped Treasury silver and was in a position to sell short on the commodity exchange.

This suppression of the silver futures market in conjunction with the superfluous sales of silver each week successfully kept the price under control, and even at a depressed level.

BUT TODAY YOU CAN GO TO THE MINNESOTA BANKS AND DEMAND SILVER COINAGE AND CLOSE ALL THE STATE BANKS OF MINNESOTA IN A MATTER OF DAYS. This probably exists in other states as well. It may not happen. But it CAN.

GET RID OF SILVER

It seems to be the plan to get all of the silver out of the country as soon as possible. The criminal export of strategic silver from the U.S.A. last year, the complete depletion of Treasury reserves at low prices, and now the encouragement of the export of melted coinage would seem to indicate a plan to rid the country of silver. Under such circumstances the constitution obviously could not be enforced for very real reasons of non-existent silver.

The U.S. executive branch too has mortgaged all

the gold belonging to the citizens under the constitution and refuses to give the citizens an account of the public financial condition. It is your money. It does not belong to Mr. Nixon or to Mr. Kennedy, but they will not tell you the TRUTH on how much is pledged to the I.M.F., Canada and Germany in Roosabonds.

YOUR LOYALTY

Your only loyalty is to the constitution of the U.S. For since when does the owner enthrone the servant? It is your duty to claim and assert your rights under the constitution and to demand from your servants that they honour and obey your constitution. They have no right to ask for your cooperation which in any way helps them to carry out acts contrary to the provisions of the constitution.

The executive branch have usurped the power of the people on money. They are imposters in contradiction of your rights. Their despotic powers have deprived you and your country of all the gold and silver which your constitution says is the only real money. By the usurpation of authority these despots under the cloak of philanthropy have ruined your nation and denuded it of all real money.

When they asked you not to hoard silver they were asking you to turn loose of it so they could melt it, thus deny the banks, and thus sabotage the specie payment section of your constitution. When they ask you not to own gold, they ask you to become an accomplice in subverting your own rights.

If a thief enters your house, can he ask your loyalty? Your help in stealing your own goods?

When your executive branch sells off your Treasury silver coins hot out of the melting pot but keeps them out of the banks they thwart the constitution which tells you that silver is your real money. When they say that gold is no good they sneer at your constitution.

For 35 years they have worked toward the monetary destruction of this great country, admired by all the world -- the U.S.A. Surreptitiously in the night they have bored holes in the monetary foundation.

History tells us no great empire has ever yet survived the implementation of fiat money.

* * *

That is why the founding fathers in their wisdom made gold and silver the basis for all U.S. money forever.

THE STORY

The trigger story to repeat briefly is this:

The case was in Justice Court, Township of Credit River; Martin V. Mahoney, Justice. In the State of Minnesota, County of Scott; plaintiff First National Bank of Montgomery, and defendant Jerome Daly. The bank had loaned $14,000 to Jerome Daly, which had not been paid, and it moved to secure possession of the property in a trial by jury. The jury unanimously rejected the plaintiff on the grounds that it admitted it had created the money out of nothing, and that it knew of no law that allowed it to create money. Therefore there was no consideration. The mortgage was declared null and void - Dec. 9, 1968.

The bank went to appeal in the DISTRICT Court and offered two paper dollars as the standard fee to the Justice of the Peace to transfer the case. Justice Mahoney refused the two dollar bills on the grounds they were not money and he was not required under the State of Minnesota to accept them. However, he invited the bank to a hearing to show cause how they could claim the two paper dollars was money under the law. The bank didn't show up.

The strongest point of this case is that the bank would rather give up $14,000 then be required to prove that Federal Reserve notes are money. They dropped the case, undoubtedly hoping the news would go no further. Appeal was denied Feb. 4, 1969. The story was further brought to light by MFR #67 last week. It is no secret now.

They may claim the Justice of the Peace Court is a low court and carries no precedent in law. But here we have the greatest PRECEDENT IN FACT. Jerome Daly has defied the Federal Reserve system of the U.S. to claim real property on a mortgage. They have not been able to claim it. Justice Mahoney has defied the Federal Reserve system to force him to accept Federal Reserve notes as money under the constitution of the U.S. and they have abdicated and run away from this challenge.

THE CREDIT

The credit for this goes to two patriotic Americans, Jerome Daly and Justice Mahoney, who have the courage to stand up for the constitution. For whatever may be the immediate hardship, these men recognize that if the constitution is gone, the whole country is gone. If you don't protect and claim your rights, eventually they disappear, and your liberties die from lack of use. Your liberties are very sick.

PERMISSION

While this letter is copyrighted, in this instance it is hereby authorized: Any person may reproduce, photograph, or print any quantity; and distribute as far and wide as may be desired -- WITHOUT LIMIT.

THE GOLD PRICE

The gold price has been dropping rather dramatically the last few days. No apparent reason. Obviously there is a concerted move afoot to depress gold. It would not be surprising to find that certain monetary authorities are themselves dumping gold on the free market to push down the dangerous price level contrary to their own Washington agreement of 1968. It has been fully established that the world monetary authorities are not to be trusted. Clandestine and secret agreements are rampant. They can be recognized only by their results. Despite all the manipulations, the situation continually worsens.

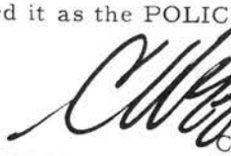
* * *

It is surprising how people purposefully disregard solid evidence served up for them on a platter. For the most part they shrug it off or laugh. The Harry Schultz Letter hits this pretty good when it says: "They laughed at Noah every day it didn't rain."

RECOMMENDATIONS

1. Demand silver whenever possible.
2. Buy silver coinage - all you can get. At 10% to 20% premium, it's a steal. Buy silver bullion in Switz. or buy near month futures - TAKE DELIVERY.
3. Hold silver and gold shares; buy S.A. golds.
4. For those brave enough to withstand the onslaught of the Internal Revenue Service, test constitutionality of FDR's dictatorial removal of your right to own gold.

Note: Nearly all Americans fear the Internal Revenue Dept. They regard it as the POLICE arm of a despotic government.



C. V. Myers, Editor.

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$ MYERS' 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".

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 fo 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.

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1940 1969

903 LANCASTER BLDG., CALGARY 2, ALBERTA, CANADA TELEPHONE (403) 269-1103

No. 68-X LET THE TRUTH BE TOLD June 9, 1969

This letter goes to all U.S. Senators and House of Representatives.

This letter is written as a special service and is not charged against your subscription. It is not within the power of a newsman to give any greater GIFT to his readers than the TRUTH. For that reason I want this short letter to stand out as my GIFT to my subscribers. It is the greatest and most NEEDED truth that I will ever be privileged to publish.

Not only can you own gold, you can go to the bank and DEMAND gold COIN at face value for paper money.

Not Mr. Nixon, not Mr. Kennedy, not Mr. McChesney Martin -- not all of these combined -- have the power to deny you this right -- for they are the servants of the constitution, not its master.

You are agreed, the government is agreed, all of the judges are agreed, and all are universally AGREED that the constitution is supreme. Let them read this and shiver.

YOUR CONSTITUTION SAYS

THAT IF YOU CAN'T OWN GOLD,

NEW YORK STATE CAN CREATE NOBILITY

AND TEXAS CAN JOIN MEXICO



ARTICLE I SECTION 10 -- "No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts or grant any Title of Nobility."

Remember the constitution was made for PEOPLE. Not for Chief Justices, not for bankers, not for politicians, presidents or Treasury secretaries. It was made for 200 million people who are born and live out their lives and die in the country that is called the United States of America. It was made to guarantee unalterably their freedom, and their rights.

It was made because of the oppression that the forefathers had suffered under despotic regimes. It was the banner of FREEDOM. It is epitomized in the Statue of Liberty outside of New York.

THE CONSTITUTION OF THE UNITED STATES IS THE UNITED STATES. It has been the hope of free men all over the world. It is the monumental document of mankind. If it is trampled, if any of its cornerstones can be arbitrarily removed -- these hopes of mankind must perish.

Its language is clear and simple. It was made for the workers, the farmers, the businessmen, the bulk of all the people to understand and read. It's language is so plain that legal learning is not needed in the interpretation of most of its articles and sections.

Please refer back to Article I Section 10: Notice that the founding fathers capitalized certain words for emphasis. In the section "make any Thing but gold and silver Coin a Tender in Payment of Debts" they didn't use the word 'anything'! They said any "Thing". This is the most positive statement possible that no "Thing" whatsoever shall be substituted for gold and silver coin. Not bullion silver, not bullion gold, not paper dollars -- but absolutely and irrefutably coin. Now coin is marked with a face value.

And so this says you can go to the bank and collect the face value marked on gold and silver coin.

* * *

Now please examine this whole section. All items are of equal importance. If a state can make any Thing but gold and silver Coin a Tender in Payment of Debts then it follows as night follows day that Illinois can make a treaty with Canada, Texas can enter into confederation with Mexico, and New York state can create nobility.

CONVERSELY if New York State cannot create nobility and if Texas cannot join Mexico, then every bank in the United States of America is obligated and must pay you gold and silver coin on face value.

ANY JUDGE THAT RULES AGAINST GOLD AND SILVER COIN AS THE FINAL SETTLEMENT OF DEBT RULES FOR THE DESTRUCTION OF THE CONSTITUTION OF THE UNITED STATES AND RULES FOR THE PERMISSION OF STATES TO SEPARATE AND TO CREATE FOREIGN TREATIES.

NO FEDERAL POWER

The federal government has no power whatsoever to decide what is or what is not money.

ARTICLE X -- "The powers not delegated to the United States by the Constitution, nor prohibited by

it to the States, are reserved to the States respectively or to the people."

Now please follow me closely and think hard:

Article X says that the powers that have not been given to the federal government are to be reserved to the States respectively, or to the people. The meaning of reserved is "to be kept back".

THEREFORE each and every power not specifically granted to the federal government is KEPT BACK from the federal government.

Your constitution declares and ordains that YOUR FEDERAL GOVERNMENT HASN'T GOT A LEG TO STAND ON IF IT TRIES TO FORCE YOU TO ACCEPT FEDERAL RESERVE NOTES AS LEGAL PAYMENT FOR DEBTS. It cannot force you to accept platinum, diamonds, feathers, shells, or anything whatsoever.

THE RESULT

IF YOU ARE OWED A DEBT -- IF SOMEONE WRITES YOU A CHEQUE FOR $100 -- AND IF YOU TAKE THIS TO THE BANK, THE BANK MUST GIVE YOU GOLD AND SILVER COIN. If they refuse you, the judiciary must enforce payment, or must seize the bank and its premises and offer for sale.

GOLD EQUALLY WITH SILVER

Now you will notice that the constitution says gold AND silver coin. It does not say gold or silver coin.

The result is that you can demand both gold and silver coin. And your case to demand gold is on an absolutely equal status with silver. The "And" makes the one to the other, no less or more important than the other -- or the one or the other, no less your right than the other.

The truth is that the constitution of the United States unquestionably and in complete ultimacy gives you the right not only to own gold coin but to demand gold coin in payment when you collect, and at face value.

* * *

They will tell you that there are laws to prevent this -- but if there are laws to prevent it, such laws conflict with the constitution. Since this part of the constitution has not been ammended it is the supreme law -- regardless of any other law of Congress. See 16AM JUR 2d #177 -- "The construction of a statute which brings it in conflict with the constitution will nullify it."

* * *

NEWSPAPERS will soon be forced to pick up this story because it is spreading underneath. When they do you will face complications that stagger the mind. For instance, you are required to file income tax returns if you make 600 DOLLARS. But money as defined by your ultimate law must be convertible to gold and silver coin. Therefore your currency is not money. How can a judge rule that you have made money if the constitution says "NO"?

Earle Guy was arraigned on a counterfeit charge on $20 bills in Credit River, Minn; defended by Jerome Daly. Justice Mahoney ruled: "It is not possible to make, counterfeit, forge and pass what is commonly known as Federal Reserve notes as they are already a forgery, are counterfeit, unconstitutional and void, and are in contemplation of law the same as if they never existed." Earle Guy was released.

The ramifications of the forbidden fiat money are devastating.

Yet any judge who rules against mandatory gold and silver convertibility, rules for the disintegration of the U.S.A. by ruling against Article I Section 10 which binds the states together.

With interest rates up 1% again today and Euro-$ interest at 12% the GALLOP has started.

As I see it we will be faced very soon with an emergency meeting of Congress to pass a new standard of weights and measures redefining the dollar.

Since the Treasury has got rid of most of the silver it would appear that the remaining 150 mm oz. would have to be valued at somewhere between $6 and $10 per oz., and gold (if they have $5 billion left) at about $200 an oz.

Silver will have to come back into the coinage. No other coinage material is allowed by the U.S. constitution. An ammendment to the constitution -- 2/3 of both Houses, and 3/4 of all states -- would take months in order to kick out silver. Meanwhile current coinage is unsupported in law.

As soon as the newspapers pick up these facts -- as soon as the public becomes informed -- we will be faced with a paper currency crisis greater than the MISSISSIPPI BUBBLE.

Lawyers and judges studying these matters this week are unable to come up with comforting answers.

* * *

JEROME DALY SAYS: The Congress can only legislate. The executive can only execute laws. The judiciary can only referee the law. When these three powers are vested in one branch, that is the definition of a dictatorship.

* * *

CAN YOU OWN GOLD BULLION? The Roosevelt law prohibiting the ownership of gold COIN is obviously not worth the ink it took to write it. Does this mean you can own gold bullion? Logically, the answer seems to be YES, because gold is the raw material of coins. If you are allowed to have bread, can wheat be prohibited; if you are allowed to own a car, can steel be forbidden; if allowed to wear a dress, can you be denied cotton?

THE KERNEL

FIAT MONEY IS FORBIDDEN IN THE U.S.A. IF IT SURVIVES THE U.S.A. DOES NOT.

FOREIGNERS BEWARE

Foreign governments should beware of U.S. Treasury negotiators on money. You face a danger that the grandiose scheme for $10 billion of paper gold could blow right out from under you within domestic America. Don't underestimate the American PEOPLE if they get their dander up.

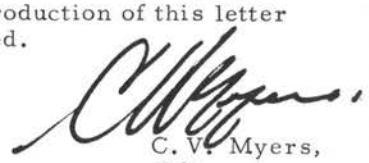
If they ever start to assert rights, which they already have, you face two grave developments.

(1) The American Treasury will be forced to stop sending foreigners any more gold or silver.

(2) A drastic revaluation of the American domestic $ commensurate with the amount of gold and silver left.

DISTRIBUTION

This letter follows MFR No. 68 in going to all cabinet members of Canada, Japan, Mexico, England, Germany, France, Netherlands, Belgium, Italy, Israel, Saudi Arabia and South Africa in addition to news media. Unlimited reproduction of this letter (with credit) hereby permitted.



C. V. Myers,
Editor.

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THE DALY EAGLE



FEBRUARY 7,1969

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IN THIS ISSUE: "A LANDMARK DECISION"

A MINNESOTA TRIAL COURT'S DECISION HOLDING THE FEDERAL RESERVE ACT UNCONSTITUTIONAL AND VOID; HOLDING THE NATIONAL BANKING ACT UNCONSTITUTIONAL AND VOID; DECLARING A MORTGAGE ACQUIRED BY THE FIRST NATIONAL BANK OF MONTGOMERY, MINNESOTA IN THE REGULAR COURSE OF ITS BUSINESS, ALONG WITH THE FORECLOSURE AND THE SHERIFF'S SALE TO BE VOID.

THIS DECISION, WHICH IS LEGALLY SOUND, HAS THE EFFECT OF DECLARING ALL PRIVATE MORTGAGES ON REAL AND PERSONAL PROPERTY, AND ALL U.S. AND STATE BONDS HELD BY THE FEDERAL RESERVE, NATIONAL AND STATE BANKS TO BE NULL AND VOID. THIS AMOUNTS TO AN EMANCIPATION OF THIS NATION FROM PERSONAL, NATIONAL AND STATE DEBT PURPORTEDLY OWED TO THIS BANKING SYSTEM. EVERY AMERICAN OWES IT TO HIMSELF, HIS COUNTRY, AND TO THE PEOPLE OF THE WORLD FOR THAT MATTER TO STUDY THIS DECISION VERY CAREFULLY AND TO UNDERSTAND IT, FOR UPON IT HANGS THE QUESTION OF FREEDOM OR SLAVERY.

A PATRIOTIC PUBLICATION, EDITED AND ISSUED BY JEROME DALY, 28 EAST MINNESOTA STREET, SAVAGE, MINNESOTA.



Patrick Henry's advice on the cold war . . .

They tell us, Sir, that we are weak — unable to cope with so formidable an adversary. But when shall we be stronger? Will it be the next week, or the next year? Will it be when we are totally disarmed? . . .

Shall we gather strength by irresolution and inaction? Shall we acquire the means of effectual resistance by lying supinely on our backs, and hugging the delusive phantom of hope, until our enemies shall have bound us hand and foot? . . .

Sir, we shall not fight our battles alone. There is a just God who presides over the destinies of Nations. . . . The battle, Sir, is not to the strong alone; it is to the vigilant, the active, the brave. . . . There is no retreat but in submission and slavery! Our chains are forged! . . .

Gentlemen may cry, Peace, Peace! — but there is no peace. The war is actually begun! . . . Why stand we here idle? What is it that Gentlemen wish? What would they have? Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take; but as for me, give me liberty or give me death!

HOUSE OF BURGESSES, VIRGINIA
MARCH, 1775

The prohibitions in the Constitution of the United States upon the States of the Union are as follows:

No State shall enter into any Treaty. No State shall enter into any alliance. No State shall enter into any Confederation. No State shall grant Letters of Marque or Reprisal. No State shall coin money. No State shall emit Bills of Credit. No State shall make any Thing but Gold and Silver Coin a Tender in Payment of Debts. No State shall pass any Bill of Attainder. No State shall pass any ex post facto Law. No State shall pass any Law impairing the obligation of Contracts. No State shall grant any Title of Nobility.

No State shall without the consent of Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection laws: and the net Produce of all duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States and all such laws shall be subject to the revision and control of Congress.

No State shall, without the Consent of Congress; (1) Lay any duty of Tonnage; (2) Keep Troops or ships of War in time of peace; (3) Enter into any agreement or compact with another State; (4) Enter into any agreement or Compact with a foreign Power; (5) No State shall without the Consent of Congress engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

No State shall make or enforce any law which shall abridge the Privileges of citizens of the United States.

No State shall make or enforce any law which shall abridge the Immunities of citizens of the United States.

No State shall deprive any person of life, liberty, or property, without due process of law.

No State shall deny to any person within its jurisdiction the equal protection of the laws.

These are prohibitions upon the activity of the States. A State cannot directly take any step in any degree to directly invade or violate any of these provisions. A State cannot lend its aid in any degree to any person or corporation to effectuate a violation of these absolute prohibitions indirectly or obliquely lest a mockery be made of the Constitution of the United States.

A more serious and obvious question arises. Can the Legislative branch or the Executive Branch or the Judicial Branch of the Government of the United States authorize a State to invade the absolute prohibitions against the States expressly set out in the Constitution, or are the three departments of the U.S. Government incompetent to authorize such an invasion. The answer is obvious. The absolute prohibitions in the Constitution of the United States are impregnable. The Constitution is ordained and established in the name of the people. It is a law for the Governments of the States and the United States. The people said what they meant and they mean what they said.

Assume that Congress by attempted enactment would pass a law authorizing a State to deprive a person of Life, Liberty or property without due process of law. It would obviously be unconstitutional. The same is true of any other provision set out. Any attempt by Congress or the Executive or the Judiciary to authorize any State to invade any of the prohibitions is void. See Edwards v. Kearzey U.S. Supreme Court. 6 Otto 795.

No amount of perverted thinking or skullduggery can justify the fatal magnitude of the consequences which are to follow to total destruction of the Constitution of the United States by the Clergy, the Money Changers and those subversives in public office engaged in active treason against the Constitution.

The honest administration of Justice is gone. The whimsical anarchy which is pressing upon us with ever increasing effect is characterized with all the relics of ancient barbarism. Our Republic is gone.

Jerome Daly October 13, 1968

Jerome Daly
28 East Minnesota Street
Savage, Minn. 55378

February 7, 1969

INTRODUCTION

On May 8, 1964 the writer executed a Note and Mortgage to the First National Bank of Montgomery, Minnesota, which is a member of the Federal Reserve Bank of Minneapolis. Both Banks are private owned and are a part of the Federal Reserve Banking System.

In the Spring of 1967 the writer was in arrears $476.00 in the payments on this Note and Mortgage. The Note was secured by a Mortgage on real property in Spring Lake Township in Scott County,Minnesota. The Bank foreclosed by advertisement and bought the property in at a Sheriff's Sale held on June 26, 1967. The writer made no further payments after June 26, 1967 and did not redeem within the 12 month period of time allotted by law after the Sheriff's Sale.

The Bank brought an action to recover the possession to the property in the Justice of the Peace Court at Savage, Minnesota. The first 2 Justices were disqualified by Affidavit of Prejudice. The first by the writer and the Second by the Bank. A third one refused to handle the case. It was then sent, pursuant to law, to Martin V. Mahoney, Justice of the Peace, Credit River Township, Scott County, Minnesota, who presided at a Jury trial on December 7, 1968. The Jury found the Note and Mortgage to be void for failure of a lawful consideration and refused to give any validity to the Sheriff's Sale. Verdict was for the writer with costs in the amount of $75.00.

The president of the Bank admitted that the Bank created the money and credit upon its own books by which it acquired or gave as consideration for the Note; that this was standard banking practice, that the credit first came into existence when they created it; that he knew of no United States Statutes which gave them the right to do this. This is the universal practice of these Banks. The Justice who heard the case handed down the opinion attached and included herein. Its reasoning is sound. It will withstand the test of time. This is the first time the question has been passed upon in the United States. I predict that this decision will go into the History Books as one of the great Documents of American History. It is a huge cornerstone wrenched from the temple of Imperialism and planted as one of the solid foundation stones of Liberty.

JEROME DALY
SAVAGE, MINNESOTA

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OVER

STATE OF MINNESOTA
COUNTY OF SCOTT

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

First National Bank of Montgomery,

Plaintiff,

vs.

JUDGMENT AND DECREE

Jerome Daly,

Defendant.

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

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

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

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

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

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

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

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

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

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

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

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

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

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

7. A 10 day stay is granted.

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

Dated December 9, 1968

BY THE COURT
MARTIN V. MAHONEY
Justice of the Peace
Credit River Township
Scott County, Minnesota

MEMORANDUM

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

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

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

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

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

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

December 9, 1968

BY THE COURT
MARTIN V. MAHONEY
Justice of the Peace
Credit River Township
Scott County, Minnesota

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

FORWARD: The above Judgment was entered by the Court on December 9,1968. The issue there was simple- Nothing in the law gave the Banks the right to create money upon their books. The Bank filed a Notice of Appeal within 10 days. The Appeals statutes must be strictly followed, otherwise, the District Court does not acquire Jurisdiction upon Appeal. To effect the Appeal the Bank had to deposit $2.00 with the Clerk within 10 days for payment to the Justice of the Peace when he made his return to the District Court. The Bank deposited two $1.00 Federal Reserve Notes. The Justice refused the Notes and refused to allow the Appeal upon the grounds that the Notes were unlawful and void for any purpose. The Decision is addressed to the legality of these Notes and the Federal Reserve System. The Cases of Edwards v. Kearnzey and Craig vs. Missouri set out in the decision should be studied very carefully as they bear upon the inviolability of Contracts. This is the Crux of the whole issue. Jerome Daly

Jerome Daly
28 East Minnesota Street
Savage, Minn. 55378
December 27, 1968

Mr. Patrick Foley
United States Attorney for Minnesota
United States Court House Bldg.
Minneapolis, Minnesota

Sir:

Re: First National Bank of Montgomery
vs.
Jerome Daly

As you are on my mailing list, at your request, attached kindly find 2 copies of a decision rendered at Credit River Twp. Justice of the Peace Court on December 9, 1968 by Justice Martin V. Mahoney, who by occupation is a dirt farmer and a carpenter and who is not dependent upon the fraudulent Federal Reserve Mob for his sustenance; thus he was able to view the whole fraud, which is Global in scope, with a mind in the settled calmness of impartiality, disinterestedness, and fairness, in keeping with his oath and with a completely friendly feeling toward the Constitution of the United States of America.

In truth and in fact the Justice of the Peace Court is the highest Court in the land as it is the closest to the People. Every Judge who is dependent upon this fraudulent Federal Reserve, National and State Banking System for his sole support is disqualified because of self interest and has no jurisdiction to sit in review of this Judgment. If any Appellate Court, including the Supreme Court of the United States, in the review of this Judgment, perpetrates a fraud upon the People by defying the Constitutional Law of the United States Mahoney has resolved that he will convene another Jury in Credit River Township to try the issue of the Fraud on the part of any State or Federal Judge, and in an action on my part to recover the possession if the Jury decides in my favor, the Constable and the Citizens Militia of Credit River Township will, pursuant to the law, deliver me back into possession. So you see this Justice of the Peace can keep the peace in Scott County, Minnesota, not with the help of these State and Federal Judges who have fled reality, but in spite of them. Thus Thomas Jefferson's prophesy with reference to Chattel Slavery once again rings true; "God's Justice will not sleep forever.".

One wonders sometimes what the United States, and its leaders, including the Shylock usury element, did to bring on a Pearl Harbor attack on December 7, 1941 with such suddenness and devestation. It could be the Judgment of a Just God giving vent to a stored wrath in retaliation to the money changers. It is ironic in deed that the Jury should return its verdict on the same day 27 years later and the National and International Banking and Oil Mob shudder in their back rooms where they have cornered the money of the World and where they

- over -

sit pulling the strings; fostering, conniving and perpetrating War with profit to themselves paid for by the blood, sweat, tears and toil of the farmer, the mechanic, the laborer and the humbler members of society; and well they might tremble, for, as they listen they can hear, with ever increasing distinctness, the sound of the waves at low tide as they wash across the lonely decks of the U.S.S. Arizona with over 2,500 men entombed in her hold, with oil still seeping therefrom to the surface.

It is better to be charitable than miserly, honest than dishonest, direct than indirect, upright than underhanded, intelligent than unintelligent, to have courage than be a coward, to be free than slave, in body and in mind.

I remain,

Quite Independently Yours,

Jerome Daly

P.S. Give my best wishes for a New Year to the Boys in the Back Room.

J.D.

STATE OF MINNESOTA
COUNTY OF SCOTT

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

First National Bank of Montgomery,
Plaintiff,

-vs-

Jerome Daly,
Defendant.

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND JUDGMENT

- - - - -

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

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

Sirs:

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

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

ORDER

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

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

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

BY THE COURT

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

January 20, 1969

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

JUDGMENT AND DECREE

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

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

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

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

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

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

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

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

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

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

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

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

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

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

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

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

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

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

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

7. A 10 day stay is granted.

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

BY THE COURT

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

Dated December 9, 1968

MEMORANDUM

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

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

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

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

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

BY THE COURT

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

December 9, 1968

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

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

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

NOTICE OF REFUSAL TO ALLOW APPEAL

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

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

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

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

Two so-called "One Dollar" Federal Reserve Notes issued by the Federal Reserve Bank of San Francisco L1278283C and Federal Reserve Bank of Minneapolis Serial No. I80410697A were deposited with the Clerk of the District Court to be tendered to me.

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

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

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

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

TAKE NOTICE AND GOVERN YOURSELVES ACCORDINGLY.

BY THE COURT

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

Dated January 6, 1969

MEMO

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

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

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

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

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



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

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

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

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

ORDER TO SHOW CAUSE

* *

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

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

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

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

BY THE COURT:

/s/ Harold E. Flynn
Judge of District Court

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

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

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

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

The Defendant appeared by and on behalf of himself.

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

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

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DETERMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BY THE COURT

Martin V. Mahoney

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

Dated: February 5, 1969

MEMORANDUM

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

66. THE DECLARATION OF INDEPENDENCE
July 4, 1776

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

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

In Congress, July 4, 1776,

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For quartering large bodies of armed troops among us:

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

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

For imposing taxes on us without our Consent:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JOHN HANCOCK.

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

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

ARTICLE I

Section 1

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

Section 8

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

To borrow Money on the credit of the United States;

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

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

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

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

To establish Post Offices and post Roads;

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

To constitute Tribunals inferior to the supreme Court;

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

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

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

To provide and maintain a Navy;

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

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

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

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

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

Section 10

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

ARTICLE III

Section 1

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

Section 2

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

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

ARTICLE VI

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

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

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

AMENDMENTS

ARTICLE I

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

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

ARTICLE V

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

ARTICLE VII

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

ARTICLE IX

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

ARTICLE X

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

ARTICLE XIII

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

SECTION 1

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

SECTION 2

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

ARTICLE XIV

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

SECTION 1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Our Constitution stands absolute and alone.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

tion and Law and has shaken society to its foundations.

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

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

The Constitution states, "No State shall make anything but Gold and silver Coin a legal tender in payment of debts." The above referred to enactments of Congress state that the Notes are a legal tender. There is a direct conflict between the Constitution and the Acts of Congress. If the Constitution is not controlling then Congress is above and has superior authority from the Constitution and the People who ordained and established it.

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

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

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

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

to 20 years of experience with the Bank of America in Los Angeles, the Marquette National Bank of Minneapolis and the Plaintiff in this case. He seemed to be familiar with the operations of the Federal Reserve System. He freely admitted that his Bank created all of the money or credit upon its books with which it acquired the Note and Mortgage of May 8, 1964. The credit first came into existence when the Bank created it upon its books. Further he freely admitted that no United States Law gave the bank the authority to do this. There was obviously no lawful consideration for the Note. The Bank parted with absolutely nothing except a little ink. In this case the evidence was on January 22, 1969 that the Federal Reserve Banks obtain the Notes for the cost of the printing only. This seems to be confirmed by Title 12 USC Section 420. The cost is about 9/10ths of a cent per Note, regardless of the amount of the Note. The Federal Reserve Banks create all of the Money and Credit upon their books by bookkeeping entry by which they acquire United States and State Securities. The collateral required to obtain the Notes is, by section 412, USC, Title 12, a deposit of a like amount of Bonds; Bonds which the Banks acquired by creating money and credit by bookkeeping entry.

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

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

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

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

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

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

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

January 30,1969.

BY THE COURT

Martin V. Mahoney

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

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

An Apparent Banking Paradox?

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

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

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

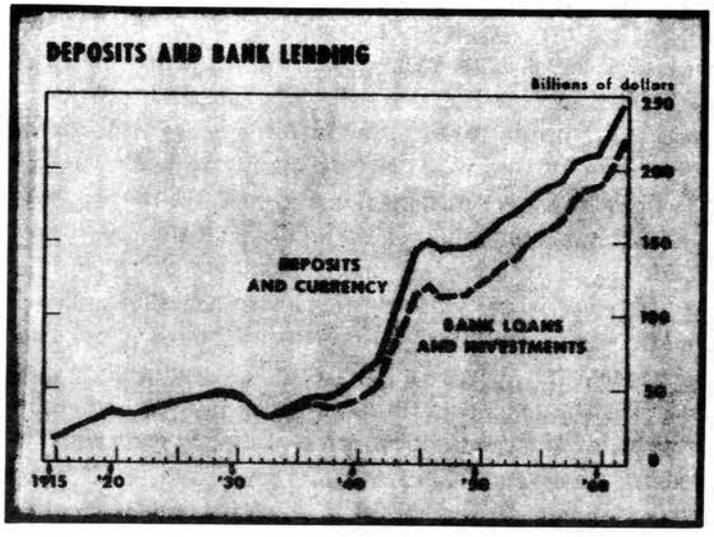
account in favor of various of his creditors who deposit them at their banks. Thus the lending bank is likely to retain or receive back as deposits only a small portion of the money that it lent, while a large portion of the money that is lent by other banks is likely to be brought to it by its customers.

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

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

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

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



Additional Aspects of Bank Credit Expansion

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

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

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

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

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

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

Management of Reserve Balances

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



CHAPTER X

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

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

One of the tasks of the Federal Reserve System is to

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

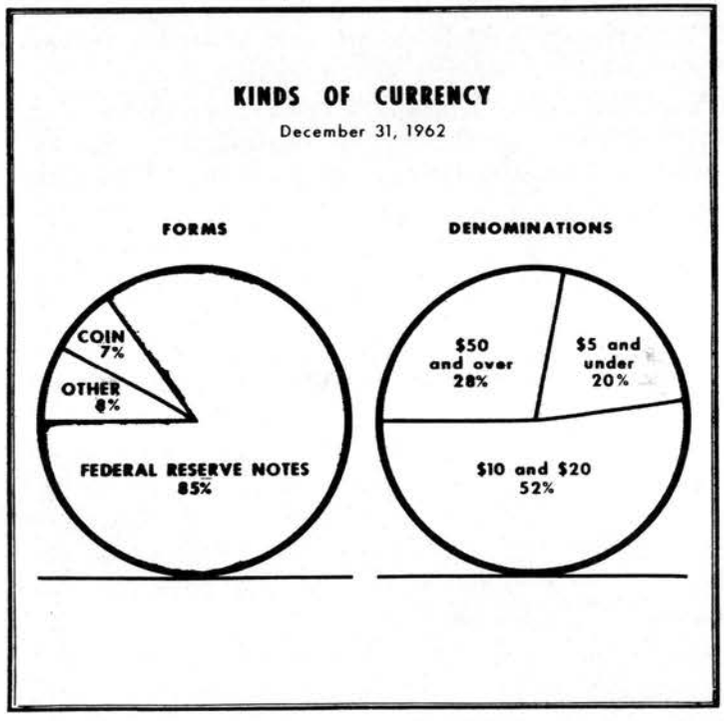
The currency mechanism provided under the Federal Reserve Act has worked satisfactorily: currency moves into and out of circulation automatically in response to an increase or decrease in the public demand. The Treasury, the Federal Reserve Banks, and the thousands of local banks throughout the country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

How Federal Reserve Notes Are Paid Out

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

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

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



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

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

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

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

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

Demand for Currency

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

D. Effect of Totally or Partially Unconstitutional Statutes

1. Total Unconstitutionality

§ 177. Generally.

The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law,[8] but is wholly void,[9] and ineffective for any purpose;[10] since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it,[11] an unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed.[12] Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted.[13]

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

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

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

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

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

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

7. § 146, supra.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 178. Protection of rights.

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

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

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

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

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

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

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

8. See § 185, infra.

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

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

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

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

13. § 177, supra.

14. Sumner v Beeler, 50 Ind 341.

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

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

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

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

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

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

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

[16] See supra, § 2.

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

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

[19] Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.
Generally as to bank notes as money, see infra, § 9.

[20] Belford v. Woodward, 158 Ill 122, 41 NE 1097, 29 LRA 593.

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

[2] Woodruff v. Mississippi, 162 US 291, 40 L ed 973, 16 S Ct 820.
At one time, shortly after the first issue in this country of notes declared to have the quality of legal tender, it was a common practice of drawers of bills of exchange or checks, or makers of promissory notes, to indicate whether the same were to be paid in gold or silver or in such notes; and the term "current funds" was used to designate any of these, all being current and declared by positive enactment to be legal tender. Ibid.

[3] See supra, § 5.

[4] 27 Ohio Jur pp. 125, 126, § 3.

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

[6] Bank of United States v. Bank of Georgia, 10 Wheat(US) 333, 6 L ed 334; Howe v. Hartness, 11 Ohio St 449, 78 Am Dec 312; Vick v. Howard, 136 Va 101, 116 SE 465, 31 ALR 240; Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.
Anno: 4 Ann Cas 630.
See PAYMENT [Also 21 RCL p. 39, § 36].

[7] Bank of United States v. Bank of Georgia, 10 Wheat(US) 333, 6 L ed 334; Howe v. Hartness, 11 Ohio St 449, 78 Am Dec 312; Crutchfield v. Robins, 5 Humph (Tenn) 15, 42 Am Dec 417; Ross v. Burlington Bank, 1 Alk(Vt) 43, 15 Am Dec 664; Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.
Anno: 4 Ann Cas 639.
Bank notes lawfully issued and actually current at par in lieu of coin are treated as money because they flow as such through the channels of trade and commerce without question. Woodruff v. Mississippi, 162 US 291, 40 L ed 973, 16 S Ct 820; Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773. Anno: 4 Ann Cas 630.
Bank notes are regarded as money to the extent that they will pass by a bequest of cash. Anno: 52 Am Dec 448.
See also 7 Am Jur 283, BANKS, §§ 400 et seq.

[8] See infra, § 18.
See PAYMENT [Also 21 RCL p. 40, § 36].

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

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

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

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

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

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

[10] State v. Finnegean, 127 Iowa 286, 103 NW 155, 4 Ann Cas 628; State v. Kube, 20 Wis 217, 91 Am Dec 390.
Anno: 4 Ann Cas 630.
See 18 Am Jur 574, EMBEZZLEMENT, § 6; 32 Am Jur 987, LARCENY, § 77.

[11] Hamilton v. State, 60 Ind 193, 28 Am Rep 653.
Anno: 4 Ann Cas 630.

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

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

[14] Howe v. Hartness, 11 Ohio St 449, 78 Am Dec 312; Westfall v. Braley, 10 Ohio St 188, 75 Am Dec 509.
Money includes only such bank notes as are current de jure et de facto at the locus in quo; that is, bank notes which are issued for circulation by authority of law, and are in actual and general circulation at par with coin, as a substitute for coin, interchangeable with coin; bank notes which actually represent dollars and cents, and are paid and received for dollars and cents at their legal standard value. Whatever is at a discount—that is, whatever represents less than the standard value of coined dollars and cents at par—does not properly represent dollars and cents, and is not money. Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773.

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

[17] See infra, § 13.

[18] Allibone v. Ames, 9 SD 74, 68 NW 165, 33 LRA 585; State v. McFetridge, 84 Wis 473, 54 NW 1, 998, 20 LRA 223.
Anno: Ann Cas 1912C 356.
Generally as to the definition and nature of certificates of deposit, see 7 Am Jur 351, BANKS, §§ 491 et seq.

[19] Smith v. Field, 19 Idaho 558, 114 P 668, Ann Cas 1912C 354.

[20] Poorman v. Woodward, 21 How(US) 266, 16 L ed 151.

III. COINAGE, ISSUANCE, AND REGULATION

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

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

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

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

[1] See infra, §§ 12 et seq.

[2] See infra, §§ 12 et seq.

[3] See supra, § 5.

[4] See 7 Am Jur 284, BANKS, § 402.

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

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

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

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

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

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

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

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

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

Anno: 31 ALR 246.

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

[9] See infra, § 17.

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

Anno: 31 ALR 246.

The states cannot declare what shall be money, or regulate its value, since whatever power there is over the currency is vested in Congress. Norman v. Baltimore & O. R. Co. 294 US 240, 79 L ed 885, 55 S Ct 407, 95 ALR 1352, affirming 265 NY 37, 191 NE 726, 92 ALR 1523.

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

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

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

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

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

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

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

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

The expression "intended to circulate as money," as used in provisions of some state Constitutions to the effect that "the legislature shall, in no case, have power to issue treasury warrants, treasury notes, or paper of any description intended to circulate as money," implies that the paper in question must have a fitness for general circulation as a substitute for money in the common transactions of business; it does not apply to warrants made payable to an individual to whom the state is indebted, although the state may direct its officers to receive such warrants in payment of debts due the state. Houston & T. C. R. Co. v. Texas, 177 US 66, 44 L ed 673, 20 S Ct 545.

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

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

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

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

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

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

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

the same rule has been applied with regard to an option to purchase property at the price offered to the optionor by a third person.[9]

G. Consideration

1. In General; Necessity

§ 85. Generally; definitions and nature of consideration.

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

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

Although historically the terms "quid pro quo" and "nudum pactum" applied only with regard to contracts which were at common law enforceable by an action of debt, these terms are now generally used with regard to the consideration for contracts generally—that is, consideration is referred to as the "quid pro quo," and any promise not supported by consideration is said to be "nudum pactum."[19] Consideration is, however, not identical with quid

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

9. Slaughter v Mallet Land & Cattle Co. (CA5 Tex) 141 F 282, cert den 201 US 646, 50 L ed 903, 26 S Ct 761; Marske v Willard, 169 Ill 276, 48 NE 290; Hayes v O'Brien, 149 Ill 403, 37 NE 73; Levy v Peabody, 238 Mass 164, 130 NE 261; Nu-Way Service Stations v Vandenberg Bros. Oil Co. 283 Mich 551, 278 NW 683; Driebe v Ft. Penn Realty Co. 331 Pa 314, 200 A 62, 117 ALR 1091; Peerless Dept. Stores v George M. Snook Co. 123 W Va 77, 15 SE2d 169, 136 ALR 130; Goerke Motor Co. v Lonergan, 236 Wis 544, 295 NW 671.

Annotation: 136 ALR 139, 140.

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

58 Columbia L Rev 929 et seq.

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

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

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

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

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

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

16. Thompson v Thompson, 17 Ohio St 649.

17. Williston, Contracts 3d ed § 110.

18. § 95, infra.

19. Contracts which were at common law enforceable by an action of debt generally derived their obligatory force from a duty imposed by law. This duty was based either on the form of the contract or on what was known as quid pro quo. By this was meant that the person owing the duty had received from the person to whom the duty was due something which he was bound to return or

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

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

§ 86. Necessity.

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

pay for. In the absence of quid pro quo, the engagement, except in the case of formal contracts, was termed "nudum pactum"—a phrase derived from the civil law. When the English courts finally declared that an action of assumpsit might be maintained for the nonperformance of a simple promise, they limited the right of action to cases in which there existed an element which came to be known as "consideration." Any promise not supported by a consideration they likewise termed "nudum pactum." The term "consideration" is thus in some respects analogous to the causa of the civil law and to quid pro quo in debt. In fact the latter term has sometimes been treated as though it were synonymous with consideration. Shackleford v Hendley, 1 AK Marsh (Ky) 496; Todd v Weber, 95 NY 181; Justice v Lang, 42 NY 493.

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

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

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

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

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

1. § 102, infra.

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

3. See Seals (1st ed § 13).

4. See Seals (1st ed § 8).

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

6. Uniform Commercial Code § 2–203.

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

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

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

§ 214. Revenue stamps.[3]

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

III. CONSIDERATION

A. In General

§ 215. Generally.

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

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

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

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

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

1. Uniform Commercial Code § 3–113.

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

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

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

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

5. Goodale v Thorn, 199 Cal 307, 249 P 11; Newhall Sav. Bank v Buck, 197 Iowa 732, 197 NW 936; Farmers Sav. Bank v Neel, 193 Iowa 685, 187 NW 555, 21 ALR 1116; Currie-McGraw Co. v Friedman, 135 Miss 701, 100 So 273; Bank of High Hill v Rockey (Mo App) 277 SW 573; Security State Bank v Brown, 110 Neb 237, 193 NW 336.

6. §§ 334 et seq. infra.

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

7. §§ 302 et seq., infra.

8. § 141, supra.

9. §§ 90, 145, 188, 189, supra.

10. §§ 452 et seq., infra.

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

B. What Constitutes

§ 216. Generally.

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

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

11. § 237, infra.

12. See Vol. 12.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 217. Adequacy.

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

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

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

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

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

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

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

4. Bromfield v Trinidad Nat. Invest. Co. (CA10) 36 F2d 616, 71 ALR 542; Tegtmeyer v Nordlund, 259 Ill App 247; Greenwood Leflore Hospital Com. v Turner, 213 Miss 200, 56 So 2d 496; Coast Nat. Bank v Bloom, 113 NJL 597, 174 A 576, 95 ALR 528; First Nat. Bank v Boxley, 129 Okla 159, 264 P 184, 64 ALR 588; Swanson v Sanders, 75 SD 40, 58 NW2d 809; Barrett v Mahnken, 6 Wyo 541, 48 P 202.

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

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

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

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

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

9. Shocket v Fickling, 229 SC 412, 93 SE 2d 203; Rauschenbach v McDaniel's Estate, 122 W Va 632, 11 SE2d 852.

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

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

10. Rauschenbach v McDaniel's Estate, supra.

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

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

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

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

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

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

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

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

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

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

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

17. Smock v Pierson, 68 Ind 405.

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

19. Miller v Finley, 26 Mich 249.

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

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

1. Wolford v Powers, 85 Ind 294; Foxworthy v Adams, 136 Ky 403, 124 SW 381; Hatten's Estate, 233 Wis 199, 288 NW 278.

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

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

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

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

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

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

This language has been several times cited with approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

The Act of August 22, 1868, was then in force. The Acts of 1854 and 1859 had been repealed. *Wilson* v. *Sparks*, 72 N. C., 208. No point is made upon these Acts by the counsel upon either side. We shall, therefore, pass them by without further remark.

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

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

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

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

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

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

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

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

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

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

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

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

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

material, it will be regarded as of no account.

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

We will, however, further examine the subject.

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

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

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

Imprisonment for debt is a relic of ancient barbarism. Cooper's Justinian, 658; 12 Tables, Tab. 3. It has descended with the stream of time. It is a punishment rather than a remedy. It is right for fraud, but wrong for misfortune. It breaks the spirit of the honest debtor, destroys his credit, which is a form of capital, and dooms him, while it lasts, to helpless idleness. Where there is no fraud, it is the opposite of a remedy. Every right-minded man must rejoice when such a blot is removed from the statute book.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Justice **Clifford**, concurring:

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

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

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

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

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

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

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

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

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

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

Mr. Justice **Hunt.**

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

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

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

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

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

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

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

Cited—96 U. S., 637; 102 U. S., 419; 107 U. S., 233, 750, 798; 108 U. S., 65; 5 Dill., 193, 213, 315, 418; 1 McCrary, 527; 66 Ind., 408, 509.

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

v.

HORATIO D. VANSYCLE.

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

Missouri Constitution—estoppel as to county bonds.

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

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

[No. 216.]

Argued Feb. 8, 1875. Decided Apr. 15, 1878.

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

Statement by Mr. Justice **Harlan.**

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

Each bond contained these recitals:

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

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

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

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

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

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

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

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

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

L. O. COOKE v. SAMUEL G. IVERSON

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Reported in 122 N.W. 251

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

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

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

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

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

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

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

63 Minnesota Reports

P. 147

Reported in 65 N.W. 262

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

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

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

ABOLISHMENT OF HOME OWNERS' LOAN CORPORATION

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

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

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

TRANSFER OF FUNCTIONS

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

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

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

FEDERAL RESERVE NOTES

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

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

REFERENCES IN TEXT

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

CODIFICATION

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

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

AMENDMENTS

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

CHANGE OF NAME

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

CROSS REFERENCES

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

§ 412. Application for notes; collateral required.

Any Federal Reserve bank may make application to the local Federal Reserve agent for such amount of the Federal Reserve notes hereinbefore provided for as it may require. Such application shall be accompanied with a tender to the local Federal Reserve agent of collateral in amount equal to the sum of the Federal Reserve notes thus applied for and issued pursuant to such application. The collateral security thus offered shall be notes, drafts, bills of exchange, or acceptances acquired under the provisions of sections 82, 342—347, 347c, and 372 of this title, or bills of exchange endorsed by a member bank of any Federal Reserve district and purchased under the provisions of sections 348a and 353—359 of this title, or bankers' acceptances purchased under the provisions of said sections 348a and 353—359 of this title, or gold certificates, or direct obligations of the United States. In no event shall such collateral security be less than the amount of Federal Reserve notes applied for. The Federal Reserve agent shall each day notify the Board of Governors of the Federal Reserve System of all issues and withdrawals of Federal Reserve notes to and by the Federal Reserve bank to which he is accredited. The said Board of Governors of the Federal Reserve System may at any time call upon a Federal Reserve bank for additional security to protect the Federal Reserve notes issued to it. (Dec. 23, 1913, ch. 6, § 16, 38 Stat. 265; Sept. 7, 1916, ch. 461, 39 Stat. 754; June 21, 1917, ch. 32, § 7, 40 Stat. 236; Feb. 27, 1932, ch. 58, § 3, 47 Stat. 57; Feb. 3, 1933, ch. 34, 47 Stat. 794; Jan. 30, 1934, ch. 6, § 2 (b) (2), 48 Stat. 338; Mar. 6, 1934, ch. 47, 48 Stat. 398; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704; Mar. 1, 1937, ch. 20, 50 Stat. 23; June 30, 1939, ch. 256, 53 Stat. 991; June 30, 1941, ch. 264, 55 Stat. 395; May 25, 1943, ch. 102, 57 Stat. 85; June 12, 1945, ch. 186, § 2, 59 Stat. 237.)

CODIFICATION

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

AMENDMENTS

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

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

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

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

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

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

CODIFICATION

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

AMENDMENTS

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

CHANGE OF NAME

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

TRANSFER OF FUNCTIONS

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

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

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

REFERENCES IN TEXT

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

AMENDMENTS

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

CHANGE OF NAME

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

TRANSFER OF FUNCTIONS

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

CROSS REFERENCES

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

§ 418. Printing of notes; denomination and form.

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

REFERENCES IN TEXT

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

CODIFICATION

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

AMENDMENTS

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

EXCEPTION AS TO TRANSFER OF FUNCTIONS

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

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

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

REFERENCES IN TEXT

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

CODIFICATION

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

EXCEPTION AS TO TRANSFER OF FUNCTIONS

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

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

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

REFERENCES IN TEXT

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

CODIFICATION

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

CHANGE OF NAME

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

EXCEPTION AS TO TRANSFER OF FUNCTIONS

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

§ 421. Examination of plates and dies.

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

REFERENCES IN TEXT

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

CODIFICATION

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

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

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

CIRCULATING NOTES AND BONDS SECURING SAME

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

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

CODIFICATION

Section is comprised of first par. of section 18 of act Dec. 23, 1913. Pars. 2 and 3, 4, 5, and 7—9 of section 18 are classified to sections 442, 443, 444, and 446—448 of this title, respectively. Par. 6 of section 18, which was classified to section 445 of this title, was repealed by act June 12, 1945, ch. 186, § 3, 59 Stat. 238.

TRANSFER OF FUNCTIONS

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

§ 442. Purchase of bonds by reserve banks.

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

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

CODIFICATION

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

DERIVATION

Act Feb. 21, 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 52. — Where parties are in pari delicto.

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

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

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

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

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

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

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

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

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

Annotation: 2 ALR 906.

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

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

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

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

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

19. Ring v Spina (CA2 NY) 148 F2d 6 160 ALR 371; Reilly v Clyne, 27 Ariz 4 234 P 35, 40 ALR 1005; Berka v Woodwar 125 Cal 119, 57 P 777; Western U. Tel. C v Yopst, 118 Ind 248, 20 NE 222; Grapi Bottling Co. v Ennis, 140 Miss 502, 106 97, 44 ALR 124; Short v Bullion-Beck C. Min. Co. 20 Utah 20, 57 P 720; Rolle Murray, 112 Va 780, 72 SE 665.

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

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

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

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

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

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

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

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

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

Annotation: 116 ALR 1018.

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

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

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

Annotation: 116 ALR 1023-1031.

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

6. Wallace v Cannon, 38 Ga 199.

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

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

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

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

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

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

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

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

VIII. DEPARTMENTAL SEPARATION OF GOVERNMENTAL POWERS

A. In General

§ 210. Principle of separation, generally.

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

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

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

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

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

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

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

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

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

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

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

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

— pilotage. See Shipping.

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

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

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

And see § 150, supra.

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

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

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

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

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

5. O'Donoghue v United States, 289 US 516, 77 L ed 1356, 53 S Ct 740; Springer v Philippine Islands, 277 US 189, 72 L ed 845, 48 S Ct 480; J. W. Hampton Jr., & Co. v United States, 276 US 394, 72 L ed 624, 48 S Ct 348; Evans v Gore, 253 US 245, 64 L ed 887, 40 S Ct 550, 11 ALR 519; Kilbourn v Thompson, 103 US 168, 26 L ed 377; Fox v McDonald, 101 Ala 51, 13 So 416; Hawkins v Governor, 1 Ark 570; Denver v Lynch, 92 Colo 102, 18 P2d 907, 86 ALR 907; Stockman v Leddy, 55 Colo 24, 129 P 220; Norwalk Street R. Co.'s Appeal, 69 Conn 576, 37 A 1080, 38 A 708; Florida Nat. Bank of Jacksonville v Simpson (Fla) 59 So 2d 751, 33 ALR2d 581; Burnett v Green, 97 Fla 1007, 122 So 570, 69 ALR 244; Re Speer, 53 Idaho 293, 23 P2d 239, 88 ALR 1086; People v Kelly, 347 Ill 221, 179 NE 898, 80 ALR 890; People ex rel. Rusch v White, 334 Ill 465, 166 NE 100, 64 ALR 1006; Greenfield v Russel, 292 Ill 392, 127 NE 102, 9 ALR 1334; Ellingham v Dye, 178 Ind 336, 99 NE 1, error dismd 231 US 250, 58 L ed 206, 34 S Ct 92; Overshiner v State, 156 Ind 187, 59 NE 468; Parker v State, 135 Ind 534, 35 NE 179; State v Barker, 116 Iowa 96, 89 NW 204; Harris v Allegany County, 130 Md 488, 100 A 733; Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059; Anway v Grand Rapids R. Co. 211 Mich 592, 179 NW 350, 12 ALR 26; People v Dickerson, 164 Mich 148, 129 NW 199; Veto Case, 69 Mont 325, 222 P 428, 35 ALR 592; Searle v Yensen, 118 Neb 835, 226 NW 464, 69 ALR 257; Tyson v Washington County, 78 Neb 211, 110 NW 634; Saratoga Springs v Saratoga Gas, E. L. & P. Co. 191 NY 123, 83 NE 693; State ex rel. Atty.-Gen. v Knight, 169 NC 333, 85 SE 418; Re Minneapolis, St. P. & S. Ste. M. R. Co. 30 ND 221, 152 NW 513; State v Blaisdell, 22 ND 86, 132 NW 769; Riley v Carter, 165 Okla 262, 25 P2d 666, 88 ALR 1018; Simpson v Hill, 128 Okla 269, 263 P 635, 56 ALR 706; Baskin v State, 107 Okla 272, 232 P 383, 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 executes, and the judiciary construes, the law; but the maker of the law may commit something to the discretion of the other departments. Wayman v Southard, 10 Wheat (US) 1, 6 L ed 253.

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

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

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

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 493, 239 NW 144, 78 ALR 770; University of Mississippi v Waugh, 105 Miss 623, 62 So 827, affd 237 US 589, 59 L ed 1131, 35 S Ct 720; State v J. J. Newman Lumber Co. 102 Miss 802, 59 So 923; State ex rel. Hadley v Washburn, 167 Mo 680, 67 SW 592; State v Field, 17 Mo 529; Searle v Yensen, 118 Neb 835, 226 NW 464, 69 ALR 257; Follmer v State, 94 Neb 217, 142 NW 908; Tyson v Washington County, 78 Neb 211, 110 NW 634; State v Roy, 40 NM 397, 60 P2d 646, 110 ALR 1; State ex rel. Dushek v Watland, 51 ND 710, 201 NW 680, 39 ALR 1169; Riley v Carter, 165 Okla 262, 25 P2d 666, 88 ALR 1018; Simpson v Hill, 128 Okla 269, 263 P 635, 56 ALR 706; Hopper v Oklahoma County, 43 Okla 288, 143 P 4; Macartney v Shipherd, 60 Or 133, 117 P 814; State v George, 22 Or 142, 29 P 356; Biggs v McBride, 17 Or 640, 21 P 878; Langever v Miller, 124 Tex 80, 76 SW2d 1025, 96 ALR 836; Union Cent. L. Ins. Co. v Chowning, 86 Tex 654, 26 SW 982; State v Mounts, 36 W Va 179, 14 SE 407; Public Serv. Com. v Grimshaw, 49 Wyo 158, 53 P2d 1, 109 ALR 534. See also State ex rel. Dushek v Watland, 51 ND 710, 201 NW 680, 39 ALR 1169.

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 1391; 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, 168 ALR 808.

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

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

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

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

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

§ 212. — Importance of principle.

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

Sarlls v State, 201 Ind 88, 166 NE 270, 67 ALR 718 (statute providing commission and city manager forms of governments for cities); State v Mankato, 117 Minn 458, 136 NW 264; Barnes v Kirksville, 266 Mo 270, 180 SW 545; State v 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 [illegible], 49 L ed 78, 24 S Ct 769; Powell v Pennsylvania, 127 US 678, 32 L ed 253, 8 S Ct 992, 1257; Kilbourn v Thompson, 103 US 168, 26 L ed 377; Sinking Fund Cases, 99 US 700, 25 L ed 496; Lincoln Federal Labor Union v Northwestern Iron & Metal Co. 149 Neb 507, 31 NW2d 477; Wenham v State, 65 Neb 394, 91 NW 421; Ex parte Kair, 28 Nev 127, 425, 80 P 463, 82 P 453; State ex rel. Schorr v Kennedy, 132 Ohio St 510, 9 NE2d 278, 110 ALR 1428; State ex rel. Bushman v Vandenberg, 203 Or 326, 276 P2d 432, 280 P2d 344; Enterprise v State, 156 Or 623, 69 P2d 953; U'Ren v Bagley, 118 Or 77, 245 P 1074, 46 ALR 1173; State v Peel Splint Coal Co. 36 W Va 802, 15 SE 1000.

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

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

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

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

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

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

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

It is particularly essential that the respective branches of the government keep within the powers assigned to each by the constitution. Lichter v United States, 334 US 742, 92 L ed 1694, 68 S Ct 1294, reh den 335 US 836, 93 L ed 389, 69 S Ct 11.

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]

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.

C. Judicial Powers

1. In General

§ 219. Generally.[1]

The power to maintain a judicial department is an incident to the sovereignty of each state.[2] Under the doctrine of the separation of the powers of government,[3] judicial power, as distinguished from executive and legislative power, is vested in the courts as a separate magistracy.[4]

The judiciary is an independent department of the state and of the federal government, deriving none of its judicial power from either of the other departments. This is true although the legislature may create courts under the provisions of the constitution. When a court is created, the judicial power is conferred by the constitution, and not by the act creating the court.[5] It was said at an early period in American law that the judicial power in every well-organized government ought to be coextensive with the legislative power so far, at least, as private rights are to be enforced by judicial proceedings.[6] The rule is now well settled that under the various state governments, the constitution confers on the judicial department all the authority necessary to exercise powers as a co-ordinate department of the government.[7] Moreover, the independence of the judiciary is the means provided for maintaining the supremacy of the constitution.[8]

In a general way the courts possess the entire body of judicial power. The other departments cannot, as a general rule, properly assume to exercise any part of this power,[9] nor can the constitutional courts be hampered or limited in the discharge of their functions by either of the other two branches.[10]

1. Discussed at this point is the judicial power in its constitutional relationship to the other powers of government. A broad discussion of judicial power, generally, will be found in the article, Courts.

2. Hoxie v New York, N. H. & H. R. Co. 82 Conn 352, 73 A 754.

3. § 210, supra.

4. Brydonjack v State Bar, 208 Cal 439, 281 P 1018, 66 ALR 1507; Norwalk Street R. Co.'s Appeal, 69 Conn 576, 37 A 1080, 38 A 708; Brown v O'Connell, 36 Conn 432; Burnett v Green, 97 Fla 1007, 122 So 570, 69 ALR 244; Ex parte Earman, 85 Fla 297, 95 So 755, 31 ALR 1226; State v Shumaker, 200 Ind 623, 157 NE 769, 162 NE 441, 163 NE 272, 58 ALR 954; State v Denny, 118 Ind 382, 21 NE 252; Flournoy v Jeffersonville, 17 Ind 69; Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059; American State Bank v Jones, 184 Minn 498, 239 NW 144, 78 ALR 770.

5. Brown v O'Connell, 36 Conn 432; Norwalk Street R. Co.'s Appeal, 69 Conn 576, 37 A 1080, 38 A 708; Parker v State, 135 Ind 534, 35 NE 179; Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059.

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

7. Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1509.

8. Riley v Carter, 165 Okla 262, 25 P2d 666, 88 ALR 1018.

9. State v Noble, 118 Ind 350, 21 NE 244; Attorney General ex rel. Cook v O'Neill, 280 Mich 649, 274 NW 445; Washington-Detroit Theatre Co. v Moore, 249 Mich 673, 229 NW 618, 68 ALR 105.

The whole of judicial power reposing in the sovereignty is granted to courts except as restricted in the constitution. Washington-Detroit Theatre Co. v Moore, supra.

10. Vidal v Backs, 218 Cal 99, 21 P2d 952, 86 ALR 1134; Shaw v Moore, 104 Vt 529, 162 A 373, 86 ALR 1139.

And see § 217, supra, and §§ 234 et seq., infra.

I certify that the foregoing is my amended return to Order to Show Cause issued out of the District Court on January 8, 1969.

The Act of February 12, 1873, 17 Stat 426 fixed the Gold Dollar at 25.8 grains, Troy weight 9/10 fine for the Gold Dollar.

The Act of February 28, 1878 fixed the Silver Dollar at 412 1/2 grains Troy weight of Silver. These are the last two Constitutional Act of Congress, pursuant to the Constitution in which they coined money, regulated the value thereof and fixed the Standard of weights and measures. The Congress cannot abdicate or delegate these legislative powers. Usurpation by the Executive or his Agents is void. Thus the Silver clad-copper coins are a debasing of the Coins when once the Standard has been fixed. They are also not a legal tender, and are unconstitutional and void. These debased Coins and void Federal Reserve Notes constitute a shallow and impudent artifice, the least covert of all modes of knavery, a miserable scheme of robbery, all of which were the final characteristics of Arbitrary and profligate governments preceeding their downfall. No longer does any sentiment of honor influence the governing power of this Nation.

Based upon the Law and Facts presented to me, the Appeal is not allowed in this Court.

BY THE COURT

February 4, 1969

MARTIN V. MAHONEY
Justice of the Peace
Credit River Twp.
Scott County, Minn.

Lightning Over the Treasury Building

CHAPTER I

The Goldsmiths

Once upon a time, gold—being the most useless of all metals—was held in low esteem. Things which possessed intrinsic value were labored for—fought for—accumulated—and prized. These things became the standards of value and the mediums of exchange in the respective localities producing them.

One of the most urgent requirements of man is a wife, and it used to be that one of the most prized possessions of a father was a strong, hard working daughter; and she was considered his property. In those days he didn't give a dowry with her to get rid of her—but if a young blade desired her he had to recompense the Dad before he could lead her away to his cave. Good milch cows were as scarce as good girls—so a wooer hit upon the happy idea, one day, of offering a cow to the "Old Man" for his daughter. The deal was made and cows became, probably, the first money in history.

Since that ancient date most everything that you can think of has been used for money. Carpets, cloth, ornaments, beads, shells, feathers, teeth, hides, tobacco, gophers' tails, woodpeckers' heads, salt, fish hooks, nails, beans, spears,

bronze, silver and gold—and later, receipts for gold which did not exist—have all been used for money.

The latter article was the invention of the goldsmith and has yielded greater profits than all other inventions combined. It all came about like this:

Women have always had a fondness for beautiful ornaments. The plainer women—the ones who needed decorating with trinkets—were the ones who received the fewest ornaments. This was because men were the ones who supplied them, and—as contradictory as it may seem—the more beautiful the lady was, the more ornaments she usually received. Rings for her fingers—rings for her toes—rings for her ears—and rings for her nose—bracelets, anklets, tiaras, throatlets, pendants and foibles of yellow gold were hung on her like decorations on a Christmas tree.

Gold was also used to beautify the palaces of the kings, and of the near kings, shrines and temples. It was held in such high esteem that the people actually began to worship it—making gods and goddesses of it. It became the most desired of all substances. Because of the high esteem in which it was held it superseded all of its competitors in the civilized world as a medium of exchange. The value of other goods was measured by the amount of gold for which those goods could be exchanged.

The yellow metal, for convenience sake, and because the gold itself—and not the ornaments which could be made from it—was in demand, was shaped into rings, bars, discs and cubes, usually bearing an imprint of the kingly or princely owner.

Every community, or city, had its king or ruler. These rulers were all eager to increase their hoard of gold. Raiding expeditions were promoted and the weaker tribes, or kingdoms, were looted of the gold which they had accumulated. At times they would become so prosaic and unromantic as to carry on legitimate trade with other communi-

ties and obtain the gold in that way—but that was usually too slow and unexciting.

When the king arrived home with the precious stuff, his worries were not over. There were thieves in those days. There were also goldsmiths. The goldsmiths were the manufacturers of the ornaments which the ladies wore, and they always had a considerable amount of the coveted metal on hand. To safeguard their treasures they built strong-rooms on their premises in which to store the gold entrusted to their care.

It was not surprising, then, that the custom grew for the leader, upon his return from his thieving expedition, to leave the hoard of gold which he had obtained, with the goldsmith for safe-keeping. The merchants, too, who had traded profitably with other nations, communities or tribes, as well as other merchants and raiders passing through the city where the goldsmith lived, found it convenient—and usually safe—to leave their gold in the strong-room of the goldsmith.

When the gold was weighed and safely deposited in the strong-room, the goldsmith would give the owner a warehouse receipt for his deposit. These receipts were of various sizes, or for various amounts; some large, others smaller and others still more small. The owner of the gold, when wishing to transact business, would not as a rule take the actual gold out of the strong-room but would merely hand over a receipt for gold which he had in storage.

The goldsmith soon noticed that it was quite unusual for anyone to call for his gold. The receipts, in various amounts, passed from hand to hand instead of the gold itself being transferred. He thought to himself: "Here I am in possession of all this gold and I am still a hard working artisan. It doesn't make sense. Why there are scores of my neighbors who would be glad to pay me interest for the use of this gold which is lying here and never called for.

It is true, the gold is not mine—but it is in my possession, which is all that matters."

The birth of this new idea was promptly followed by action. At first he was very cautious, only loaning a little at a time—and that, on tremendous security. But gradually he became bolder and larger amounts of the gold were loaned.

One day the amount of loan requested was so large that the borrower didn't want to carry the gold away. The goldsmith solved the problem, pronto, by merely suggesting that the borrower be given a receipt for the amount of gold borrowed—or several receipts for various amounts totalling the amount of gold figuring in the transaction. To this the borrower agreed, and off he walked with the receipts, leaving the gold in the strong-room of the goldsmith.

After his client left, the goldsmith smiled broadly. He could have a cake and eat it too. He could lend gold and still have it. The possibilities were well nigh limitless. Others, and still more neighbors, friends, strangers and enemies expressed their desire for additional funds to carry on their businesses—and so long as they could produce sufficient collateral they could borrow as much as they needed—the goldsmith issuing receipts for ten times the amount of gold in his strong-room, *and he not even the owner of that.*

Everything was hunky-dory so long as the real owners of the gold didn't call for it—or so long as the confidence of the people was maintained—or a whispering campaign was not begun; in which case, upon the discovery of the facts, the goldsmith was usually taken out and shot.

In this manner, through the example of the goldsmiths, bank credit entered upon the scene. The practice of issuing receipts—entries in bank ledgers and figures in bank pass books—balancing the borrower's debt against the bank's obligation to pay, and multiplying the obligations to pay by thirty or forty times the amount of money which they (the

banks) hold, is a hangover of the goldsmith's racket and is the cause of most of the distress in America and the civilized world today.

As a result of the enormous profits being made by the bankers, the United Nations scheme has been formed to protect them in their franchise and to enable them to exploit the world.

The Bank of Amsterdam, established in 1609 in the City of Amsterdam, was, it seems, the first institution which followed the practice of the goldsmiths under the title of banking. It accepted deposits and gave separate receipts for each deposit of its many depositors, each deposit comprising a new account. The procedure greatly multiplied the number of receipts outstanding. The receipts constituted the medium of exchange in the country.

At first these bankers did not think of or did not intend to follow the practice of the goldsmiths in issuing more receipts than they had in gold, but their avarice soon gained control and that practice was introduced and pursued. The receipts were not covered by gold but by mortgages and property which they believed could be converted into gold on short notice, if necessary.

All went well for a time, but in 1795 the truth leaked out. It was found that the outstanding receipts called for several times the amount of gold which was held by the bank. This discovery caused a panic and a run on the bank resulting in its destruction—because the demand for its gold far exceeded its supply.

The collapse of the Bank of Amsterdam should have been an object lesson to all posterity, but alas, avaricious men again took advantage of the forgetfulness and gullibility of the people and the fraud was revived and perpetuated.

CHAPTER II

The Bank of England

For centuries, in England, the Christians were taught, and believed, that it was contrary to Christian ethics to loan money at usury, or interest. During those centuries the Church and the State saw eye to eye, for they were practically one and the same. It was, therefore, not only un-Christian, but also illegal to loan money at interest.

The laws of King Alfred, in the Tenth Century, provided that the effects and lands of those who loaned money upon interest should be forfeited to the Crown and the lender should not be buried in consecrated ground. Under Edward the Confessor, in the next Century, it was provided that the usurer should forfeit all his property, be declared an outlaw and banished from England.

During the reign of Henry II, in the Twelfth Century, the estates of usurers were forfeited at their death and their children disinherited. In the Thirteenth Century, King John confiscated and gathered in the wealth of all known usurers. In the Fourteenth Century, the crime of loaning money at interest was made a capital offense, and during the reign of James I, it was held that the taking of usury was no better than taking a man's life.

In view of these facts it is quite understandable how the Jews became, for the most part, the money lenders and the goldsmiths of England. They for some reason had no compunction of conscience on the matter. They lived outside the pale of the teachings of the New Testament and ignored the unmistakable commands of the Old regarding usury. It is true that they had to carry on their business secretly, but carry it on they did.

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On the Constitutionality of the Bank of the United States, *1791*

Jefferson to Washington:

I consider the foundation of the Constitution as laid on this ground: That "all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people . . ." To take a single step beyond the boundaries thus specially drawn around the powers of Congress is to take possession of a boundless field of power, no longer susceptible of any definition.

The incorporation of a bank, and the powers assumed by this bill, have not, in my opinion, been delegated to the United States by the Constitution.

I. They are not among the powers specially enumerated: for these are: 1. A power to lay taxes for the purpose of paying the debts of the United States; but no debt is paid by this bill, nor any tax laid. Were it a bill to raise money, its origination in the Senate would condemn it by the Constitution.

2. "To borrow money." But this bill neither borrows money nor insures the borrowing it. The proprietors of the bank will be just as free as any other money-holders to lend or not to lend their money to the public. The operation proposed in the bill, first, to lend them two millions, and then to borrow them back again, cannot change the nature of the latter act, which will still be a payment, and not a loan, call it by what name you please.

3. To "regulate commerce with foreign nations, and among the states, and with the Indian tribes." To erect a bank, and to regulate commerce, are very different acts. He who erects a bank creates a subject of commerce in its bills; so does he who makes a bushel of wheat or digs a dollar out of the mines; yet neither of these persons regulates commerce thereby. To make a thing which may be bought and sold is not to prescribe regulations for buying and selling. Besides, if this was an exercise of the power of regulating commerce, it would be void, as extending as much to the internal commerce of every State, as to its external. For the power given to Congress by the Constitution does not extend to the internal regulation of the commerce of a State (that is to say of the commerce between citizen and citizen), which remain exclusively with its own legislature; but to its external commerce only, that is to say, its commerce with another State, or with foreign nations, or with the Indian tribes. Accordingly the bill does not propose the measure as a regulation of trade, but as "productive of considerable advantages to trade." Still less are these powers covered by any other of the special enumerations.

II. Nor are they within either of the general phrases, which are the two following:

1. To lay taxes to provide for the general welfare of the United States, that is to say, "to lay taxes for the purpose of providing for the general welfare." For the laying of taxes is the power, and the general welfare the purpose for which the power is to be exercised. They are not to lay taxes *ad libitum* for any purpose they please but only to pay the debts or provide for the welfare of the Union. In like manner, they are not to do anything they please to provide for the general welfare but only to lay taxes for that purpose. To consider the latter phrase, not as describing the purpose of the first, but as giving a distinct and independent power to do any act they please, which might be for the good of the Union, would render all the preceding and subsequent enumerations of power completely useless.

It would reduce the whole instrument to a single phrase, that of instituting a Congress with power to do whatever would be for the good of the United States; and, as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they please.

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It is an established rule of construction where a phrase will bear either of two meanings to give it that which will allow some meaning to the other parts of the instrument and not that which would render all the others useless. Certainly no such universal power was meant to be given them. It was intended to lace them up straitly within the enumerated powers, and those without which, as means, these powers could not be carried into effect. It is known that the very power now proposed as a means was rejected as an end by the Convention which formed the Constitution. A proposition was made to them to authorize Congress to open canals, and an amendatory one to empower them to incorporate. But the whole was rejected, and one of the reasons for rejection urged in debate was that then they would have a power to erect a bank, which would render the great cities, where there were prejudices and jealousies on the subject, adverse to the reception of the Constitution.

2. The second general phrase is "to make all laws necessary and proper for carrying into execution the enumerated powers." But they can all be carried into execution without a bank. A bank therefore is not necessary and consequently not authorized by this phrase.

It has been urged that a bank will give great facility or convenience in the collection of taxes. Suppose this were true: yet the Constitution allows only the names which are "necessary," not those which are merely "convenient" for effecting the enumerated powers. If such a latitude of construction be allowed to this phrase as to give any nonenumerated power, it will go to every one, for there is not one which ingenuity may not torture into a convenience in some instance or other, to some one of so long a list of enumerated powers. It would swallow up all the delegated powers and reduce the whole to one power, as before observed. Therefore it was that the Constitution restrained them to the *necessary* means, that is to say, to those means without which the grant of power would be nugatory. . . .

Perhaps, indeed, bank bills may be a more convenient vehicle than treasury orders. But a little difference in the degree of convenience cannot constitute the necessity which the Constitution makes the ground for assuming any nonenumerated power. . . .

It may be said that a bank whose bills would have a currency all over the States would be more convenient than one whose currency is limited to a single State. So it would be still more convenient that there should be a bank whose bills should have a currency all over the world. But it does not follow from this superior conveniency that there exists anywhere a power to establish such a bank or that the world may not get on very well without it.

Can it be thought that the Constitution intended that for a shade or two of convenience, more or less, Congress should be authorized to break down the most ancient and fundamental laws of the several States; such as those against mortmain, the laws of alienage, the rules of descent, the acts of distribution, the laws of escheat and forfeiture, the laws of monopoly? Nothing but a necessity invincible by any other means can justify such a prostitution of laws, which constitute the pillars of our whole system of jurisprudence. Will Congress be too strait-laced to carry the Constitution into honest effect, unless they may pass over the foundation laws of the State government for the slightest convenience of theirs?

The negative of the President is the shield provided by the Constitution to protect against the invasions of the legislature: 1. The right of the executive. 2. Of the judiciary. 3. Of the States and States legislatures. The present is the case of a right remaining exclusively with the States, and consequently one of those intended by the Constitution to be placed under its protection. . . .

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Veto of the Bank Renewal Bill, *Andrew Jackson, 1832*

The bill "to modify and continue" the act entitled "An act to incorporate the subscribers to the Bank of the United States" was presented to me on the 4th July instant. Having considered it with that solemn regard to the principles of the Constitution which the day was calculated to inspire, and come to the conclusion that it ought not to become a law, I herewith return it to the Senate, in which it originated, with my objections.

A bank of the United States is in many respects convenient for the Government and useful to the people. Entertaining this opinion, and deeply impressed with the belief that some of the powers and privileges possessed by the existing bank are unauthorized by the Constitution, subversive of the rights of the States, and dangerous to the liberties of the people, I felt it my duty at an early period of my Administration to call the attention of Congress to the practicability of organizing an institution combining all its advantages and obviating these objections. I sincerely regret that in the act before me I can perceive none of those modifications of the bank charter which are necessary, in my opinion, to make it compatible with justice, with sound policy, or with the Constitution of our country.

The present corporate body, denominated the president, directors, and company of the Bank of the United States, will have existed at the time this act is intended to take effect twenty years. It enjoys an exclusive privilege of banking under the authority of the General Government, a monopoly of its favor and support, and, as a necessary consequence, almost a monopoly of the foreign and domestic exchange. The powers, privileges, and favors bestowed upon it in the original charter, by increasing the value of the stock far above its par value, operated as a gratuity of many millions to the stockholders.

An apology may be found for the failure to guard against this result in the consideration that the effect of the original act of incorporation could not be certainly foreseen at the time of its passage. The act before me proposes another gratuity to the holders of the same stock, and in many cases to the same men, of at least seven millions more. This donation finds no apology in any uncertainty as to the effect of the act. On all hands it is conceded that its passage will increase at least 20 or 30 per cent more the market price of the stock, subject to the payment of the annunity of $200,000 per year secured by the act, thus adding in a moment one-fourth to its par value. It is not our own citizens only who are to receive the bounty of our Government. More than eight millions of the stock of this bank are held by foreigners. By this act the American Republic proposes virtually to make them a present of some millions of dollars. For these gratuities to foreigners, and to some of our own opulent citizens the act secures no equivalent whatever. They are the certain gains of the present stockholders under the operation of this act, after making full allowance for the payment of the bonus.

Every monopoly and all exclusive privileges are granted at the expense of the public, which ought to receive a fair equivalent. The many millions which this act proposes to bestow on the stockholders of the existing bank must come directly or indirectly out of the earnings of the American people. It is due to them, therefore, if their Government sell monopolies and exclusive privileges, that they should at least exact for them as much as they are worth in open market. The value of the monopoly in this case may be correctly ascertained. The twenty-eight millions of stock would probably be at an advance of 50 per cent, and command in market at least $42,000,000, subject to the payment of the present bonus. The present value of the monopoly, therefore, is $17,000,000, and this the act proposes to sell for three millions, payable in fifteen annual installments of $200,000 each.

It is not conceivable how the present stockholders can have any claim to the special favor of the Government. The present corporation has enjoyed its monopoly during the period stipulated in the original contract. If we must have such a corporation, why should not the Government sell out the whole stock and thus secure to the people the full market value of the privileges granted? Why should not Congress create and sell twenty-eight millions of stock, incorporating the purchases with all the powers and privileges secured in this act and putting the premium upon the sales into the Treasury?

But this act does not permit competition in the purchase of this monopoly. It seems to be predicated on the erroneous idea that the present stockholders have a prescriptive right not only to the favor but to the bounty of Government. It appears that more than a fourth part of the stock is held by foreigners and the residue is held by a few hundred of our own citizens, chiefly of the richest class. For their benefit does this act exclude the whole American people from competition in the purchase of this monopoly and dispose of it for many millions less than it is worth. This seems the less excusable because some of our citizens not now stockholders petitioned that the door of competition might be opened, and offered to take a charter on terms much more favorable to the Government and country.

But this proposition, although made by men whose aggregate wealth is believed to be equal to all the private stock in the existing bank, has been set aside, and the bounty of our Government is proposed to be again bestowed on the few who have been fortunate enough to secure the stock and at this moment wield the power of the existing institution. I can not perceive the justice or policy of this course. If our Government must sell monopolies, it would seem to be its duty to take nothing less than their full value, and if gratuities must be made once in fifteen or twenty years let them not be bestowed on the subjects of a foreign government nor upon a designated and favored class of men in our own country. It is but justice and good policy as far as the nature of the case will admit, to confine our favors to our own fellow-citizens, and let each in his turn enjoy an opportunity to profit by our bounty. In the bearings of the act before me upon these points I find ample reasons why it should not become a law.

It has been urged as an argument in favor of rechartering the present bank that the calling in its loans will produce great embarrassment and distress. The time allowed to close its concerns is ample, and if it has well managed its pressure will be light, and heavy only in case its management has been bad. If, therefore, it shall produce distress, the fault will be its own, and it would furnish a reason against renewing a power which has been so obviously abused. But will there ever be a time when this reason will be less powerful? To acknowledge its force is to admit that the bank ought to be perpetual, and as a consequence the present stockholders and those inheriting their rights as successors be established a privileged order, clothed both with great political power and enjoying immense pecuniary advantages from their connection with the Government.

The modifications of the existing charter proposed by this act are not such, in my view, as make it consistent with the rights of the States or the liberties of the people. The qualification of the right of the bank to hold real estate, the limitation of its power to establish branches, and the power reserved to Congress to forbid the circulation of small notes are restrictions comparatively of little value or importance. All the objectionable principles of the existing corporation, and most of its odious features, are retained without alleviation. . . .

In another of its bearings this provision is fraught with danger. Of the twenty-five directors of this bank five are chosen by the Government and twenty by the citizen stockholders. From all voice in these elections the foreign stockholders are excluded by the charter. In proportion, therefore, as the stock is transferred to foreign holders the extent of

suffrage in the choice of directors is curtailed. Already is almost a third of the stock in foreign hands and not represented in elections. It is constantly passing out of the country, and this act will accelerate its departure. The entire control of the institution would necessarily fall into the hands of a few citizen stockholders, and the ease with which the object would be accomplished would be a temptation to designing men to secure that control in their own hands by monopolizing the remaining stock. There is danger that a president and directors would then be able to elect themselves from year to year, and without responsibility or control manage the whole concerns of the bank during the existence of its charter. It is easy to conceive that great evils to our country and its institutions might flow from such a concentration of power in the hands of a few men irresponsible to the people.

Is there no danger to our liberty and independence in a bank that in its nature has so little to bind it to our country? The president of the bank has told us that most of the State banks exist by its forbearance. Should its influence become concentered, as it may under the operation of such an act as this, in the hands of a self-elected directory whose interests are identified with those of the foreign stockholders, will there not be cause to tremble for the purity of our elections in peace and for the independence of our country in war? Their power would be great whenever they might choose to exert it; but if this monopoly were regularly renewed every fifteen or twenty years on terms proposed by themselves, they might seldom in peace put forth their strength to influence elections or control the affairs of the nation. But if any private citizen or public functionary should interpose to curtail its powers or prevent a renewal of its privileges, it can not be doubted that he would be made to feel its influence.

Should the stock of the bank principally pass into the hands of the subjects of a foreign country, and we should unfortunately become involved in a war with that country, what would be our condition? Of the course which would be pursued by a bank almost wholly owned by the subjects of a foreign power, and managed by those whose interests, if not affections, would run in the same direction there can be no doubt. All its operations within would be in aid of the hostile fleets and armies without. Controlling our currency, receiving our public moneys, and holding thousands of our citizens in dependence, it would be more formidable and dangerous than the naval and military power of the enemy.

If we must have a bank with private stockholders, every consideration of sound policy and every impulse of American feeling admonishes that it should be *purely American*. Its stockholders should be composed exclusively of our own citizens, who at least ought to be friendly to our Government and willing to support it in times of difficulty and danger. So abundant is domestic capital that competition in subscribing for the stock of local banks has recently led almost to riots. To a bank exclusively of American stockholders, possessing the powers and privileges granted by this act, subscriptions for $200,000,000 could readily be obtained. Instead of sending abroad the stock of the bank in which the Government must deposit its funds and on which it must rely to sustain its credit in times of emergency, it would rather seem to be expedient to prohibit its sale to aliens under penalty of absolute forfeiture.

It is maintained by the advocates of the bank that its constitutionality in all its features ought to be considered as settled by precedent and by the decision of the Supreme Court. To this conclusion I can not assent. Mere precedent is a dangerous source of authority, and should not be regarded as deciding questions of constitutional power except where the acquiescence of the people and the States can be considered as well settled. So far from this being the case on this subject, an argument against the bank might be based on precedent. One Congress, in 1791, decided in favor of a bank; another, in 1811,

decided against it. One Congress in 1815, decided against a bank; another in 1816, decided in its favor. Prior to the present Congress, therefore, the precedents drawn from that source were equal. If we resort to the States, the expressions of legislative, judicial, and executive opinions against the bank have been probably to those in its favor as 4 to 1. There is nothing in precedent, therefore, which, if its authority were admitted, ought to weigh in favor of the act before me.

If the opinion of the Supreme Court covered the whole ground of this act, it ought not to control the coordinate authorities of this Government. The Congress, the Executive, and the Court must each for itself be guided by its own opinion of the Constitution. Each public officer who takes an oath to support the Constitution swears that he will support it as he understands it, and not as it is understood by others. It is as much the duty of the House of Representatives, of the Senate, and of the President to decide upon the constitutionality of any bill or resolution which may be presented to them for passage or approval as it is of the supreme judges when it may be brought before them for judicial decision. The opinion of the judges has no more authority over Congress than one opinion of Congress has over the judges, and on that point the President is independent of both. The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve. . . .

The bank is professedly established as an agent of the executive branch of the Government, and its constitutionality is maintained on that ground. Neither upon the propriety of present action nor upon the provisions of this act was the Executive consulted. It has had no opportunity to say that it neither needs nor wants an agent clothed with such powers and favored by such exemptions. There is nothing in its legitimate functions which makes it necessary or proper. Whatever interest or influence, whether public or private, has given birth to this act, it can not be found either in the wishes or necessities of the executive department, by which present action is deemed premature, and the powers conferred upon its agent not only unncessary, but dangerous to the Government and country.

It is to be regretted that the rich and powerful too often bend the acts of government to their selfish purposes. Distinctions in society will always exist under every just government. Equality of talents, of education, or of wealth can not be produced by human institutions. In the full enjoyment of the gifts of Heaven and the fruits of superior industry, economy, and virtue, every man is equally entitled to protection by law; but when the laws undertake to add to these natural and just advantages artificial distinctions, to grant titles, gratuities, and exclusive privileges, to make the rich richer and the potent more powerful, the humble members of society—the farmers, mechanics, and laborers—who have neither the time nor the means of securing like favors to themselves, have a right to complain of the injustice of their Government. There are no necessary evils in government. Its evils exist only in its abuses. If it would confine itself to equal protection, and, as Heaven does its rains, shower its favors alike on the high and the low, the rich and the poor, it would be an unqualified blessing. In the act before me there seems to be a wide and unnecessary departure from these just principles.

Nor is our Government to be maintained or our Union preserved by invasions of the rights and powers of the several States. In thus attempting to make our General Government strong we make it weak. Its true strength consists in leaving individuals and States as much as possible to themselves—in making itself felt, not in its power, but in its beneficence; not in its control, but in its protection; not in binding the States more closely to the center, but leaving each more unobstructed in its proper orbit.

Experience should teach us wisdom. Most of the difficulties our Government now encounters and most of the dangers which impend over our Union have sprung from an abandonment of the legitimate objects of Government by our national legislation, and the adoption of such principles as are embodied in this act. Many of our rich men have not been content with equal protection and equal benefits, but have besought us to make them richer by act of Congress. By attempting to gratify their desires we have in the results of our legislation arrayed section against section, interest against interest, and man against man, in a fearful commotion which threatens to shake the foundations of our Union. It is time to pause in our career to review our principles, and if possible revive that devoted patriotism and spirit of compromise which distinguished the sages of the Revolution and the fathers of our Union. If we can not at once, in justice to interests vested under improvident legislation, make our Government what it ought to be, we can at least take a stand against all new grants of monopolies and exclusive privileges, against any prostitution of our Government to the advancement of the few at the expense of the many, and in favor of compromise and gradual reform in our code of laws and system of political economy.

ANDREW JACKSON

Note:From the Journals and debates of the Constitutional Convention and the ratification debates in the State Legislatures, it was almost universally agreed that the express purpose of their meetings was to put an end to paper money of any and all descriptions as a legal tender and to insure that the obligation of Contract would no longer be impaired or invaded by any Government.

A standard unit of value no longer exists. Paper money is not redeemable in any thing. Contracts between individuals lack integrity. German paper "Fiat" Money after WW 1 depreciated so fast that the employees would not accept their wages once a week. They demanded and spent their wages twice a day and re-negotiated their employment contract after each 1/2 day. If permitted to continue the same thing will happen here.

and herds of the west are protected from the devastations of those destructive and numerous animals; the "crow certificates," the rewards of those who save the fields of the husbandman from the spoils of their worst enemies, are all receivable for taxes, and all are equally obnoxious to the exceptions taken to the certificates issued under the law of Missouri.

The consideration for the note which is the subject of this suit was a good and valuable consideration, and the note is binding on the parties to it by the express terms of the sixteenth section of the law. The note furnished the parties with the means of paying their taxes, and was a benefit to them. All the certificates have been redeemed by the State.

Congress is not authorized to issue bills of credit. The States may do all that is not prohibited, while Congress can do nothing which is not granted by the Constitution. Congress had no express authority to issue treasury notes, but they were issued. These notes were precisely like the Missouri certificates.

The treasury notes were not bills of credit; for they were not made, by the act under which they were issued, a legal tender. They were freely circulated throughout the United States without objections, and they were most useful instruments in the financial operations of the government during the last war.

This court has not jurisdiction of the case. It is not within the requirements of the twenty-fifth section of the Judiciary Act. The validity of the State law was not drawn in question before the courts of Missouri, and no decision was made in those courts upon the validity of the objection now set up under the Constitution of the United States.

The pleadings do not show that the law was drawn in question; they only deny the promise charged in the declaration. Upon the matters thus presented, and on no others, did the courts of Missouri decide.

Mr. Sheffey, in reply. The whole argument on the part of the State of Missouri in founded **424***] on the assumption that *the certificates are not bills of credit, because they are not made a legal tender.

The provision of the Constitution was introduced to prevent a mischief; one of the most fatal effects on the property of the citizens of the United States; and thus considered, it is to be construed liberally. A strict construction, and particularly one which would render it inoperative, or feeble in its influence, would not be justifiable.

The evils are the same, and the notes will circulate as freely and as extensively whether they are made a tender or not. Whatever paper promise is circulated on the credit of the State is a bill of credit, and is within the sense of the Constitution.

This provision in the Constitution was introduced to prevent the States from resorting to State necessity as an apology for the issue of paper. The States are not allowed to "coin money," and the object clearly was to prevent anything being made by the States which would serve as a circulating medium.

The word "emit" is a peculiar expression. The States may borrow money and give notes, but that is not coining money, nor is it emitting bills of credit; and so "wolf and crow scalp certificates" are only evidence that the counties in the States which authorize them owe so much money for meritorious and beneficial services.

It is denied that the power of the United States to issue bills of credit is the same which has been claimed by the State of Missouri under this law. It does not follow that because the United States may issue such bills the states may do so. The States are especially prohibited such issues by the Constitution.

The proposition which was made in the convention to give to Congress the power to issue bills of credit may have been rejected because that power had been already given in the power to coin money, and regulate its value. Congress has this power, as an incident, like the power to issue debentures; which is exercised as an incident to the power to regulate commerce.

*Mr. *Chief Justice* MARSHALL delivered the opinion of the court, *Justices* THOMPSON, JOHNSON, and M'LEAN dissenting: [**425

This is a writ of error to a judgment rendered in the Court of Last Resort in the State of Missouri, affirming a judgment obtained by the State in one of its inferior courts against Hiram Craig and others on a promissory note.

The judgment is in these words: "And afterwards at a court," &c., "the parties came into court by their attorneys, and, neither party desiring a jury, the cause is submitted to the court; therefore, all and singular the matters and things being seen and heard by the court, it is found by them that the said defendants did assume upon themselves, in manner and form, as the plaintiff by her counsel alleged. And the court also find that the consideration for which the writing declared upon and the *assumpsit* was made was for the loan of loan-office certificates, loaned by the State at her loan-office at Chariton; which certificates were issued and the loan made in the manner pointed out by an Act of the Legislature of the said State of Missouri, approved the 27th day of June, 1821, entitled 'An Act for the establishment of loan-offices,' and the acts amendatory and supplementary thereto: and the court do further find that the plaintiff has sustained damages by reason of the nonperformance of the assumptions and undertakings of them, the said defendants, to the sum of two hundred and thirty-seven dollars and seventy-nine cents, and do assess her damages to that sum. Therefore, it is considered," &c.

The first inquiry is into the jurisdiction of the court.

The twenty-fifth section of the Judicial Act declares "that a final judgment or decree in any suit in the highest court of law or equity of a State, in which a decision in the suit could be had, where is drawn in question" "the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of such their validity," "may be re-examined, and reversed or affirmed in the Supreme Court of the United States."

To give jurisdiction to this court, it must appear in the *record. 1. That the validity of a statute of the State of Missouri was drawn in question on the ground of its being [**426

repugnant to the Constitution of the United States. 2. That the decision was in favor of its validity.

1. To determine whether the validity of a statute of the State was drawn in question, it will be proper to inspect the pleadings in the cause, as well as the judgment of the court.

The declaration is on a promissory note, dated on the 1st day of August, 1822, promising to pay to the State of Missouri on the 1st day of November, 1822, at the loan-office in Chariton, the sum of one hundred and ninety-nine dollars ninety-nine cents, and the two per cent. per annum, the interest accruing on the certificates borrowed from the 1st of October, 1821. This note is obviously given for certificates loaned under the Act "for the establishment of loan-offices." That act directs that loans on personal securities shall be made of sums less than two hundred dollars. This note is for one hundred and ninety-nine dollars ninety-nine cents. The act directs that the certificates issued by the State shall carry two per cent. interest from the date, which interest shall be calculated in the amount of the loan. The note promises to repay the sum, with the two per cent. interest accruing on the certificates borrowed, from the 1st day of October, 1821. It cannot be doubted that the declaration is on a note given in pursuance of the act which has been mentioned.

Neither can it be doubted that the plea of *non assumpsit* allowed the defendants to draw into question at the trial the validity of the consideration on which the note was given. Everything which disaffirms the contract, everything which shows it to be void, may be given in evidence on the general issue in an action of *assumpsit*. The defendants, therefore, were at liberty to question the validity of the consideration which was the foundation of the contract, and the constitutionality of the law in which it originated.

Have they done so?

Had the cause been tried before a jury, the regular course would have been to move the court to instruct the jury that the act of Assembly in pursuance of which the note was given was repugnant to the Constitution of the
427*] United States, *and to except to the charge of the judges if in favor of its validity: or a special verdict might have been found by the jury stating the act of Assembly, the execution of the note in payment of certificates loaned in pursuance of that act, and referring its validity to the court. The one course or the other would have shown that the validity of the act of Assembly was drawn into question on the ground of its repugnancy to the Constitution, and that the decision of the court was in favor of its validity. But the one course or the other would have required both a court and jury. Neither could be pursued where the office of the jury was performed by the court. In such a case, the obvious substitute for an instruction to the jury, or a special verdict, is a statement by the court of the points in controversy, on which its judgment is founded. This may not be the usual mode of proceeding, but it is an obvious mode; and if the court of the State has adopted it, this court cannot give up substance for form.

The arguments of counsel cannot be spread on the record. The points urged in argument cannot appear. But the motives stated by the court on the record for its judgment, and which form a part of the judgment itself, must be considered as exhibiting the points to which those arguments were directed, and the judgment as showing the decision of the court upon those points. There was no jury to find the facts and refer the law to the court; but if the court, which was substituted for the jury, has found the facts on which its judgment was rendered, its finding must be equivalent to the finding of a jury. Has the court, then, substituting itself for a jury, placed facts upon the record which, connected with the pleadings, show that the act in pursuance of which this note was executed was drawn into question on the ground of its repugnancy to the Constitution?

After finding that the defendants did assume upon themselves, &c., the court proceeds to find "that the consideration for which the writing declared upon and the *assumpsit* was made was the loan of loan-office certificates loaned by the State at her loan-office at Chariton; which certificates were issued and the loan made in the manner pointed out *by an [***428** Act of the Legislature of the said State of Missouri, approved the 27th of June, 1821, entitled," &c.

Why did not the court stop immediately after the usual finding that the defendants assumed upon themselves? Why proceed to find that the note was given for loan-office certificates issued under the act contended to be unconstitutional, and loaned in pursuance of that act, if the matter thus found was irrelevant to the question they were to decide?

Suppose the statement made by the court to be contained in the verdict of a jury which concludes with referring to the court the validity of the note thus taken in pursuance of the act; would not such a verdict bring the constitutionality of the act as well as its construction directly before the court? We think it would: such a verdict would find that the consideration of the note was loan-office certificates issued and loaned in the manner prescribed by the act. What could be referred to the court by such a verdict but the obligation of the law? It finds that the certificates for which the note was given were issued in pursuance of the act, and that the contract was made in conformity with it. Admit the obligation of the act, and the verdict is for the plaintiff; deny its obligation, and the verdict is for the defendant. On what ground can its obligation be contested, but its repugnancy to the Constitution of the United States? No other is suggested. At any rate, it is open to that objection. If it be in truth repugnant to the Constitution of the United States, that repugnancy might have been urged in the State, and may consequently be urged in this court; since it is presented by the facts in the record, which were found by the court that tried the cause.

It is impossible to doubt that, in point of fact, the constitutionality of the act under which the certificates were issued that formed the consideration of this note, constituted the only real question made by the parties, and the only real question decided by the court. But the record is to be inspected with judicial eyes; and, as it does not state in express terms that this point was made, it has been contended that this court

cannot assume the fact that it was made or determined in the tribunal of the State.

429*] *The record shows distinctly that this point existed, and that no other did exist; the special statement of facts made by the court as exhibiting the foundation of its judgment contains this point and no other. The record shows clearly that the cause did depend, and must depend, on this point alone. If, in such a case, the mere omission of the court of Missouri to say, in terms, that the act of the Legislature was constitutional, withdraws that point from the cause, or must close the judicial eyes of the appellate tribunal upon it, nothing can be more obvious than that the provisions of the Constitution and of an act of Congress may be always evaded; and may be often, as we think they would be in this case, unintentionally defeated.

But this question has frequently occurred, and has, we think, been frequently decided in this court. *Smith* v. *The State of Maryland* (6 Cranch, 286), *Martin* v. *Hunter's Lessee* (1 Wheat., 355), *Miller* v. *Nicholls* (4 Wheat., 311), *Williams* v. *Norris* (12 Wheat., 117), *Wilson et al.* v. *The Black Bird Creek Marsh Company* (2 Peters, 245), and *Harris* v. *Dennie*, in this term, are all, we think, expressly in point. There has been perfect uniformity in the construction given by this court to the twenty-fifth section of the Judicial Act. That construction is, that it is not necessary to state, in terms, on the record, that the Constitution or a treaty or law of the United States has been drawn in question, or the validity of a State law, on the ground of its repugnancy to the Constitution. It is sufficient if the record shows that the Constitution, or a treaty or law of the United States must have been construed, or that the constitutionality of a State law must have been questioned, and the decision has been in favor of the party claiming under such law.

We think, then, that the facts stated on the record presented the question of repugnancy between the Constitution of the United States and the act of Missouri to the court for its decision. If it was presented, we are to inquire,

2. Was the decision of the court in favor of its validity?

The judgment in favor of the plaintiff is a decision in favor of the validity of the contract,
430*] and, consequently, of *the validity of the law by the authority of which the contract was made.

The case is, we think, within the twenty-fifth section of the Judicial Act, and, consequently, within the jurisdiction of this court.

This brings us to the great question in the cause: Is the act of the Legislature of Missouri repugnant to the Constitution of the United States?

The counsel for the plaintiffs in error maintain that it is repugnant to the Constitution, because its object is the emission of bills of credit contrary to the express prohibition contained in the tenth section of the first article.

The Act under the authority of which the certificates loaned to the plaintiffs in error were issued was passed on the 26th of June, 1821, and is entitled "An Act for the establishment of loan-offices." The provisions that are material to the present inquiry are comprehended in the third, thirteenth, fifteenth, sixteenth, twenty-third, and twenty-fourth sections of the act, which are in these words:

Section the third enacts "that the auditor of public accounts and treasurer, under the direction of the governor, shall, and they are hereby required to issue certificates, signed by the said auditor and treasurer, to the amount of two hundred thousand dollars, of denominations not exceeding ten dollars, nor less than fifty cents (to bear such devices as they may deem the most safe), in the following form, to wit: "This certificate shall be receivable at the treasury, or any of the loan-offices of the State of Missouri, in the discharge of taxes or debts due to the State, for the sum of $——, with interest for the same, at the rate of two per centum per annum from this date, the—— day of —— 182 ."

The thirteenth section declares "that the certificates of the said loan-office shall be receivable at the treasury of the State, and by all tax-gatherers and other public officers, in payment of taxes or other moneys now due to the State or to any county or town therein, and the said certificates shall also be received by all officers, civil and military, in the State, in the discharge of salaries and fees of office."

The fifteenth section provides "that the commissioners *of the said loan-offices [***431** shall have power to make loans of the said certificates to citizens of this State, residing within their respective districts only, and in each district a proportion shall be loaned to the citizens of each county therein, according to the number thereof," &c.

Section sixteenth. "That the said commissioners of each of the said offices are further authorized to make loans on personal securities by them deemed good and sufficient for sums less than two hundred dollars; which securities shall be jointly and severally bound for the payment of the amount so loaned, with interest thereon," &c.

Section twenty-third. "That the General Assembly shall, as soon as may be, cause the salt springs and lands attached thereto, given by Congress to this State, to be leased out, and it shall always be the fundamental condition in such leases that the lessee or lessees shall receive the certificates hereby required to be issued in payment for salt, at a price not exceeding that which may be prescribed by law; and all the proceeds of the said salt springs, the interest accruing to the State, and all estates purchased by officers of the said several offices under the provisions of this act, and all the debts now due or hereafter to be due to this State, are hereby pledged and constituted a fund for the redemption of the certificates hereby required to be issued, and the faith of the State is hereby also pledged for the same purpose."

Section twenty-fourth. "That it shall be the duty of the said auditor and treasurer to withdraw annually from circulation one-tenth part of the certificates which are hereby required to be issued," &c.

The clause in the Consitution which this act is supposed to violate is in these words: "No State shall" "emit bills of credit."

What is a bill of credit? What did the Constitution mean to forbid?

In its enlarged, and perhaps its literal sense, the term "bill of credit" may comprehend any instrument by which a State engages to pay money at a future day; thus including a certificate given for money borrowed. But the lan-
432*] guage *of the Constitution itself, and the mischief to be prevented, which we know from the history of our country, equally limit the interpretation of the terms. The word "emit" is never employed in describing those contracts by which a State binds itself to pay money at a future day for services actually received, or for money borrowed for present use; nor are instruments executed for such purposes, in common language, denominated "bills of credit." To "emit bills of credit," conveys to the mind the idea of issuing paper intended to circulate through the community for its ordinary purposes, as money, which paper is redeemable at a future day. This is the sense in which the terms have been always understood.

At a very early period of our colonial history the attempt to supply the want of the precious metals by a paper medium was made to a considerable extent, and the bills emited for this purpose have been frequently denominated bills of credit. During the war of our revolution we were driven to this expedient, and necessity compelled us to use it to a most fearful extent. The term has acquired an appropriate meaning; and "bills of credit" signify a paper medium, intended to circulate between individuals and between government and individuals, for the ordinary purposes of society. Such a medium has been always liable to considerable fluctuation. Its value is continually changing; and these changes, often great and sudden, expose individuals to immense loss, are the sources of ruinous speculations, and destroy all confidence between man and man. To cut up this mischief by the roots, a mischief which was felt through the United States, and which deeply affected the interest and prosperity of all, the people declared in their Constitution that no State should emit bills of credit. If the prohibition means anything, if the words are not empty sounds, it must comprehend the emission of any paper medium by a State government for the purpose of common circulation.

What is the character of the certificates issued by authority of the act under consideration? What office are they to perform? Certificates signed by the auditor and treasurer of the State are to be issued by those officers to
433*] the *amount of two hundred thousand dollars, of denominations not exceeding ten dollars, nor less than fifty cents. The paper purports on its face to be receivable at the treasury, or at any loan-office of the State of Missouri, in discharge of taxes or debts due to the State.

The law makes them receivable in discharge of all taxes or debts due to the State, or any county or town therein; and of all salaries and fees of office to all officers, civil and military, within the State, and for salt sold by the lessees of the public salt-works. It also pledges the faith and funds of the State for their redemption.

It seems impossible to doubt the intention of the Legislature in passing this act, or to mistake the character of these certificates, or the office they were to perform. The denominations of the bills—from ten dollars to fifty cents—fitted them for the purpose of ordinary circulation and their reception in payment of taxes, and debts to the government and to corporations, and of salaries and fees, would give them currency. They were to be put into circulation; that is, emitted, by the government. In addition to all these evidences of an intention to make these certificates the ordinary circulating medium of the country, the law speaks of them in this character, and directs the auditor and treasurer to withdraw annually one-tenth of them from circulation. Had they been termed "bills of credit," instead of "certificates," nothing would have been wanting to bring them within the prohibitory words of the Constitution.

And can this make any real difference? Is the proposition to be maintained that the Constitution meant to prohibit names and not things? That a very important act, big with great and ruinous mischief, which is expresely forbidden by words most appropriate for its description, may be performed by the substitution of a name? That the Constitution, in one of its most important provisions, may be openly evaded by giving a new name to an old thing? We cannot think so. We think the certificates emitted under the authority of this act are as entirely bills of credit as if they had been so denominated in the act itself.

But it is contended that though these certificates should be *deemed bills of credit, [*434 according to the common acceptation of the term, they are not so in the sense of the Constitution, because they are not made a legal tender.

The Constitution itself furnishes no countenance to this distinction. The prohibition is general. It extends to all bills of credit, not to bills of a particular description. That tribunal must be bold indeed, which, without the aid of other explanatory words, could venture on this construction. It is the less admissible in this case, because the same clause of the Constitution contains a substantive prohibition to the enactment of tender laws. The Constitution, therefore, considers the emission of bills of credit and the enactment of tender laws as distinct operations, independent of each other, which may be separately performed. Both are forbidden. To sustain the one because it is not also the other; to say that bills of credit may be emitted if they be not made a tender in payment of debts, is, in effect, to expunge that distinct independent prohibition, and to read the clause as if it had been entirely omitted. We are not at liberty to do this.

The history of paper money has been referred to for the purpose of showing that its great mischief consists in being made a tender, and that, therefore, the general words of the Constitution may be restrained to a particular intent.

Was it even true that the evils of paper money resulted solely from the quality of its being made a tender, this court would not feel itself authorized to disregard the plain meaning of words, in search of a conjectural intent to which we are not conducted by the language of any part of the instrument. But we do not think that the history of our country proves

either, that being made a tender in payment of debts is an essential quality of bills of credit, or the only mischief resulting from them. It may, indeed, be the most pernicious; but that will not authorize a court to convert a general into a particular prohibition.

We learn from Hutchinson's History of Massachusetts (Vol. I., p. 402), that bills of credit were emitted for the first time in that colony in 1690. An army returning unexpectedly from an expedition against Canada (which had proved as disastrous as the plan was magnifi-
435*] cent), found the government *totally unprepared to meet their claims. Bills of credit were resorted to for relief from this embarrassment. They do not appear to have been made a tender, but they were not on that account the less bills of credit, nor were they absolutely harmless. The emission, however, not being considerable, and the bills being soon redeemed, the experiment would have been productive of not much mischief had it not been followed by repeated emissions to a much larger amount. The subsequent history of Massachusetts abounds with proofs of the evils with which paper money is fraught, whether it be or be not a legal tender.

Paper money was also issued in other colonies, both in the north and south; and whether made a tender or not, was productive of evils in proportion to the quantity emitted. In the war which commenced in America in 1755, Virginia issued paper money at several successive sessions under the appellation of treasury notes. This was made a tender. Emissions were afterwards made in 1769, in 1771, and in 1773. These were not made a tender, but they circulated together; were equally bills of credit, and were productive of the same effects. In 1775 a considerable emission was made for the purposes of the war. The bills were declared to be current, but were not made a tender. In 1776, an additional emission was made, and the bills were declared to be a tender. The bills of 1775 and 1776 circulated together, were equally bills of credit, and were productive of the same consequences.

Congress emitted bills of credit to a large amount, and did not, perhaps could not, make them a legal tender. This power resided in the States. In May, 1777, the Legislature of Virginia passed an Act for the first time making the bills of credit issued under the authority of Congress a tender so far as to extinguish interest. It was not until March, 1781, that Virginia passed an Act making all the bills of credit which had been emitted by Congress, and all which had been emitted by the State, a legal tender in payment of debts. Yet they were, in every sense of the word, bills of credit previous to that time, and were productive of all the consequences of paper money. We cannot, then, assent to the proposition
436*] *that the history of our country furnishes any just argument in favor of that restricted construction of the Constitution for which the counsel for the defendant in error contends.

The certificates for which this note was given, being in truth "bills of credit" in the sense of the Constitution, we are brought to the inquiry:

Is the note valid of which they form the consideration?

It has been long settled that a promise made in consideration of an act which is forbidden by law is void. It will not be questioned that an act forbidden by the Constitution of the United States, which is the supreme law, is against law. Now, the Constitution forbids a State to "emit bills of credit." The loan of these certificates is the very act which is forbidden. It is not the making of them while they lie in the loan-offices, but the issuing of them, the putting them into circulation, which is the act of emission—the act that is forbidden by the Constitution. The consideration of this note is the emission of bills of credit by the State. The very act which constitutes the consideration is the act of emitting bills of credit in the mode prescribed by the law of Missouri, which act is prohibited by the Constitution of the United States.

Cases which we cannot distinguish from this in principle have been decided in State courts of great respectability, and in this court. In the case of *The Springfield Bank* v. *Merrick et al.* (14 Mass. Rep., 322), a note was made payable in certain bills, the loaning or negotiating of which was prohibited by statute, inflicting a penalty for its violation. The note was held to be void. Had this note been made in consideration of these bills, instead of being made payable in them, it would not have been less repugnant to the statute; and would consequently have been equally void.

In *Hunt* v. *Knickerbocker* (5 Johns. Rep., 327), it was decided that an agreement for the sale of tickets in a lottery not authorized by the Legislature of the State, although instituted under the authority of the government of another State, is contrary to the spirit and policy of the law, and void. The consideration on which the agreement was founded being illegal, the agreement was void. The books, both of *Massachusetts and New York, [*437 abound with cases to the same effect. They turn upon the question whether the particular case is within the principle, not on the principle itself. It has never been doubted that a note given on a consideration which is prohibited by law, is void. Had the issuing or circulation of certificates of this or of any other description been prohibited by a statute of Missouri, could a suit have been sustained in the courts of that State on a note given in consideration of the prohibited certificates? If it could not, are the prohibitions of the Constitution to be held less sacred than those of a State law?

It had been determined, independently of the acts of Congress on that subject, that sailing under the license of an enemy is illegal. *Patton* v. *Nicholson* (3 Wheat., 204) was a suit brought in one of the courts of this district on a note given by Nicholson to Patton, both citizens of the United States, for a British license. The United States were then at war with Great Britian, but the license was procured without any intercourse with the enemy. The judgment of the Circuit Court was in favor of the defendant, and the plaintiff sued out a writ of error. The counsel for the defendant in error was stopped, the court declaring that the use of a license from the enemy being unlawful, one citizen had no right to purchase from or sell to another such

a license, to be used on board an American vessel. The consideration for which the note was given being unlawful, it followed of course that the note was void.

A majority of the court feels constrained to say that the consideration on which the note in this case was given is against the highest law of the land, and that the note itself is utterly void. In rendering judgment for the plaintiff, the court for the State of Missouri decided in favor of the validity of a law which is repugnant to the Constitution of the United States.

In the argument we have been reminded by one side of the dignity of a sovereign state; of the humiliation of her submitting herself to this tribunal; of the dangers which may result from inflicting a wound on that dignity: by the other, of the still superior dignity of the 438*] people of the United States, *who have spoken their will in terms which we cannot misunderstand.

To these admonitions we can only answer, that if the exercise of that jurisdiction which has been imposed upon us by the Constitution and laws of the United States shall be calculated to bring on those dangers which have been indicated, or if it shall be indispensable to the preservation of the Union, and consequently, of the independence and liberty of these States, these are considerations which address themselves to those departments which may with perfect propriety be influenced by them. This department can listen only to the mandates of law, and can tread only that path which is marked out by duty.

The judgment of the Supreme Court of the State of Missouri for the First Judicial District is reversed, and the cause remanded, with directions to enter judgment for the defendants.

Mr. Justice JOHNSON.

This is a case of a new impression and intrinsic difficulty, and brings up questions of the most vital importance to the interests of this Union.

The declaration is in the ordinary form, and the part of the record of the State court which raises the questions before us, is expressed in these words: "At a court, &c., came the parties, &c., and neither party requiring a jury, the cause is submitted to the court; therefore, all and singular, the matters and things, and evidences, being seen and heard by the court, it is found by them that the said defendants did assume upon themselves in the manner and form as the plaintiffs by their counsel allege; and the court also find that the consideration for which the writing declared upon and the *assumpsit* was made, was for the loan of loan-office certificates, loaned by the State at her loan-office at Chariton; which certificates were issued and the loan made in the manner pointed out by an Act of the Legislature of Missouri, approved, &c. And the court do further find that the plaintiff hath sustained damages by reason of the nonperformance of the assumptions and undertakings aforesaid, of them the said de-439*] fendants, *to the sum, &c.; and therefore it is considered that the plaintiff recover," &c.

In order to understand the case, it may be proper to premise that the territory now occupied by the State of Missouri having been subject to its Spanish government, was at the time of its cession governed by the civil law as modified by the Spanish government; that it so continued, subject to certain modifications introduced by act of Congress, until it became a State; when the people incorporated into their institutions as much of the civil law as they thought proper: and hence, their courts of justice now partake of a mixed character, perhaps combining all the advantages of the civil and common law forms. By one of the provisions of this law the trial by jury is forced upon no one; is yet open to all, and when not demanded, the court acts the double part of jury and judge.

It is obvious, therefore, that the matter certified from the record of the State court before recited is in nature of a special verdict, and the judgment of the court is upon that verdict, and in this light it shall be examined.

The purport of the finding is that the vote declared upon was given "for a loan of loan-office certificates loaned by the State under certain State acts, the caption of which is given."

Some doubts were thrown out in the argument whether we could take notice of the State laws thus found without being set out at length; but in this there can be no question; whatever laws that court would take notice of, we must of necessity receive and consider, as if fully set out.

By the acts of the State designated by the court in their finding, the officers of the treasury department of the State were authorized to create certificates of small denominations—from ten dollars down to fifty cents—bearing interest at two per centum per annum, and to loan these certificates to individuals; taking in lieu thereof promissory notes, payable not exceeding one year from the date, with not more than six per cent. interest, and redeemable by installments not exceeding ten per cent. every six months, giving mortgages of landed property for security.

*These certificates were in this form: [*440 "This certificate shall be receivable at the treasury, or any of the loan-offices of the State of Missouri, in the discharge of taxes or debts due the State, for the sum of $———, with interest for the same, at the rate of two per centum per annum from this date, the ——— day of ———, 182 ;" which form is set out in and prescribed by the act designated in the finding of the court.

This writ of error is sued out under the twenty-fifth section of the Judiciary Act, upon the supposition that the State act is in violation of that provision in the Constitution which prohibits the States from emitting bills of credit; and that the note declared on is void, as having been taken for an illegal consideration, or without consideration.

As a preliminary question, it has been argued that the case is not within the provisions of the twenty-fifth section; because it does not appear from anything on the record that this ground of defense was specially set up in the courts of the State. But this we consider no longer an open question; it has repeatedly

ADDITIONAL MEMORANDUM

At the trial on December 7,1968 John R. Elsom's Book, "LIGHTNING OVER THE TREASURY" was recieved in evidence. See included herein pages 11 thru 15 for the origin of this Bank racket. Also included is Jefferson's objection to the First Bank of the United States and his reasons and also Andrew Jackson's Veto of the Second Bank of the United States.

Whether it is Constitutional for the Gov. of the U.S. to incorporate a Bank, this Court need not pass upon, for it is immaterial to the issues here involved. Such a Corporation certainly cannot have any more rights than a natural person. The emission of Bills of Credit upon their Books, without consideration and the Issuance of Federal Reserve Notes without consideration to circulate as a legal tender for the payment of debts is not permitted, expressly or impliedly by the Constitution of the United States. Paper, whether money or not, is always illegal unless it is fully representative of some material commodity.

The issuance of a paper money without backing by the Banks is the same as if a grain warehouseman were to issue Warehouse Receipts for grain that he did not have. There must be a full representative consideration behind the paper or it is void as premised in fraud. No rights can be acquired by fraud. The law does not sanction an intentional wrong to the Citizen either in War or in Peace.

February 6,1969

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

THE INCOME TAX IS IN TROUBLE

(1) A Minnesota court has ruled that Federal Reserve Notes (the dollars in your billfold) are NOT LEGALLY U.S. DOLLARS. The Notes are null and void and do not constitute lawful money as set forth in the Constitution of the United States. Under IRS regulations, unless an individual has an income of 600 U.S. Dollars or more, he need not file an income tax form.

(2) Furthermore, a U.S. District Court ruled that Jerome Daly was within his constitutional rights in refusing to provide the IRS with information requested on the 1040 income tax form. Based on these court rulings, Jerome Daly, A. J. Forth and others pay no State or Federal income tax.

Mr. A. J. Forth - Mr. Jerome Daly

(Tax Consultant) (Attorney at Law)

Will discuss these two legal cases and comment on their application:

Saturday, June 14, 1969
7:30 P.M.

RUSS AUDITORIUM

12th & Russ Street

o

Admission: $2.00 (Federal Reserve Notes)
or $1.00 (Silver Coin)

Individually Sponsored by Mr. Ralph Richter

San Diego, California

42174

Petitioners Ex 18
2/10/70 lmg

STATE OF MINNESOTA)
) ss. AFFIDAVIT
COUNTY OF HENNEPIN)

JOYCE M. SIMPSON, being first duly sworn on oath, deposes and says:

On August 27, 1969, I directed a handwritten letter to Jerome Daly, Lawyer, Box 177, Savage, Minnesota, requesting the information offered in the want ad from the issue of *"THE FARMER"* dated August 16, 1969, a photocopy of which want ad is attached hereto and marked Exhibit "A".

On August 29, 1969, I received through the mail, in the envelope marked Exhibit "B", a letter attached hereto and marked Exhibit "C", and five pages of enclosure, attached hereto and marked Exhibit "D".

DATED: This 2nd day of September, 1969.

Joyce M. Simpson
JOYCE M. SIMPSON

Subscribed and sworn to before
me this 2nd day of September, 1969.

Ione C. Raver
Notary Public

IONE C. RAVER
Notary Public, Hennepin County, Minn.
My Commission Expires Dec. 12, 1975.

Petitioner's Ex 19
2/10/70 ems

42174

FARM LOANS

MINNESOTA TRIAL COURT DECIDES FEDERAL Reserve Notes and National Bank Mortgage unconstitutional and void. For free information about decision. Jerome Daly, Lawyer, Box 177, Savage, Minn.

EXHIBIT "A"

EXHIBIT "B"

Jerome Daly
28 East Minnesota Street
Savage, Minn. 55378
July 11,1969

Fellow Citizen:

Re Invalidity of Federal Reserve Notes
Federal Reserve and National Bank
Mortgages and Silver clad coper coins.

Attached herewith kindly find copies of Myers' Finance Review of May 27,1969 and June 9, 1969 and a copy of a letter of one of the subscribers to the "Daly Eagle" to the Internal Revenue Service, which material is self explanatory.

To any one who gives the matter the slightest thought it is obvious that the Big National and International Bankers are designing a depression with their tight money and high interest rates for the express purpose of rendering the working people unable to pay their mortgages on their real and personal property with resulting foreclosures and further enslavement.

This Minnesota Trial Court's decision holds these mortgages null and void as without a lawful consideration to support them because the Federal Reserve and National Banks, in combination, create all the credit upon their books by bookeeping entry out of thin air. They get by with it because taking the Banks as a whole the credit never leaves their books and is transfered from one Bank to another.

Careful research and documentation went into the decision and I am distributing it for $5.00. It is 104 pages long. If you will write me and enclose $5.00 I will forward one copy with the understanding that if you are not satisfied you may return it and get your money back.

If you are not interested pass this material on to some one who is as I think it vital to the preservation of this Republic to spread this information as far and wide as possible and the sooner the better.

Thanking you for your interest I remain,

Respectfully yours,

Jerome Daly, Lawyer
P.O.Box 177
Savage,Minnesota

EXHIBIT "C"

...YERS'

REVIEW

No. 69 ... THE TRUTH BE TOLD June 20, 1969

All this arises out of the failure of the Fed. Reserve System to collect on a supposedly bonified mortgage from Attorney Jerome Daly at Credit River, Minn. in a jury trial on grounds of "no consideration". Justice Mahoney refused to accept two $1 Federal notes as U.S. lawful money as a fee to transfer to District Court. The Fed retreated -- gave up its mortgage.



U.S. CONSTITUTION AT STAKE

INCOME TAX UNENFORCEABLE
COUNTERFEITERS CAN GO FREE
MORTGAGES CANNOT BE REALIZED

BECAUSE

U.S. PAPER CURRENCY IS NOT MONEY

Banks across the United States are refusing to redeem paper currency with gold and silver coin. Regardless of legal jargon and silly excuses, here is what American law precedent says about that: (AM JUR 2d #8):

"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 dishonored and depreciated evidences of debt."

In other words, American law precedent says that the currency which your banks are failing to redeem in coin is NOT MONEY. This is related and arises out of Article 1 Section 10.

Some people are making the mistake of calling the paper currency illegal tender in the belief it is illegal for the payor to offer it as a payment for debt. This does not follow. It is legal to use the paper as long as your debtor will accept it. The point is no one need accept it. Under the law anyone can demand gold and silver coin. So the question arises why should you accept this paper because the next fellow that comes to you asking you to pay your debt may demand that you pay him in gold and silver coin.

The whole thing boils down to the fact that the U.S. Constitution will not tolerate or abide with the fiat money system.

THE FED IS AFRAID

The Federal Reserve System sacrificed $14,000 and let loose of a mortgage rather than try to prove to a Justice of the Peace how two $1 American bills can qualify as money under the law.

If they were sure of themselves you can bet your bottom fiat dollar they would have jumped at this chance. The idea seems to have been to keep it quiet!

Also Jerome Daly has not paid income tax. The I.R.S. walked away from the case. A year has gone by. They have preferred to keep it quiet.

SO THE UNITED STATES OF AMERICA IS FACED WITH:

(1) Proving the legality of income tax.

(2) Prospect of closure of banks if the public demands adherence to bank charters under the law.

(3) Counterfeiters.

(4) Defaulted mortgages.

You can't believe this? But can you more sanely disbelieve what you read with your own eyes in the U.S. Constitution? To a rational human being it becomes quite a question. To a judge sworn to uphold the Constitution, there can be no question. Because breaking the oath to preserve the Constitution must destroy his self-respect.

AMERICA CAN HAVE A K I N G -- If the U.S. amends the Constitution.

CALIFORNIA CAN CONCLUDE A MUTUAL DEFENCE AGREEMENT WITH JAPAN -- if the U.S. amends the Constitution.

THE BANKS MAY REFUSE TO REDEEM PAPER WITH GOLD AND SILVER COIN -- if the U.S. amends the Constitution.

Each of the above propositions enjoys equal legality -- absolutely Z E R O !

No Act of Congress, not 100 Acts, not 1000 Acts, can improve their legality one iota -- without an amendment.

Mountains of legal jargon by Supreme Court Justices, dragging in other issues and generalizations are just so much garbage against the crystal clear wording of Article I Section 10. All rationalizations will amount to no more than chattering of the birds.

Meanwhile, all sworn officials would do well to remember that HIGH misdemeanor can bring IMPEACHMENT.

EXHIBIT "D"

MYERS' REVIEW $ 1969

[illegible] 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".

EXHIBIT "D"

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

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.

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Rec'd 1:55 P.M. July 3, 1969

STATE OF MINNESOTA
COUNTY OF SCOTT
TOWNSHIP OF CREDIT RIVER

IN JUSTICE COURT
MARTIN V. MAHONEY
JUSTICE OF THE PEACE

Leo Zurn, Plaintiff,

Rec'd 10 A.M. 7/8/69 MD

vs. SUMMONS

First National Bank of Minneapolis and Roger Derrick, Defendants.

THE STATE OF MINNESOTA, UNITED STATES OF AMERICA, TO THE SHERIFF OR ANY CONSTABLE OF THE STATE OF MINNESOTA; or PLAINTIFF"S ATTORNEY

SIR:

Pursuant to the authority vested in me by the Declaration of Independence, The Northwest Ordinance of 1787, The Constitution of the United States, The Louisania Purchase Treaty of April 30,1803 and the Constitution of the State of Minnesota, You are hereby Commanded to Summon the Defendants above named to be and appear before the undersigned and to file your Answer herein or otherwise pleade to and before the undersigned, one of the Justices of the Peace in and for said County on July 17, 1969 at 7:00 P.M. at my Court House located on my farm in the Farm Yard thereof in Section 9, Township 114 North, Range 21 West, Credit River Township, Scott County, Minnesota, located on the East side of County Road 68 2 Miles N.E. of the Township Hall in a Civil Action wherein Plaintiff claims and asks for relief prayed for in the Complaint dated June 30,1969 which is attached hereto and made a part hereof by reference, and have you then and there this Summons and Complaint with proof of service thereupon.

Given under my hand and seal this 1st day of July,1969, at Credit River Township, Scott bounty,Minnesota.

Martin V. Mahoney

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

530.01
530.05
Venue 12 USC § 94

Petitioners 4 20
2/10/70 emf

42174

STATE OF MINNESOTA
COUNTY OF SCOTT
TOWNSHIP OF CREDIT RIVER

IN JUSTICE COURT
MARTIN V. MAHONEY
JUSTICE OF THE PEACE

Leo Zurn, Plaintiff,

vs.

COMPLAINT

Roger Derrick and
First National Bank of Minneapolis,

Defendant

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

I.

That Plaintiff, at the request of the legal owner and possessor/of one Roger Derrick a certain 1967 Cadillac Automobile bearing Minnesota License Plates No. 3 MT 100, Serial No. 0566479M7132179, did expend Labor, Skill and Material to said Automobile in repairing, caring for, keeping and storing said Car in the reasonable sum of $150.00.

II.

That Plaintiff is in actual possession of said Car and claims a mechanics lien thereon. That Plaintiff has demanded payment of Roger Derrick the full amount of said repairs and storage in lawful money of the United States, which demand for payment is wholly refused by said Roger Derrick.

III.

That after repairs were made it appeared that the Defendant First National Bank of Minneapolis claims some right, title, interest, lien and mortgage on said Automobile in the sum of $4,200.00 or thereabouts, whereas the said Bank, if it has a purported lien, which Plaintiff denies, did, upon the leger books of said Bank, create by bookeeping entry all the money and credit out of nothing that it used as a loan or purchase money mortgage on said car. That said bookeeping created money and credit is wholly without consideration, null and void and is in contemplation of law a forgery. That it is not a lawful consideration with which to support said Note and Mortgage and the Note and Mortgage is void.

IV.

That the Defendant First National Bank of Minneapolis claims some right, title, interest or lien in and to said Automobile whereas it has none.

Wherefore, Plaintiff demands Judgment as follows:

1. Judgment against Defendant Roger Derrick in the sum of $ 750.00

2. Judgment that said Automobile be sold at a Judicial Sale in the manner prescribed by law

3. Judgment that the Defendant First National Bank of Minneapolis has no right, title, lien, interest or mortgage on said Automobile.

4. Declaratory Judgment declaring what, specifically, consititutes a legal tender in the payment and discharge of the debt.

5. Costs and Disbursments incurred herein against any or either Defendant or both as the case may be who shall make an appearance herein.

Jerome Daly
Plaintiff's Attorney
28 East Minnesota Street
Savage, Minnesota

June 30, 1969

VERIFICATION

STATE OF MINNESOTA

COUNTY OF SCOTT

Leo Zurn, being first duly sworn deposes and states that he is the Plaintiff herein, that he has read the foregoing Complaint, and the same is true to the best of his knowledge information and belief.

Leo Zurn

Subscribed and sworn before me this

1st Day of July 1969

Jerome Daly

Notary Public Dakota County, Minnesota My commission Expires January 15, 1973

D C

STATE OF MINNESOTA
COUNTY OF SCOTT
TOWNSHIP OF CREDIT RIVER

IN JUSTICE COURT
MARTIN V. MAHONEY
JUSTICE OF THE PEACE

Leo Zurn,

Plaintiff,

-vs-

First National Bank of Minneapolis and Roger Derrick,

Defendants.

SEPARATE ANSWER OF DEFENDANT, FIRST NATIONAL BANK OF MINNEAPOLIS

Defendant, First National Bank of Minneapolis, for its Answer to the Complaint of the plaintiff, states and alleges as follows:

FIRST DEFENSE

I.

Admits the allegations of Paragraph I, except denies that the reasonable value of said labor, skill, material and storage was Seven Hundred Fifty Dollars ($750.00).

II.

Alleges that defendant, First National Bank of Minneapolis, is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph II of plaintiff's Complaint; denies the allegations of Paragraphs III and IV of plaintiff's Complaint.

WHEREFORE, defendant, First National Bank of Minneapolis, demands that the Complaint of plaintiff be dismissed with prejudice on the merits,

and that defendant, First National Bank of Minneapolis, receive its costs and disbursements herein.

DATED: July 12, 1969.

DORSEY, MARQUART, WINDHORST, WEST & HALLADAY

By /s/ Jan D. Stuurmans
Jan D. Stuurmans
2400 First National Bank Building
Minneapolis, Minnesota 55402
333-2151

Attorneys for Defendant, First National Bank of Minneapolis

VERIFICATION

STATE OF MINNESOTA)
)SS.
COUNTY OF HENNEPIN)

George Pullen, being first duly sworn deposes and says that he is a duly authorized officer of defendant, First National Bank of Minneapolis, that he is familiar with the facts, that he has read the foregoing Answer, and the same is true to the best of his knowledge, information and belief.

/s/ George Pullen
George Pullen

Subscribed and sworn to before me this 12th day of July, 1969.

JAMES B. VESSEY
Notary Public, Hennepin County, Minn.
My Commission Expires April 17, 1974

TE OF MINNESOTA
COUNTY OF SCOTT
TOWNSHIP OF CREDIT RIVER

IN JUSTICE COURT
MARTIN V. MAHONEY
JUSTICE OF THE PEACE

Leo Zurn, Plaintiff,

vs.

REPLY

First National Bank of Minneapolis
and Roger Derrick,
Defendants.

Plaintiff for his reply herein states and alleges:

1. That demand for change of venue under MSA 542.10 only applies to the District Court.

2. That the First National Bank of Minneapolis does business in Scott County. That leo Zurn is a resident of Scott County and the subject matter of the suit is within the jurisdiction of Scott County where the reparis to the auto in question took place.

3. That all salaried Judges are disqualified because of self interest because they are dependent upon this Fraudulent Federal Reserve and National Banking Fraud for the payment of their salaries, which are in fact not salaries at all, but worthless script money.

Wherefore, Plaintiff demands Judgment as originally prayed for.

Jerome Daly
Plaintiff's Attorney
Savage,Minnesota

July 16,1969

STATE OF MINNESOTA
COUNTY OF SCOTT
TOWNSHIP OF CREDIT RIVER

IN JUSTICE COURT
MARTIN V. MAHONEY
JUSTICE OF THE PEACE

Leo Zurn,

Plaintiff,

-vs-

First National Bank of Minneapolis and Roger Derrick,

Defendants.

DEMAND FOR CHANGE OF VENUE

Defendant, First National Bank of Minneapolis, Minnesota, hereby expressly demands, pursuant to Minn. Stat. § 531.115, Subd. 2, that the case be removed to another Court having jurisdiction within the County of Scott and presided over by a salaried judge.

DATED: July 12, 1969.

DORSEY, MARQUART, WINDHORST, WEST & HALLADAY

By /s/ Jan D. Stuurmans
Jan D. Stuurmans
2400 First National Bank Building
Minneapolis, Minnesota 55402
333-2151

Attorneys for Defendant, First National Bank of Minneapolis

DC

STATE OF MINNESOTA
COUNTY OF SCOTT
TOWNSHIP OF CREDIT RIVER

IN JUSTICE COURT
MARTIN V. MAHONEY
JUSTICE OF THE PEACE

Leo Zurn,

Plaintiff,

-vs-

First National Bank of Minneapolis and Roger Derrick,

Defendants.

MOTION TO DISMISS OF DEFENDANT, FIRST NATIONAL BANK OF MINNESOTA

TO: The Honorable Martin V. Mahoney, Justice of the Peace, Township of Credit River, Minnesota, and Jerome Daly, Esquire, Attorney for the Plaintiff.

Defendant, First National Bank of Minneapolis, respectively moves the Court for the following relief:

1. To dismiss the above-entitled action because the Complaint fails to state a claim against the defendant, First National Bank of Minneapolis, upon which relief can be granted;

2. To dismiss the above-entitled action for lack of jurisdiction over the subject matter because plaintiff's claim is, on its face, for a sum in excess of One Hundred Dollars ($100.00);

3. To dismiss the above-entitled action for lack of subject matter jurisdiction, since the plaintiff seeks equitable relief;

4. To dismiss the above-entitled action on the ground that plaintiff and his attorney have previously litigated the issues raised in the Complaint and are barred by the doctrines of res judicata and collateral estoppel by virtue of the previous results of such litigation;

5. To dismiss the above-entitled action on the grounds that plaintiff and his attorney are acting in contempt of the United States

District Court for the District of Minnesota by violating an injunction dated June 20, 1968 of that Court, a true and accurate copy of which is attached hereto as Exhibit A, and plaintiff's claim is therefore illegal.

DATED: July 12, 1969.

DORSEY, MARQUART, WINDHORST, WEST & HALLADAY

By /s/ Jan D. Stuurmans
Jan D. Stuurmans
2400 First National Bank Building
Minneapolis, Minnesota 55402
333-2151

Attorneys for Defendant, First National Bank of Minneapolis

GDS

DC

STATE OF MINNESOTA
COUNTY OF SCOTT
TOWNSHIP OF CREDIT RIVER

IN JUSTICE COURT
MARTIN V. MAHONEY
JUSTICE OF THE PEACE

Leo Zurn,

Plaintiff,

-vs-

First National Bank of Minneapolis and Roger Derrick,

Defendants.

DEMAND FOR CHANGE OF VENUE

Defendant, First National Bank of Minneapolis, Minnesota, hereby expressly demands, pursuant to Minn. Stat. § 542.10 (1967), that the above-captioned matter be tried in the District Court of Hennepin County, Minnesota, rather than before the Justice of the Peace, Martin V. Mahoney, in the County of Scott, where it was commenced by plaintiff.

DATED: July 12, 1969.

DORSEY, MARQUART, WINDHORST, WEST & HALLADAY

By /s/ Jan D. Stuurmans
Jan D. Stuurmans
2400 First National Bank Building
Minneapolis, Minnesota 55402
333-2151

Attorneys for Defendant, First National Bank of Minneapolis

STATE OF MINNESOTA
COUNTY OF SCOTT
TOWNSHIP OF CREDIT RIVER

IN JUSTICE COURT
MARTIN V. MAHONEY
JUSTICE OF THE PEACE

Leo Zurn,

Plaintiff,

-vs-

First National Bank of Minneapolis and Roger Derrick,

Defendants.

AFFIDAVIT IN SUPPORT OF CHANGE OF VENUE

STATE OF MINNESOTA)
)SS.
COUNTY OF HENNEPIN)

Jan D. Stuurmans, being first duly sworn and under oath, states as follows:

1. He is one of the attorneys for defendant, First National Bank of Minneapolis, and is making this affidavit in support of the written demand of defendant, First National Bank of Minneapolis, for change of venue from the County of Scott to the County of Hennepin, Minnesota;

2. Defendant, First National Bank of Minneapolis, is a national banking association duly organized under Chapter 2 of Title XII, United States Code, and, as such, is located solely within the City of Minneapolis, Hennepin County, Minnesota;

3. Defendant, First National Bank of Minneapolis, resides in the County of Hennepin, State of Minnesota;

4. Defendant, First National Bank of Minneapolis, expressly intends to preserve its right to be sued only in "any state, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases," as duly provided by 12 U.S.C. § 94;

5. At no time has defendant, First National Bank of Minneapolis, waived its right to be sued in accordance with 12 U.S.C. §94, nor has

defendant, First National Bank of Minneapolis, at any time consented to action in the County of Scott, Eighth Judicial District, Minnesota;

6. The District Court of Hennepin County is the Court having jurisdiction of claims similar to the claims asserted in the Complaint of the plaintiff herein.

Further affiant saith not.

DATED: July 12, 1969.

/s/ Jan D. Stuurmans
Jan D. Stuurmans

Subscribed and sworn to before
me this 12th day of July, 1969

ELAINE TEJEDA
Notary Public, Hennepin County, Minn.
My Commission Expires Jan. 11, 1975.

JDS

DC

STATE OF MINNESOTA
COUNTY OF SCOTT
TOWNSHIP OF CREDIT RIVER

IN JUSTICE COURT
MARTIN V. MAHONEY
JUSTICE OF THE PEACE

Leo Zurn,

Plaintiff,

-vs-

First National Bank of Minneapolis and Roger Derrick,

Defendants.

DEMAND FOR CHANGE OF VENUE

Defendant, First National Bank of Minneapolis, Minnesota, hereby expressly demands, pursuant to Minn. Stat. § 542.10 (1967), that the above-captioned matter be tried in the District Court of Hennepin County, Minnesota, rather than before the Justice of the Peace, Martin V. Mahoney, in the County of Scott, where it was commenced by plaintiff.

DATED: July 12, 1969.

DORSEY, MARQUART, WINDHORST, WEST & HALLADAY

By /s/ Jan D. Stuurmans
Jan D. Stuurmans
2400 First National Bank Building
Minneapolis, Minnesota 55402
333-2151

Attorneys for Defendant, First National Bank of Minneapolis

Copy for Bank

STATE OF MINNESOTA
COUNTY OF SCOTT
TOWNSHIP OF CREDIT RIVER

UNITED STATES OF AMERICA
MARTIN V. MAHONEY, CHIEF JUSTICE
JUSTICE OF THE PEACE COURT

Jerome Daly, Plaintiff,

vs. SUMMONS

Savage, State Bank,
Savage, Minnesota, Defendant.

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

GREETINGS:

You are hereby Commanded to Summon the Savage, State Bank, the Defendant herein, through its Officers and Directors, if the Defendant shall be found in your County, to be and appear before the undersigned, one of the Justices of the Peace in and for said County, of the 19th day of August, 1969 at 12:00 O'clock noon Central Standard Time at my office in the above entitled Township and County located in my Farm Yard 2 miles North East of the Credit River Township Hall, to Answer or otherwise plead to the Complaint of Plaintiff, Jerome Daly, in a civil action wherein the Plaintiff claims and demands Judgment in the sum of One Hundred Dollars and Costs and Declaratory Judgment as to what constitutes Legal Tender pursuant to Law; and have you then and there this Writ of Summons.

Given under my hand and seal this 7th day of August, 1969 at Credit River Township, Minnesota, in the County of Scott.

Martin V. Mahoney

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

Petitioners Ex 21
2/10/70 lmg

42174

STATE OF MINNESOTA
COUNTY OF SCOTT
TOWNSHIP OF CREDIT RIVER

UNITED STATES OF AMERICA
MARTIN V. MAHONEY, CHIEF JUSTICE
JUSTICE OF THE PEACE COURT

Jarome Daly, Plaintiff,

COMPLAINT

vs.

Savage State Bank,
Savage, Minnesota, Defendant.

Plaintiff, for his cause of action herein States and Alleges:

I.

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

II.

That Defendant is under the joint management, direction and control of a Board of Directors and officers, employees and agents of the State of Minnesota and the Federal Reserve Banks and Federal Reserve System, its officers, employees, agents and Board of Governors, which Federal Reserve Bank is privately owned and controlled.

III.

That the Federal Reserve Banks issue Notes or so called Notes which on their face contain no promise to pay any thing. That said Notes are not redeemable in Gold and Silver Coin nor in any Thing of Value, nor is there a fund set aside for their redemption.

IV.

Exhibit "A" is attached hereto and made a part hereof by reference the same as though herein set out in full and is a copy of a check which is tendered to Plaintiff in the regular course of Plaintiffs business for a valuable consideration on August 4, 1969.

V.

That on August 6, 1969 Plaintiff presented said check to one of the cashiers at the Savage State Bank during the regular course of business who accepted it for payment. Plaintiff demanded Gold and Silver Coin, where upon the said Cashier of Defendant advised that said Bank did not have Gold or Silver Dollars and could not honor said check by payment in Specie.

VI.

That pursuant to the several acts of Congress Gold Dollars containing 25.8 grains of Gold .9 fine, Troy weight and Silver Dollars containing 412.5 grains of Silver, Troy weight, are legal Tender as payment in specie.

VII.

That the Defendant Savage State Bank has suspended payments in Specie (Gold and Silver Coin) by making use of and tendering Federal Reserve Notes not redeemable in any thing.

VIII.

That the act of the Defendant Savage State Bank is tantamount to the act of the State of Minnesota.

IX.

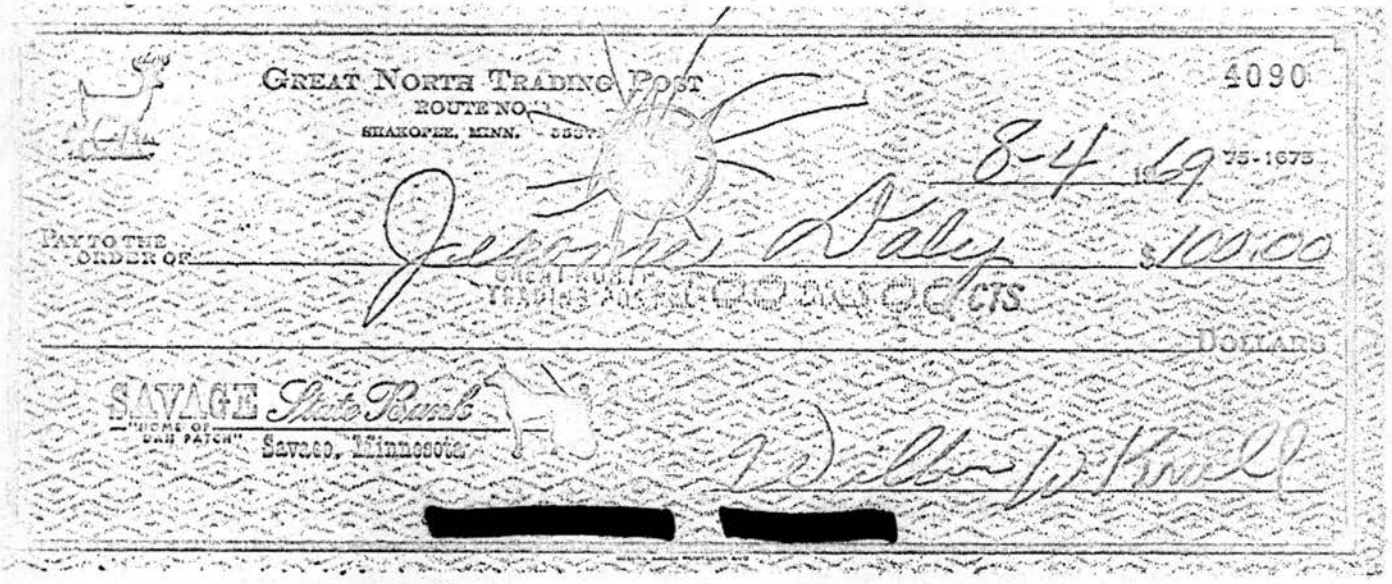
That the Defendant Savage State Bank is acting in total violation of the Declaration of resolves of the First Continental Congress of October 14, 1774, the Declaration of the Causes and Necessity of Taking up Arms of July 6, 1775, the Declaration of Independence of July 4, 1776, the Northwest Ordinance of July 13, 1787, the Cession Treaty of Louisiana between France and the United States of America of April 30, 1803, The Constitution of the United States of America and the Constitution of the State of Minnesota each of which documents are referred to as though herein set out in full.

HEREFORE, Plaintiff demands Judgment against Defendant as follows:

1. ONE HUNDRED DOLLARS AND COSTS.

2. Declaratory Judgment declaring what constitutes legal Tender pursuant to Law. Dated at Savage, Minnesota August 7, 1969.

Jerome Daly, ~~Jay~~ Se
Plaintiff
28 East Minnesota Street
Savage, Minnesota



GREAT NORTH TRADING POST
ROUTE NO.
SHAKOPEE, MINN.

4090

8-4 1969

75-1675

PAY TO THE ORDER OF Jeanne Daly $100.00

EIGHT HUNDRED DOLLARS 00 CTS

DOLLARS

SAVAGE State Bank
"HOME OF DAN PATCH" Savage, Minnesota

[redacted]

EXHIBIT "A"

VERIFICATION

Jerome Daly, being first duly sworn deposes and states that he has read the foregoing complaint, that he knows the contents thereof and that the same is true and correct.

Jerome Daly

Subscribed and sworn to before
me this 6th day of August, 1969

Martin V. Mahoney

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

STATE OF MINNESOTA
COUNTY OF SCOTT
TOWNSHIP OF CREDIT RIVER

UNITED STATES OF AMERICA
MARTIN V. MAHONEY, CHIEF JUSTICE
JUSTICE OF THE PEACE COURT

Jerome Daly, Plaintiff,

vs.

WRIT OF SUMMONS

Eugene T. Kearney, Postmaster,
United States Post Office,
Savage, Minnesota and Savage State
Bank, Savage, Minnesota,
Defendants.

The State of Minnesota to any Sheriff or Constable of the County of Scott, State of Minnesota:

Greetings:

You are hereby Commanded to Summon the Defendants, Eugene T. Kearney and Savage State Bank, if they shall be found in your County, to be and appear before the undersigned, one of the Justices of the Peace in and for said County, on the 19th day of August, 1969 at 12:00 o'clock noon, Central Standard Time, at my office located on my farm in the Farm Yard located 2 miles North East of the Credit River Township Hall, Credit River Township, Scott County, Minnesota, to answer the Complaint of Jerome Daly, Plaintiff, in a civil action, a copy of which Complaint is attached hereto, wherein the Plaintiff claims $25.00 and costs and declaratory Judgment as to what constitutes legal tender according to Law, and have you then and there this Writ of Summons.

Given under my hand and seal this 7th day of August, 1969 at Credit River Township, Minnesota, United States of America.

Martin V. Mahoney

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

Petitioners' Ex 22
2/10/70 mg

42174

530.

STATE OF MINNESOTA
COUNTY OF SCOTT
TOWNSHIP OF CREDIT RIVER

UNITED STATES OF AMERICA
MARTIN V. MAHONEY, CHIEF JUSTICE
JUSTICE OF THE PEACE COURT

Jerome Daly, Plaintiff,

vs.

COMPLAINT

Eugene T. Kearney, Postmaster,
United States Post Office,
Savage, Minnesota and Savage State
Bank, Savage, Minnesota,
Defendants.

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

I.

That Defendant Kearney is the Postmaster of the United States Post Office at Savage, Minnesota and is also on the Board of Directors of the Savage State Bank , Defendant herein.

II.

On August 7, 1969 Plaintiff presented a United States Postal Money Order in the sum of $25.00 to two agents and employees of the United States Post Office at Savage, Minnesota, a true and correct copy of which is attached hereto as Exhibit "A" showing both sides of said money Order, whereupon, one of the agents accepted the said money Order and directed Plaintiff to endorse the reverse side thereof and agreed to tender payment therefore. Plaintiff then and there endorsed the reverse side thereof and presented it for payment, whereupon Plaintiff then and there demanded Gold and Silver Dollars in specie as payment therefor. The Postal Employees stated that the only tender that they had for payment was printing press money and that they had no Gold or Silver Dollars to Tender in payment of said money Order.

III.

That the Post Office at Savage, Minnesota keeps its account at the Savage State Bank to the best of Plaintiff's knowledge, information and belief.

IV.

That the Defendant Savage State Bank has also suspended payment in specie, which is, according to the several acts of Congress, Gold Dollars containing 28.8 grains of Gold .9 fine, Troy weight and Silver Dollars containing 412.5 grains of Silver, Troy weight, each. That such Dollars are the only ones that

are a legal Tender in payment of Debts.

V.

That the Defendants and each of them, their agents and servants have been and are in activa conspiracy in aiding and assisting each other to suspend payment in specie in direct violation of the Constitutions of the United States and The State of Minnesota and also in direct violation of the Northwest Ordinance of 1787 and the Cession Treaty of Louisiana between France and the United States of America of April 30,1803.

WHEREFORE, Plaintiff demands Judgment against the Defendants and each of them in the sum of $25.00 and costs and further declaratory Judgment against the Defendants declaring exactly what constitutes a legal tender pursuant to Law.

Dated at Savage, Minnesota August 7,1969.

Jerome Daly, Pro Se
Plaintiff
28 East Minnesota Street
Savage, Minnesota

VERIFICATION

STATE OF MINNESOTA
SS
COUNTY OF SCOTT

Jerome Daly, being first duly sworn deposes and states that he is Plaintiff herein, that he has read the foregoing complaint and that the same is true except as to those matter stated upon information and belief and as to those I believe them to be true.

Jerome Daly

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

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

EXHIBIT A

PAY THIS AMOUNT ▷ $25.00 ◁ WARNING DO NOT CASH IF ALTERED

DOLLARS CENTS

8,543,567,393

U. S. Postal Money Order

MAXIMUM ISSUE LIMITED TO FIFTY DOLLARS

NOT VALID FOR MORE THAN FIFTY DOLLARS

DO NOT FOLD, STAPLE, SPINDLE OR MUTILATE

PURCHASER—FILL IN INFORMATION BELOW

PAY TO ▷ Clerk of Court

FROM ▷ PURCHASER'S NAME Quanna Wiley

66-7 C.O.D. ENTER IN HERE ▶ PURCHASER'S STREET ADDRESS 128 E Missouri St

PURCHASER'S CITY, STATE AND ZIP CODE Savage, Minn

[redacted]

POSTMARK OF ISSUING POST OFFICE

JUL 29 1961 SAVAGE, MINN.

$25.00 DOLLARS CENTS

8,543,567,393

PURCHASER'S RECEIPT

U.S. Postal Money Order

DETACH AND MAIL

JUL 29 1961 SAVAGE MN

PURCHASER ASSUMES RESPONSIBILITY FOR FILLING IN THE NAME AND ADDRESS AND NAME OF PAYEE IN SPACES PROVIDED ON THIS ORDER

PAYEE MUST ENDORSE BELOW ON LINE MARKED "PAYEE"

OWNERSHIP OF THIS ORDER MAY BE TRANSFERRED TO ANOTHER PERSON OR FIRM IF THE PAYEE WILL WRITE THE NAME OF SUCH PERSON OR FIRM ON THE LINE MARKED "PAY TO" BEFORE WRITING HIS OWN NAME ON THE LINE MARKED "PAYEE". MORE THAN ONE ENDORSEMENT IS PROHIBITED BY LAW. BANK STAMPS ARE NOT REGARDED AS ENDORSEMENTS.

PAY TO

PAYEE

CAUTION
IDENTIFICATION REQUIRED

THIS ORDER BECOMES INVALID AFTER 20 YEARS. THEREAFTER NO CLAIM FOR PAYMENT WILL BE CONSIDERED.

THIS RECEIPT MUST BE PRESENTED IN CASE OF LOSS

SENT TO

ADDRES

NO INQUIRY ACCEPTED PRIOR TO 60 DAYS FROM DATE OF PURCHASE

No. Sp. Supreme Court Per Curiam

In re Jerome Daly.

42174

Endorsed
Filed September 5, 1969
John McCarthy, Clerk
Minnesota Supreme Court

O P I N I O N

PER CURIAM.

On July 11, 1969, Mr. Justice C. Donald Peterson, acting for the Minnesota Supreme Court, directed Martin V. Mahoney, Justice of the Peace of Credit River Township, Scott County, Minnesota, and Jerome Daly, counsel for plaintiff in an action brought by one Leo Zurn against one Roger D. Derrick and the Northwestern National Bank of Minneapolis, to show cause why they should not be permanently restrained from further proceedings in the justice court. In addition, Justice Peterson ordered a stay of all further proceedings before the justice of the peace pending final determination of the questions raised by Northwestern National Bank's petition for writ of prohibition.

Although the stay order of Justice Peterson was served on the justice of the peace and Mr. Daly on July 11, 1969, they intentionally and deliberately disregarded it in this way: On July 14, 1969, the justice of the peace, upon motion of Mr. Daly, entered findings of fact, conclusions of law, and an order for judgment in favor of Zurn. In response to our order of August 12, 1969, directing the justice of the peace and Mr. Daly to show cause why they should not be held in constructive contempt of the Supreme Court of Minnesota for this conduct, Mr. Daly appeared personally in his own behalf before this court on August 21. He advised the court that he had

Petitioners Ex 1 42174
2/9/70 F.M.F.

been authorized to represent the justice of the peace in the proceedings. After noting that he was making a special appearance, Mr. Daly, an attorney at law admitted to practice in this state, acknowledged that both he and the justice of the peace intentionally violated the order of Justice Peterson because in their opinion neither this court nor Justice Peterson had jurisdiction to issue it.

Although the death of the justice of the peace on August 22, 1969, has rendered the proceedings as against him moot, it is our judgment that the conduct of Jerome Daly was contumacious. It is the order of this court that he be temporarily suspended from the practice of law in the courts of this state effective October 1, 1969.

We reserve jurisdiction of this matter to permit further proceedings, the object of which will be to determine whether this contumacious conduct of Jerome Daly is or is not an isolated instance of impropriety. Final determination of the disciplinary measures to be invoked will be made after such hearing has been conducted. Reasonable notice of any charges of misconduct and a full opportunity to be heard shall be afforded in these contemplated hearings.

The rationale of our determination is as follows:

(1) The Supreme Court of the State of Minnesota by the terms of our Constitution has power to issue writs of prohibition restraining a court of limited jurisdiction from exceeding its power. Minn. Const. art. 6, § 2, provides that the Supreme Court "shall have original jurisdiction in such remedial cases as may be prescribed by law." By the terms of Minn. St. 480.04, the legislature has provided:

> "The court shall have power to issue to all courts of inferior jurisdiction and to all corporations and individuals, writs of error, certiorari, mandamus, prohibition, quo warranto and all other writs and processes, whether especially provided for by statute or not, that are necessary to the execution of the laws and the furtherance of justice. It shall be always open for the issuance and return of such writs and

> processes and for the hearing and determination of all matters involved therein and for the entry in its minutes of such orders as may from time to time be necessary to carry out the power and authority conferred upon it by law, subject to such regulations as it may prescribe. Any justice of the court, either in vacation or in term, may order the writ or process to issue and prescribe as to its service and return."

(2) In Minnesota, the justice of the peace court is a court of inferior jurisdiction.[1] Since the constitutional amendment of the judicial article in 1956 justice of the peace courts exist in this state only to the extent permitted by the legislature. Minn. Const. art. 6, §§ 1, 8, and Schedule. The legislature has fixed narrow limits to the jurisdiction which may be exercised by justices of the peace in this state. (Minn. St. 530.01, 530.05, 530.06, 531.03, 531.04, 532.37.) Acts in excess thereof by such justices of the peace are a nullity and subject to control by a writ of prohibition. Smith v. Tuman, 262 Minn. 149, 114 N. W. (2d) 73.

(3) The power to prohibit an improper exercise of jurisdiction embraces the power to issue ex parte an order designed to maintain the status quo pending a hearing upon an application for a writ of prohibition. See, Minn. St. 480.04. In the case of In re Lord, 255 Minn. 370, 378, 97 N. W. (2d) 287, 292, under similar circumstances, we stated that--

> "* * * this court had full authority to issue a preliminary order to show cause why such peremptory writ should not issue, and, in order to maintain the status quo until both sides of the controversy could be heard, to issue a restraining order to prevent any further action from being taken, either affirmatively or by inaction such as we have here."

See, also, 21 C. J. S., Courts, § 88, p. 136, and cases cited in footnote 13.

(4) The order executed by Justice Peterson, acting in the name of this court, was a proper exercise of the court's authority. Any justice of the supreme court, either in vacation or in term, may

---

[1] For a definition of the term "inferior courts" see 21 C. J. S., Courts, § 7, p. 21.

execute orders in behalf of the court pursuant to § 480.04. See, 48 C. J. S., Judges, § 48, and particularly cases cited in footnote 94; 30A Am. Jur., Judges, § 35.

We find no essential requirement that such orders be issued by or through the office of the clerk of this court. To impose such a requirement would unnecessarily curtail the capacity of this court to respond in emergency situations. It would be unreasonable to make the performance of a clerical act a necessary condition to the exercise of judicial authority which must be asserted promptly to be effective. The signature of a justice of this court is adequate assurance of the authenticity of any order to which such signature is affixed.

Although the verification of statements of fact submitted to this court in ex parte matters is to be preferred, there is no jurisdictional requirement that a petition for temporary relief or for a writ of prohibition be verified. See, Dean v. First Nat. Bank, 217 Ore. 340, 341 P. (2d) 512; 73 C. J. S., Prohibition, § 26. In the matter before us it was evident from an examination of the summons and complaint in the proceedings sought to be restrained that Justice of the Peace Mahoney was undertaking to act in a matter with respect to which he had no jurisdiction. The representation of an attorney at law authorized to practice before this court that a copy of this summons and complaint attached to the petition seeking the writ of prohibition was a true and correct copy of the process served on his client formed in itself an adequate factual basis for the issuance of the temporary order directed to Justice of the Peace Mahoney and Jerome Daly.

(5) The refusal of the justice of the peace to respect the July 11 order of this court was not justified. The justice of the peace would be bound to obey our intermediary order regardless of whether the actions restrained by our order were in excess of his

jurisdiction. In re Lord, supra. Apart from this principle, it is clear that the proceedings restrained were beyond the limits of the jurisdiction of the justice of the peace in a number of respects, including these:

> (a) The summons, being returnable at 7 p. m. rather than between the hours of 9 a. m. and 5 p. m. as specified by Minn. St. 531.03, was a nullity.
>
> (b) The summons did not contain a statement of the amount claimed by plaintiff as required by § 531.03.
>
> (c) Contrary to the provisions of § 531.04, the summons was personally served upon Northwestern National Bank of Minneapolis in the city of Minneapolis, a city having a population in excess of 200,000.
>
> (d) This service was performed outside of the county of issuance, Scott County, in violation of the provision of § 531.04 that such service must satisfy the requirements of Minn. St. 532.29. One of the requirements of Minn. St. 532.29 is a continuance of proceedings for a period not exceeding 20 days, and no such continuance was provided in this case.
>
> (e) The amount in controversy exceeded the $100 jurisdictional limitation of the justice of the peace courts under § 530.05.
>
> (f) The relief sought, a declaratory judgment, was not within the granted powers of a justice of the peace. See, § 530.05. It has been the law ever since the 1861 case of Fowler v. Atkinson, 6 Minn. 350 (503), that a justice of the peace has no jurisdiction over equitable proceedings. See, Smith v. Tuman supra.

(6) We are satisfied from the record that the justice of the peace acted upon the advice and at the instance of attorney Jerome Daly. Mr. Mahoney was not admitted to practice as a lawyer. An attorney who intentionally and deliberately advises and encourages a justice of the peace or any other person to disregard an order of the Minnesota Supreme Court is guilty of contempt. See, Minn. St. 588.01, subd. 3(1, 2, 3, 7); In re Lord, supra; State v. Leftwich, 41 Minn. 42, 42 N. W. 598; In re Green, 172 Ohio St. 269, 175 N. E. (2d) 59. The fact that such advice is prompted by fanciful notions that justice of the peace courts have a constitutional status giving them immunity from the jurisdiction of the supreme court of this state cannot excuse or justify this conduct. This is especially

the case in the present situation where the jurisdiction of this court to prohibit acts beyond the jurisdiction of a justice of the peace was clearly delineated by our decision in Smith v. Tuman, supra, published in 1962. See, also, State ex rel. Meister v. Stanway, 174 Minn. 608, 219 N. W. 452.

(7) The supreme court has inherent power to discipline an attorney guilty of contempt. In re Cary, 165 Minn. 203, 206 N. W. 402. In exercising this authority no attempt is made to impose the sanctions of the criminal law. A principal purpose of the exercise of disciplinary authority is to assure respect for the orders of this court by attorneys, who, as much as judges, are responsible for the orderly administration of justice in this state. In disciplinary proceedings the formal requisites of criminal procedure, including the right to a jury trial, have no application. In re Williams, 221 Minn. 554, 23 N. W. (2d) 5; In re Rerat, 232 Minn. 1, 44 N. W. (2d) 273; In re Joyce, 242 Minn. 427, 65 N. W. (2d) 581, certiorari denied, 348 U. S. 883, 75 S. Ct. 124, 99 L. ed 694; In re Discipline of Tracy, 197 Minn. 35, 266 N. W. 88, 267 N. W. 142.

DISPOSITION

Jerome Daly is adjudged to be guilty of contempt of this court. We are not prepared to determine with finality at this time the appropriate form of discipline to be prescribed. Final resolution of the matter must depend on whether the acts of this attorney are a part of a persistent and continuing effort to defy the authority of the courts and in part on whether there is any disposition to amend the contumacious behavior demonstrated.

Rule 1 of the Rules of the Supreme Court for Discipline and Reinstatement of Attorneys, adopted November 14, 1961, (27B M. S. A. p. 21) which prescribes the procedure to be followed in cases where unproved complaints involving alleged unprofessional conduct are

leveled against an attorney, was not intended to apply to situations where an attorney has been found in contempt of this court and an inquiry is needed to aid us in determining the kind of discipline to be imposed. To meet the problem posed by this case, we herewith refer further proceedings in this matter to the Honorable E. R. Selnes, Judge of the District Court of the State of Minnesota, who will act as a referee of the Minnesota Supreme Court in order to consider such evidence as may be presented to him bearing on the fitness and competence of Jerome Daly to serve as a practicing attorney in the courts of this state. The State Board of Law Examiners (see, In re McDonald, 204 Minn. 61, 282 N. W. 677, 284 N. W. 888) is hereby assigned the duty and responsibility of conducting a thorough investigation of the fitness and competency of Jerome Daly to continue as a member of the bar of this state. So far as applicable, proceedings shall be in conformity with the rules of this court promulgated November 14, 1961. Due notice of such charges of unfitness and incompetence as may be warranted by the evidence secured, together with due and proper notice of the time and place of such hearings as may be held with respect to such charges as may be filed, shall be afforded the said Jerome Daly. The Practice of Law Committee of the Minnesota State Bar Association is authorized to intervene and become a party to these proceedings if it so elects. Upon the evidence presented and received, together with such evidence as may be presented by the said Jerome Daly in his own behalf, the Honorable E. R. Selnes in his capacity as a referee of this court shall make findings of fact and conclusions and recommendations for disposition of this matter as shall be justified by the evidence. Such determination shall be conclusive subject to the right of any party aggrieved to secure a review of the referee's determination in the manner outlined in said rules of November 14, 1961.

Because of the deliberate and aggravated nature of the

contumacious conduct on the part of the said Jerome Daly and his failure or refusal to present any reasonable justification for his effort to frustrate the processes of the Minnesota Supreme Court, his privilege to practice law in the courts of this state is suspended effective October 1, 1969; provided, however, that this court will consider such application as the said Jerome Daly may make prior to October 1, 1969, for such limited exceptions to this order of temporary suspension as may be proved necessary in order to protect the interests of clients now represented by the said Jerome Daly and involved in litigation pending in the courts of this state.

This matter is herewith referred to the Honorable E. R. Selnes, designated as referee herein, for further proceedings consistent with this opinion, which proceedings shall be entitled "In re Jerome Daly."

PETITIONER'S EXHIBIT 23
2/2/70 L.M.F.

421/4

COPY

PLAINTIFF'S EX.
Family Service Records

PLAINTIFF'S EXHIBIT 13
M. J. STASIK

State of Minnesota
District Court, Fourth Judicial District
Minneapolis

CHAMBERS
IRVING R. BRAND
JUDGE

421/4

December 16, 1964

Jerome M. Daly, Esq.
28 Minnesota
Savage, Minnesota

Kermit A. Gill, Esq.
Rand Tower
Minneapolis, Minnesota

Samuel Saliterman, Esq.
Foshay Tower
Minneapolis, Minnesota

Robert W. Dygert, Esq.
Northwestern Bank Building
Minneapolis, Minnesota

James P. Rorris, Esq.
Rand Tower
Minneapolis, Minnesota

Mr. Paul L. Halvorson
208 South 4th
Stillwater, Minnesota

Re: Peterson v. Peterson

Gentlemen:

The above-entitled matter came on for hearing with respect to plaintiff's motions and with respect to the Court's order of December 4, 1964. Mr. Dygert and Mr. Rorris, attorneys for plaintiff, appeared; also, Mr. Kermit A. Gill and Mr. Samuel Saliterman appeared in connection with their claim of a lien on the trust for attorneys' fees. There was no appearance by Mr. Jerome M. Daly, attorney for defendant Palmer A. Peterson, nor was there any appearance by defendant Halvorson. The Court waited until 11:20 A.M. in an effort to ascertain whether there would be any further appearances.

COPY

This is to advise you that the matters that were to come on for hearing this morning have been continued until Thursday, December 31, 1964, at 1:00 o'clock P.M.

All parties and their respective counsel are requested to appear before the Court at that time for a full hearing on the above-mentioned matters, and the parties are hereby required to comply with any previous orders of this Court.

Very truly yours,

Irving R. Brand
District Judge

cc: Dr. Palmer A. Peterson
7856 Portland Avenue South
Minneapolis, Minnesota

CLARENCE D. HALL
OFFICIAL COURT REPORTER
COURT HOUSE
MINNEAPOLIS 15, MINNESOTA

February 23, 1965

I hereby certify that the attached letter was sent by Judge Irving R. Brand to the persons named, on the date indicated, and that the same was deposited in the United States mail by me, addressed to each of the persons named.

Clarence D. Hall

Clarence D. Hall

Vp.1

STATE OF MINNESOTA 566224 DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Faye V. Peterson,

Plaintiff,

-vs-

Palmer A. Peterson and
Paul L. Halverson, individually,
and as Trustee,

Defendants.

The above-entitled matter came duly on for hearing before the Hon. Irving R. Brand, one of the judges of the above-named Court, on January 13, 1965, in the Court House, City of Minneapolis, County of Hennepin, State of Minnesota.

APPEARANCES

James P. Norris, Esq., and Robert W. Dygert, Esq., appeared as counsel for and in behalf of Plaintiff.

Jerome Daly, Esq., appeared as counsel for and in behalf of Defendant Palmer A. Peterson.

Paul Fisch, Esq., appeared as counsel for and in behalf of Defendant Paul L. Halverson.

42174

Respondents Ex X
2/12/70 lms

PAID ADVERTISEMENT— Prepared and inserted by Jerome Daly, Rosemount, Minnesota, on behalf of himself, for which regular advertising rates have been paid.

My Platform for Election to the Congress of the United States of America

I am a candidate, on the democratic ticket, for the nomination, for election to the congress of the United States of America from the First District of Minnesota. I advocate the principles laid down by Franklin, Madison, Jefferson, Jackson, Lincoln, and Bryan; since these are the leaders who swore eternal hostility against despotism and stood for the protection of the rights of the individual against the "mob" power of the people. A democracy is ruled by a majority of the people; it is mob rule. Adolph Hitler had the most efficient "mob rule" Government known to history; he had a solid majority of the people behind him at all times all the way. His "mob" led by astute generals, swept like a destroying angel over almost all of the civilized World, evincing a military genius unsurpassed, skill marvelous in its perfection, and a courage which savored of rashness, yet ever demonstrated the wisdom of its dictates. For while Hitler's mob seemed to have robbed fortune of her secret, bewildered nations gazed in silence while he turned the streams of success according to his vacillating whims.

Although endowed with a perception keen enough to discern the hidden plans of opposing generals, he could see but one road to imortality—In the background stood the crematoriums with their smoke stacks pointing toward the sky, above him the stench of burnt flesh, bones, buildings, and gun powder filled the air, and ahead of him laid a path which led through battlefields and marshes wet with human gore; over rivers of blood and streams of tears that flowed from orphans' eyes—a path along whose length the widow's wail made music for his marching hosts. He is fallen, and over the purported place where he met his end no mourner weeps. Talent, genius, power, these he had—character, he had none. His government provided no protection for the individual against the tyranny and oppression of the "mob."

A republic is a democracy with a built-in legal device to protect the individual from the tyranny of the majority. The United States of America is a constitutional republic. The U. S. Constitution frames the most finely adjusted and balanced republic ever devised. If elected, I will take the prescribed oath to "uphold, support, and maintain" the constitution; and I will conform to that oath in its every intendment and implication, as written, without the slightest reservation, subterfuge or evasion whatsoever in me.

The Ninth Amendment to the Constitution of the United States announces and acknowledges in a single sentence that (1) the individual, and not the State, is the source and basis of our social compact and that sovereignty now resides, has always resided and always will reside in the individual; (2) that our Government exists through the delegation by the individual of a portion of his governmental powers based upon his naturally endowed and inherent rights; (3) that every one of the people of the United States retains his sovereignty and with it a residue of individual rights and liberties which have never been, and which never can be surrendered to the state, but which are still to be recognized, protected and secured; and (4) that individual liberty and rights are inherent, and that such rights are not derived from the Constitution, but belong to the individual by natural endowment.

Treason is defined in the Constitution as adhering to the enemies of the United States, "giving them aid and comfort." Every thought, word and deed contrary to and in contravention and derogation of the Constitution is sinful and treasonable. Two or more persons acting in concert (even though without common design and agreement) contrary to and in contravention and derogation thereof constitute a cell of communism and are guilty of treason, for which high crime they ought to be indicted, tried, convicted, and punished.

When those who are in charge of the administration of our government, the representatives, senators, chief executives and judges for them to take a solemn oath to uphold, support, and maintain the Constitution and then to unhesitatingly flaunt and ride down its provision is a mockery and sham. Not only is it an idle ceremony to take such oath but it is unquestionably giving aid and comfort to the communistic enemies of this country who are spending each waking moment engaged in connivery and skulduggery in their course of conduct to overthrow this constitutional government by force, or otherwise.

The current assault of the ungodly upon the Constitution is two-fold: FIRST, those within the United States of America, who, while posing as good citizens or worthy officials, surreptitiously and obliquely deride, downgrade, and violate the Constitution causing a progressive erosion of the public esteem and support thereof; SECOND, those without the jurisdiction of the United States of America who make direct assault upon the Constitution by thought, word and deed. ALL ARE COMMUNIST. Furthermore, contempt for those perfidious individuals, who, after having sworn to uphold and defend State and Federal Constitutions, enter into a public office of trust, and then, at their whim and caprice, with uninhibited abandon disregard those instruments does not amount to contempt of Congress, the Executive, or Court as the case may be.

Communists do not believe in God; they worship material things of the World. Communism is nothing more than a new label for mamonism which is so vehemently derided in both the Old and New Testament of the Bible, the foundation stone of all of our law.

In this country it always has been the money power against the common people who toil for a living by the sweat of their brow. Control of gold and monetary manipulation are the common denominator of all communism. 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 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 Constitution are Right; all others are Wrong.

Both external and internal communists 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 collects 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 ungoldly influences direct and implement communist activity, controls our government (regardless of elections); and at one and the same time steals alike our land and our birthright. The entire "farm program" is a fraud, a snare and a delusion Farmers are absurdly, ridiculously and senselessly paid for not producing. The commodity credit corporation is contrived manipulation, unconstitutional and void, owned and controlled by communists, whereby the output of our farms is stolen from our farmers, withheld from those who refuse to accept communist domination and dictation, withersoever dispersed over the face of the globe, starving though they be; and is given to communists and their sympathizers here in the United States and elsewhere. Why do we have tremendous unmanageable surpluses of the necessaries of life while millions all over the face of the earth suffer and starve? WHOSE PURPOSE IS SERVED? Most certainly, no legitimate American purpose is served.

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.

The Constitution exclusively reserves the right in Congress to "Coin" (create) money and regulate its value. Each and all of this power has been unconstitutionally delegated to a private corporation, in which the U. S. Government owns not one share of stock, the Federal Reserve Bank is a PRIVATE CORPORATION, owned by its member banks the control of which is in private individuals and for the most part foreign persons. We are now 308 billion dollars in debt to these private bankers. The debt exists in the U. S. Bonds which they hold, which bonds were purchased by them using the credit of the United States to do so. This has been made possible by the unconstitutional, and therefor void, Federal Reserve Act of 1913, and its subsequent amendments.

Every war has been fought over an economic consideration. 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.

One third of our taxes go to pay interest. The tables must be turned. The Banks ought and must be placed in a position of indebtedness to the United States Government for the use of U. S. Constitutional money. A U. S. Government bank should be set up, regulated and controlled directly by Congress, which loans money to private banks for use at a rate of interest set by Congress. DEBT FREE AND INTEREST FREE MONEY MUST BE ISSUED BY CONGRESS FOR USE BY U. S. GOVERNMENT AGENCIES.

By the use of the income tax Congress controls the amount of money in circulation. The Constitution should be amended so that ones homestead is rendered exempt from execution, levy and sale by reason of any tax, state, federal or otherwise.

States, cities, counties, and school districts should have the right to borrow money directly from a U. S. Government Bank at 1% paying the interest thereon payable directly to the United States Government instead of to Private Bankers. 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.

Further, the Constitution extends the judicial power to all cases in law and equity in the United States District Courts. In the face of their sworn oath to support the Constitution Congress recently passed a law limiting the jurisdication of the United States District Court to controversies in excess of $10,000.00, disestablishing justice for many of the poor and tending to make it a court where only the rich may litigate.

Of all valuable considerations, simple justice is all too often the least accessible, most expensive, and most difficult to obtain. In our larger cities, Courts are from 2 to 5 years behind in their calendars, why?; because of lack of money; yes, money for any and everything else, but not for justice.

The mind of man is become so resourceful, adroit and apt that it has invented a bomb that is capable of obliterating the largest city any where, any place on the face of the globe from the face of the earth with one blast. Yet legally, the world is adrift without a tribunal to settle the inevitable conflicts that arise among peoples of different nations, and we are left to the crucible of war to settle disputes; and in the meantime people are "digging in" bomb shelters like a bunch of animals commonly found habitated in holes below the surface of the earth. The wild goose that oscillates from winter to summer between the Arctic Circle and the Southland is freer than we are. Have we humans less brains than geese?

A Constitutional Government over the nations of the earth must be set up if we are to survive. The sovereignty of the individual must be clearly, completely, and openly preserved and protected. No move in that direction ought or should or will be made unless and until the money power is subdued, restrained and controlled so that it is permanently set up and operated in favor of the people, to the exclusion of bankers, financial magnates and any one else whose god is gold. In this fight, no quarter will be asked or given and no compromise will be granted. It must be remembered it is better to be honest than dishonest, direct than indirect, upright than underhanded, intelligent than unintelligent, to have courage than be a coward, to be free than slave, in body and mind.

Your support and vote in this endeavor is respectfully requested.

This is a paid political advertisement, paid for by and on behalf of myself as a candidate for this important office in the hopes that all Americans who now waste time and strength in divided effort may be drawn into solid formation. I am a native son of Dakota County, Minnesota, where my ancestors have resided continuously for the past 110 years; a graduate of the St. Paul College of Law; a member of the Minnesota State Bar and the Bar of the United States District Courts; a Veteran of World War II, and a member of the American Legion. With an office in St. Paul, I have practiced law in the immediate area for 9 years.

Jerome Daly

Rosemount, Minnesota

42174

Respondent's Ex BBB
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SPECIAL LAW PASSED FOR ZIONIST

Swope fortune went tax free to Israeli school

by Dorothy Thompson, *New York*

I HAVE in the past spoken of special interests which have shaped American policy. Here is an example bearing on Zionist influence on congress and the White House.

The *Jerusalem Post* (Israel) on May 29 carried an article by Moshe Levin, interviewing Abraham Tulin, an American citizen who is (to quote Levin) a brilliant attorney and "a veteran Zionist." After interviewing Tulin Levin wrote: "The story is too fresh to be told in its entirety. Many highly placed persons in the United States who were involved are still active in public life, but the drama behind the eight million dollar Gerard Swope bequest to the Technion can now be revealed." (The Technion is a technological institute in Haifa, Israel.)

Tulin was the leader in organizing the American Technion society, whose chief business was to raise funds for the institute in Israel. He succeeded in interesting the late Gerard Swope, president of General Electric and a multimillionaire.

"Mr. Swope was a Jew although few people realized it." He was enormously influential. "He was called on by several presidents to head commissions and stood for years as chairman of many boards of directors."

Swope was over 80 when Tulin met him in 1953. He had shown no interest in Zionism. Tulin approached him through his interest in technology, and between 1953 and 1955 Swope contributed $350,000 to Israel's Technion.

But Tulin thought Swope's fortune ought to go to Technion: "In 1955, Swope's wife died. He had turned over most of his fortune to her, thinking she would outlive him . . . and she willed him about eight million dollars in trust, the income to go to him for life and the principal to go upon his death to such persons or organizations as he should direct in his will."

Tulin subsequently "made out his (Swope's) will," which made Technion the sole beneficiary of this trust.

But since Swope had inherited this fortune from his wife there would be a federal tax of $4,500,000 on it. Levin continues to quote Tulin:

"There was nothing in the internal revenue code that could help us . . . Then a thought struck me. *Why couldn't we amend the code?*

important

Respondents' Exhibit
2/18/70 Dkt. 12174

It would mean putting a bill through congress, but it was the only way."

He needed Swope's permission. "He was shocked in the beginning." But Tulin convinced him and betook himself to Washington.

"There I put in the hardest four months of my life . . . I worked in complete silence. Publicity would have spoiled everything . . . I did not talk to a single Jewish member of congress. They would favor it anyway."

The bill, introduced into the house by Representatives Reed (Republican) and Keogh (Democrat) of New York was an amendment to section 2055 of the internal revenue code of 1945. But, "Congress was about to adjourn, and there was a log jam of 500 bills that had priority."

"'*At this point I received incredible help.* People have . . . told me that nothing like it ever happened before in congress.'" *The bill was jumped over other legislation and passed both houses unanimously.*

There was still another obstacle. The secretary of the treasury, who had opposed the bill throughout, announced that he would advise the President to veto it. The veto could not be overridden because congress was in recess. "Tulin resorted to friends . . . (who) went to the White House. The amendment was signed and became law, Aug. 6, 1958."

This bill is unique. It provides that "where a trust is established by the will of a testator for the life of a benefactory who is 80 years old . . . at the time of the testator's death, and who is given the power to appoint recipients of the principal . . . upon his own death and by his own will, and such benefactory files an affidavit with the internal revenue bureau within one year of the death of the testator naming the educational institutions which he intends to appoint as recipients . . . then the federal inheritance tax on the original amount is waived."

THIS BILL plainly was tailored to one case. It applies, by inference of the *Jerusalem Post* article, only to bequests to educational institutions, omitting charities. It makes no provision that such institutions be American.

Swope's will, probated in January, 1958, gave this whole American-made trust to a foreign institution.

Who were the "highly placed persons in the United States," whose names are not revealed? Who were those who gave "incredible help?" Who were the "friends" visiting the White House who overrode the treasury's recommendations? What Americans ever heard of this bill while it was before congress?

This is what I mean by the influence of external interests.

STATE OF MINNESOTA 566224 DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Faye Peterson,

Plaintiff,

-vs-

Palmer A. Peterson, and
Paul L. Halverson, individually,
and as Trustee,

Defendants.

REPORTER'S
CERTIFICATE

I, Clarence D. Hall, do hereby certify that I am one of the official court reporters of the District Court of the Fourth Judicial District of the State of Minnesota; that as such reporter I reported in stenotype the proceedings had in the above-entitled matter on January 7, 1965; that thereafter I transcribed the foregoing 32 pages of typewritten matter, which constitutes a full, true and correct transcript of said proceedings.

Dated at Minneapolis, Minnesota, January 8, 1965.

Clarence D. Hall

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION

- -x

United States of America and Raymond H. Ehlers, Revenue Agent, Internal Revenue Service,

Petitioners,

-vs-

Jerome Daly,

Respondent.

No. 3-66-349 Civil

- -x

Transcript of proceedings had in the above-entitled matter, heard by the Honorable Miles W. Lord, one of the judges of said Court, in Courtroom No. 1, United States Court House, Minneapolis, Minnesota, on Wednesday, the 17th day of July, 1968, at 10:30 o'clock, a. m.

APPEARANCES:

For the Petitioners:

Patrick J. Foley, United States Attorney, Minneapolis, Minnesota, and J. Earl Cudd, First Assistant United States Attorney, and William C. Falvey, Assistant United States Attorney;

For the Respondent:

Jerome Daly, pro se.

RESPONDENT'S EXHIBIT 7
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THEREUPON, the following proceedings were duly had:

MR. CUDD: Your Honor, the next matter is the United States of America and Raymond Ehlers versus Jerome Daly. Mr. Daly is in the courtroom pursuant to a court order which ordered his appearance on July 8, 1968, and as I understand it, pursuant to agreement between the Court and Mr. Daly, it was continued to today, July 17, 1968, at 10:00 a. m.

The defendant appears here representing himself, as I understand it. He has filed a notice of motion and motion with my office and with the Court in which he has indicated he wishes to bring on motions previously filed at this hearing. And if the Court is agreeable, I would suggest that we dispose of his motions now, which, as I understand them, are motions to dismiss for lack of jurisdiction.

THE COURT: Do you have anything to say on that point, Mr. Daly?

MR. DALY: If the Court please, I made the first motion, I think, on May 10, 1968, to set aside the order of contempt and for an order setting aside the Court's order dated December 29, 1966, or for an order setting aside the Court's order dated December 2, 1966, on the grounds that this Court has no jurisdiction and acquired no jurisdiction over my person.

I notice that in the opinion of the Circuit Court of Appeals filed on April 22, 1968, they state that "In the instant case, although the order to show cause did not specify the normal 20 days for appellant's response, nevertheless, it was served 22 days before the hearing ordered." And they say, "No argument has been made at any time that appellant has been prejudiced, only that he was technically not given a proper summons." And then they go on to say that "Although, it would seem advisable in future cases for the government to comply with" Federal Rules of Civil Procedure, "under the circumstances it seems reasonable to say that appellant received sufficient notice * * *."

Well, this is a motion going directly to that issue, and in my affidavit, which is of record, it states that "each and every time that I made an appearance before the Court I objected to the Jurisdiction of the District Court over my person becsuse I had not been properly served with process, by service of a Summons and Complaint, and that no proper action had ever been properly commenced against me. At all times I made a special appearance and will continue to do so until I am served with the proper Summons and Complaint in this action. Title 28, Section 1691, requiring 'that all writs and process issuing from a Court of the United States shall be under

the seal of the Court and signed by the clerk thereof' was not complied with from the outset and more especially with reference to the Order to show cause dated December 2, 1966. The original Order of December 2, 1966, was not attested in the name of the Clerk, was not issued under the seal of the Court and was not signed by the Clerk thereof. I was and am fully justified in ignoring this maverick proceeding as being contrary to law and void. I was prejudiced because I did not know what was going on and was completely shocked to find that the Internal Revenue Service was in the habit of proceeding this way and more especially with poor defenseless people who have had no training in the law at all.

"I specifically have been prejudiced because I have not been given an opportunity to raise all of my constitutional objections to the Internal Revenue laws and the Federal Reserve System. After June 4, 1963, there was no lawful constitutional money in circulation which could lawfully be deemed to be lawful money within the contemplation of the Constitution of the United States for the purposes of being a proper 'Standard of weights and measures' upon which a lawful tax could be imposed upon Income. That in the year 1965 about 75% of the money and credit in circulation was bank created 'bookkeeping ledger book

created' money and credit and was placed in circulation by 'Bank Checks.' About 24% was Federal Reserve notes which were not redeemable in lawful money of the United States. One per cent or less were lawful silver coins in circulation. The majority of the money and credit in circulation was and is against the highest law of the land and void nor could it be made the basis upon which to base an Income Tax upon.

"Furthermore" 26 United States Code, 7402, 3 and 4, "are unconstitutional and void. I cannot be compelled to submit to a trial or hearing before my adversary, Mr. Ehlers. He is attempting to follow a course of procedure which is foreign to our Constitution and unacknowledged by our laws."

And I might interrupt here. The Internal Revenue Service makes their own rules, decides their own disputes and executes their own laws, and it is precisely -- when those three powers are in one branch, that is a precise definition of a dictatorship.

THE COURT: Could I ask you a couple of questions, if you please? Let's talk first about points.

Do you have before you, Mr. Foley or Mr. Cudd, or Mr. Falvey, the opinion of the Court of Appeals? If you do, turn to page 5.

MR. CUDD: Yes, I have it, Your Honor.

THE COURT: All right. About half way through the first paragraph, first full paragraph on page 5, they say, "it would seem advisable in future cases for the government to comply with Federal Rules of Civil Procedure 3 and 4". Are they referring to that section that says a civil action is commenced by filing a complaint with the Court?

MR. CUDD: Yes, they are, Your Honor, but --

THE COURT: Go ahead.

MR. CUDD: However, they are there making, as I interpret the statement, an instruction or a suggestion for future cases that in these instances the action should be initiated through form of summons and complaint. However, as the Court is probably aware, they go on to indicate here that the defendant cannot now collaterally attack the contempt proceedings and everything that took place before, because when the Court overruled his jurisdictional questions at the time of his original appearances, it became an appealable order. He failed to appeal, and, therefore, it is the law of the case. As they clearly said in their opinion on page 6, approximately the eighth, ninth or tenth line down, "In the contempt proceeding, from which this appeal is filed, appellant attempts to collaterally attack the original enforcement order. He cannot do this. His jurisdictional

claim has been adjudicated and the doctrine of res judicata applies."

Then, further, on page 10 of the opinion, the first full paragraph, they say, "However, it should be clear that the hearing on remand should be limited to appellant's objections to the questions propounded to him on January 6, 1967, by the revenue agent. Appellant has now waived any overall objections to the enforcement order, such as his claimed unconstitutionality of the Federal monetary system and of the Internal Revenue laws in general. His failure to appeal from the enforcement order of December 28, 1966, waives all but the objections to the specific questions involved."

In other words, when he made his special appearance he objected to the jurisdiction of the Court. The Court overruled his objections and he failed to appeal. He should have appealed then, and he could properly have then raised the question. When he failed to do so, it became the law of the case and res judicata, and the court clearly states that he cannot now assert those claims.

THE COURT: Have you read that opinion, Mr. Daly?

MR. DALY: Well, yes, I did, with interest.

THE COURT: Now, let's look at that last page of the opinion, Mr. Daly. Now, you have been arguing here

about the Federal monetary system and the internal revenue laws, and the Court of Appeals has told me that that is all over, you see.

MR. DALY: Well, they may have told you that it is all over, but as far as I am concerned it is not all over.

THE COURT: Well, but I will follow them, of course.

MR. DALY: I am in here now on a motion making a direct attack on that order, on both of those orders.

THE COURT: On which orders?

MR. DALY: The one of December 2 and the one of December 29, on the grounds that this Court acquired no jurisdiction. And I have raised new facts by affidavit which stand uncontroverted in the record. You see, there is a new factual basis on the jurisdictional point.

THE COURT: I am going to literally follow --

MR. DALY: Pardon me?

THE COURT: I am going to literally follow the instructions of the Court of Appeals in this case. I am going to deny your other motions, and I am going to direct that we get to the point and take the questions, one by one, that you were asked by Ehlers, and then you state what your objections to those questions are.

MR. DALY: Well, whether we get to that, I want to complete the record.

THE COURT: Well, now, you have it in written affidavit form, Mr. Daly. You don't have to read it again. It is incorporated into the record.

MR. DALY: I take the further position that Section 7602, 7603 and 7604 are unconstitutional and void. In other words, Ehlers was my adversary, and this Court cannot compel me to submit to the jurisdiction of my adversary for trial. And the order is based on those unconstitutional statutes. In other words, he is my adversary, and under those statutes he has a right to go out and take evidence and make an investigation of his own, and I don't have any right to cross-examine the evidence or the witnesses or anything else, or have any determination upon which -- or make any question of the basis for his determination. After he makes his determination he files an assessment and a lien against my property. Now, this is a denial of due process of law.

THE COURT: Well, I will deny that aspect of your motion here.

Are you prepared now to proceed to take these questions one by one and to give us the basis for your refusal to answer them and to explain why you should not be required to answer them now based on those objections?

MR. DALY: Based on the objections that I --

THE COURT: That you make. Do you want to make your

argument now as to why you shouldn't be required to answer those questions.

MR. DALY: I don't think, especially in view of what has happened lately, -- I don't think it is safe for me to answer them, answer any questions pertaining to any of my personal affairs. As a matter of fact, I doubt if it is much more than safe to just give my name. There have been so many CIA agents and Federal agents running around Savage that they are stumbling over each other.

THE COURT: How big is Savage?

MR. DALY: Well, it is small.

THE COURT: How big?

MR. DALY: Oh, it can't be over a square mile.

THE COURT: There are quite a few agents out there?

MR. DALY: Yes, there are. And they come up to me in bars. As a matter of fact, one of them came up to me one morning and admitted he is a CIA agent. Now, they are not following me around because they like me.

THE COURT: Well, you ought to be as helpful as you can.

MR. DALY: Pardon me?

THE COURT: You ought to be as helpful as you can. Now, to the extent that you make representations here, I don't believe in determining the question of whether or

not you, for instance, might incriminate yourself, your representations here would not be used against you in a criminal proceeding.

MR. DALY: Well, I am not going to take your word for it.

THE COURT: In other words, I would not say that what you say here will be admissions. The U. S. Attorney is not going to be allowed to stand up and say, on such and such a day, the 17th of July, in Judge Lord's courtroom, Mr. Daly said that he might possibly be incriminated if he told the total amount of his income. That kind of thing is not going to happen.

MR. DALY: Well, I have only got your word for it, and there may be a different judge on the criminal proceeding in a different appellate court. They will have to proceed without my help.

THE COURT: What is the first question, Mr. Cudd?

MR. FOLEY: Could we have just a moment, Your Honor?

THE COURT: All right.

MR. CUDD: Your Honor, may I have the Court file for a minute? I believe the transcript is in it.

THE COURT: Have you read page 9 of the opinion of the Circuit Court, Mr. Daly?

MR. DALY: Pardon me?

THE COURT: Have you read page 9 of the opinion of

the Circuit Court?

I am going to declare a five-minute recess.

(Recess.)

THE COURT: Mr. Daly, have you read the opinions which were cited by the Court on pages 8 and 9 of its opinion in this matter, -- the Court of Appeals' opinion? Have you read those cases?

MR. DALY: You mean Hoffman versus the United States?

THE COURT: Yes, and Malloy versus Hogan, and the other cases cited there.

MR. DALY: Well, I am familiar with Malloy and Albertson.

THE COURT: What of Hoffman? Have you read it?

MR. DALY: No.

THE COURT: I have the report here. Would you like to read it?

MR. DALY: Yes.

THE COURT: Since you are acting as your own lawyer, I think you ought to have the background. Now, I am handing you that report open to the page, but I have instructed my law clerks to take out each of these cases and to have them available for you back in the library.

It's now 11:20. I propose to adjourn this proceeding until 2:00 o'clock. I will be in my chambers. If there is any one of these cases that you can't find,

you just come in here. I will be as helpful to you as I can. I will come back then, and on the record we will explain to you the purpose of the privilege against self-incrimination. I will further explain to you at that time that I have to make the decision based upon the question, its implications and such representations as you might make to me concerning the possibility that that might incriminate you.

I will tell you now that this afternoon if you are able to conjure up any reasonable basis upon which to present to the Court your argument that a question might incriminate you, I will not require you to answer it, but I will require that you answer the questions up to that point.

I again suggest to you that it might be wise for you to have an attorney to represent you this afternoon, and I take it you still are not disposed to get an attorney to represent you. Isn't that true?

MR. DALY: Well, I brought an attorney with me today.

THE COURT: Well, a former attorney. I see he is gone now. Where is he?

MR. DALY: He will be back. He is admitted to practice in this Court.

THE COURT: He hasn't been disbarred here yet?

MR. DALY: No, he has not.

THE COURT: Well, there is some conversation to the effect that that is automatic.

MR. DALY: Well, it is no conversation. It might be conversation, but that is as far as it could go. He has never been disbarred.

THE COURT: He is still technically a member of the bar of this Court?

MR. DALY: That is right.

THE COURT: Well, I am not familiar with all of the proceedings that have plagued Mr. Joyce as he undertook to practice law. He appears pro se during his own cases from time to time. Is Mr. Joyce the only lawyer that you will allow to help you in this matter?

MR. DALY: The only one in the State of Minnesota. He is the only one that can be trusted as far as I am concerned.

THE COURT: Well, I am going to allow Mr. Joyce to sit at the counsel table with you. I am not going to allow him to speak. However, you can confer with him before you make any responses.

MR. DALY: Well, he is admitted. If I want this man to represent me, he is admitted to practice in this Court, and you can check with the records in the Clerk's office in St. Paul.

THE COURT: Well, we will make that decision at 2:00 o'clock.

MR. DALY: He did indicate to me that he did not particularly care to make an appearance. He said that he had been subjected to enough abuse.

THE COURT: Why don't you have him sit with you at the counsel table? Then when he suggests what your presentation will be, you get up and say it, and I will take it just as though the lawyer said it. It won't be any admission on your part that we will incorporate into the record here again. It cannot be used as an admission. What you say in stating the basis upon which you refuse to answer cannot be construed as an admission by you on any of the matters to which you refer.

Do you have any objection to that, Mr. Foley?

MR. FOLEY: I don't have any objection. I was just checking it.

THE COURT: No. Excuse me. I really wondered if you gentlemen thought that I was prejudicing the Government in any way.

MR. FOLEY: No, I don't have any objection.

MR. CUDD: Well, Your Honor, I have no objection to the procedure outlined by the Court. I cannot make a factual assertion as to whether Mr. Joyce is admitted to the bar of this Court or not. However, according to

my knowledge of the rules of the District Court of this District, you have to be a member of the bar of this state, and he is no longer a member of the bar of this state.

MR. DALY: That is an open question, too.

MR. CUDD: However, I have no objection to him sitting at the counsel table and consulting with Mr. Daly.

MR. FOLEY: If the Court please, I was commenting to Mr. Daly, not with respect to the method of procedure; I was just pointing out that this would have to presume that any answer would be truthful and complete rather than misleading and erroneous. Any answer that he gives to these questions, I suppose, could, if erroneous, false or perjurious, expose him to some legal liability.

MR. DALY: Who? Myself?

THE COURT: Well, Mr. Foley, in making his response as to why a particular question might incriminate him, --

MR. FOLEY: We have no problem with that.

THE COURT: -- if I decide he has to answer, then he has to give the answer. Then the penalties of perjury apply.

MR. CUDD: I have nothing further then, Your Honor. I will return this transcript.

THE COURT: Well, Mr. Cudd, at one point at least I

had a short conference with Mr. Daly in my office, and my law clerks were there, and I did try to urge him to comply and to cooperate and to generally get straightened out on this idea he has been pursuing about the illegality of the monetary system and so forth, but Mr. Daly hasn't seen fit to do that. After that time I called, I believe, you, Mr. Cudd, and said I wanted you to be prepared with the individual questions and with an argument as to why each of them should be answered, to give the Court some guidance here, so I don't have to go through these things. It is not, after all, an adversary proceeding of me versus Mr. Daly. And I take it you are prepared to do that.

MR. CUDD: That is correct, Your Honor.

THE COURT: Mr. Joyce, I see you are in the courtroom. I have told Mr. Daly that if you want to come and sit at the counsel table, that that is all right with me, that you can confer with him about these individual questions and help him to prepare his response. I think both you and I would be probably more happy if you didn't undertake a speaking part here.

MR. ALFRED JOYCE: I see no occasion to appear for Mr. Daly because this Court has no jurisdiction of him for any purpose, civil or criminal. That must come through the Clerk's office.

THE COURT: Well, I don't want to engage in an argument with you. You see, I thought that you came here and that you might want to be helpful to Mr. Daly. You have made that objection now. I overrule it. Having done so, --

MR. JOYCE: I am not making any objection. I am just explaining why I am not appearing for Mr. Daly.

THE COURT: Well, I take it you will go back to the law library, will you, Mr. Daly, and read these various cases that have been cited?

MR. DALY: You are going to continue the matter until 2:00 o'clock?

THE COURT: Unless you object. If you are prepared to proceed now, I am. But I want to be sure that you had a chance to --

MR. DALY: Oh, I think I am prepared to proceed now.

THE COURT: Are you? All right.

Incidentally, you are not objecting -- we agreed on this date when you should appear here, didn't we, Mr. Daly, when you were in my chambers?

MR. DALY: There is no objection as to the date. The only thing that I did notice is that there was no motion made by the Government. In other words, there is no motion for the order that was made.

THE COURT: Well, the Court did issue the order requiring that you come and answer these things.

MR. DALY: But as I understand it, it was on your own motion.

THE COURT: Well, it was just in carrying out the admonitions of the Court of Appeals, as I took it, that we should have a plenary hearing, and I just set the time for it.

MR. DALY: Well, if I may respectfully suggest something. I think you would be on much more solid ground if you would carry out the admonition of the law as enacted by the people, and that is the Constitution of the United States. Your only oath is to support that and not any judge on the Circuit Court of Appeals.

THE COURT: You are the second one this morning that told me I didn't have to listen to those folks. But all these documents I get back keep telling me that I do.

MR. DALY: Well, of course, you have to act upon your own judgment ultimately.

THE COURT: Now, Mr. Daly, if you had had a motion by the United States Government to have you answer these specific questions, would it really have changed your position? In other words, here you are. The Court of Appeals has told us that you are to have a plenary

hearing and be asked each question and give you an opportunity to respond to it or to indicate why you wouldn't respond. Are you satisfied at this point? Do you understand and have you had adequate notice that that was going to happen here today?

MR. DALY: That the purpose of the hearing was to give me a chance to explain why I would not -- why I felt that the answer to these questions would tend to incriminate me?

THE COURT: Right, or any other reason that you have for refusing to answer.

MR. DALY: Well, number one, I claim it is an invasion of my privacy. I have got a right under the Constitution of the United States to be left alone unless a proper proceeding --

THE COURT: Excuse me, Mr. Daly.

MR. DALY: -- by a judicial branch --

THE COURT: Excuse me. I only asked you if you understood why you came here. Now, I don't want your answers yet. All I want for the record here is your statement that you knew in advance you were going to be called upon to explain why you wouldn't answer those questions. You knew when we had our conference that I was going to call you here and do what was suggested by the Court of Appeals, didn't you, -- the day you came

in to sue this other case out and you served me as a defendant on a writ of prohibition? Isn't that right?

MR. DALY: Yes.

THE COURT: Didn't we talk about this case then?

MR. DALY: That is right. Well, in the opinion it says, "At least a proper hearing should make inquiry upon the individual questions involved." Well, that -- I don't understand exactly what they mean by "inquiry upon the individual questions involved."

THE COURT: Well, I will explain that, what I conceive it to be. You refused to answer any questions.

MR. DALY: No, I did not refuse to answer any question. I gave my name, my address and my -- I call it the serial number, but they call it the Social Security number -- and my age.

THE COURT: All right. And aside from those things you refused to answer the other questions. Now, --

MR. DALY: Have you had an opportunity to read those criminal statutes -- all of them?

THE COURT: Well, I have a general familiarity with the criminal statutes.

MR. DALY: Well, 7210 --

THE COURT: Wait, Mr. Daly, you are getting off the point. Before we get to those things we have to get into the procedural problem here of whether or not

you have had adequate notice of this hearing.

MR. DALY: Well, so far as the hearing is concerned, I read the notice, but I say that even so far as this hearing is concerned, there is no proper procedure. I am not going to waive that.

THE COURT: What proper procedure?

MR. DALY: In other words, the Government has not made a motion.

THE COURT: Well, the Court has made the motion.

MR. DALY: I know. You are proceeding on your own motion.

THE COURT: That is right.

MR. DALY: And you can't do that. When you proceed on your own motion, you see, what you are doing is that you are taking an active -- rather than sitting as an impartial judge, you are becoming an advocate for their side. You see, there is a breakdown in the separation of powers. You are not only -- you are executing the laws and you are deciding them. You see, they have made no motion here. This was on your motion.

MR. CUDD: Well, Your Honor, if I might say a word, I think the procedural posture of this case is that it was appealed from the Court's prior order to the Eighth Circuit Court of Appeals. The court then handed down its decision in which it vacated the order and remanded it

to the District Court for further hearing. The Court then on July 2, 1968, pursuant to the remand of the Eighth Circuit, issued an order. Since the case is before the Court and the Court has had jurisdiction over the matter from the time it was started until the day when it was remanded from the Eighth Circuit, with the instructions given to it by that court, the Court then issued its order pursuant to the remand of the Eighth Circuit.

"Pursuant to the remand of the United States Court of Appeals for the Eighth Circuit in the above-captioned case,

"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 8th day of July, 1968, at 10:00 A. M." -- and as I stated earlier in the record, the Court continued that after a conference with Mr. Daly to today, July 17th -- "for a hearing on Jerome Daly's objections to answering questions propounded to him by an Internal Revenue agent pursuant to this Court's order."

And I think procedurally the Court has operated in a correct manner, because the matter is before this Court and the Court can issue such orders as it deems

necessary in order to properly handle the proceeding.

MR. DALY: I thought the opinion itself was kind of hilarious. He has got me waiving everything, when I at no time waived anything.

THE COURT: Let us now proceed then, Mr. Cudd, with the questions.

MR. CUDD: Fine, Your Honor. Your Honor, I request that Mr. Daly be sworn, and then I can place on the record the questions previously propounded to him and ask him whether he still declines to answer and his basis for that failure to answer.

THE COURT: Well, do you think it is necessary to put him under oath for that? After all, he is acting in a dual capacity here as both a witness and as a lawyer, and, of course, as a lawyer, as an officer of the Court, -- I would suggest that we not put him under oath, Mr. Cudd, -- I think we can do the same thing; he is required to tell the truth here as an officer of the Court -- unless you feel rather strongly about it.

MR. DALY: Well, do you want me to give an explanation as to why I refuse to answer --

THE COURT: Just wait a minute.

MR. FOLEY: Could we have a moment, Your Honor?

THE COURT: Surely.

MR. CUDD: Well, Your Honor, it is our position

that we think he should be sworn so that the question can be propounded to him, and then he can either answer or decline to answer and assert his grounds, and then he can make such argument to the Court as a lawyer. But I think in order to have a proper record in the proceeding he should be sworn and the questions propounded.

THE COURT: Very well. Will you be sworn, Mr. Daly, please?

JEROME DALY,

having been duly sworn, was examined and testified as follows:

THE COURT: Take the witness stand, if you please, Mr. Daly. I will allow you, Mr. Daly, to sit in the witness stand and make your response or lack of response to the question, and then take the counsel table to make your argument.

MR. CUDD: Your Honor, may the record show that the questions which I am reading to Mr. Daly are taken from Exhibit B in United States of America and Raymond H. Ehlers, Revenue Agent, Internal Revenue Service, Petitioner, versus, Jerome Daly, Respondent, 3-66 Civil 349. It contains a transcript of proceedings before Internal Revenue Agents on January 6, 1967.

EXAMINATION BY MR. CUDD

Q Did you appear before the Internal Revenue Service

on January 6, 1967, Mr. Daly?

A (No answer.)

Q Did you hear my question?

A Yes, I did. I was trying to check that out. Yes, I did, at 2:00 o'clock.

Q All right. And at that time were certain questions propounded to you?

A That's right.

Q And I will show you Exhibit B and ask you to examine it and if you are familiar with it?

A Well, I am generally familiar with it, yes.

Q Now, referring to that transcript, on page 3 you were asked this question by Mr. Ehlers:

"Question: 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?"

And you declined to answer that question "Upon the grounds that it infringes upon my rights as secured by the Constitution of the United States." Do you still decline to answer that question?

A Where are you reading from now?

Q I am reading from page 3 of the transcript.

A That's not right.

Q Of the January 6th transcript. This is the question

which I just read to you. (Indicating on Exhibit B.)

A You asked -- that question was asked and this answer was given: "Well, I wonder if we might -- the purpose of your examination is to ascertain information to complete the 1965 return, is that right?" That was the response I made to that question.

Q All right. Then the next question is: "Yes, it is; to determine your tax liability." Is that correct?

A Well, that is what I read here. I don't accurately recall what the questions and answers were except insofar as I use this memorandum to refresh my recollection.

Q All right. Now, 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 today?

A Where do you see this now?

Q I am asking you that question now. I am not asking it from the transcript.

A Oh, have I brought them with me today?

Q Yes.

A Well, I am going to object to that as immaterial. I wasn't required to bring anything with me today. I wasn't under subpoena or order to bring anything today.

THE COURT: Yes. What is the point of asking whether or not he has brought them today? To see whether

he will now comply?

MR. CUDD: That is correct, Your Honor.

THE COURT: Well, if the Court, Mr. Daly, directed you to bring them, would you bring them? Would you produce those documents that he has just outlined, deposit slips and so forth?

THE WITNESS: If the Court ordered me to bring them?

THE COURT: Yes.

THE WITNESS: Well, they will have to file their motion and we will have an argument on that, and then I will have to see what the order looks like, and I may appeal from the order. I don't know. I can't tell you what I would do until I am confronted with the situation.

THE COURT: Read that question again, Mr. Cudd.

MR. CUDD: The question is: "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?"

THE WITNESS: Well, I have already answered. He asked me if that question was asked, and I have already answered. Now, this is repetitious.

THE COURT: All right. You refused to answer, didn't you?

THE WITNESS: No. My answer was: "Well, I wonder

if we might -- the purpose of your examination is to ascertain information to complete the 1965 return, is that right?" That question was asked and I gave that answer.

By Mr. Cudd:

Q All right. Now, if I might proceed just a little further. Then wasn't the next question: "Yes, it is; to determine your tax liability."

A Well, like I say, I don't have -- without referring to this transcript to refresh my recollection I don't have any --

Q All right. Do you have before you a copy of the record which you filed in the Eighth Circuit Court of Appeals? Is that correct?

A That is what I am using to refresh my recollection, yes.

Q All right. Just one second. Now, referring you to page 22 of the record which you filed in the Eighth Circuit Court of Appeals in your case, midway down it is entitled "Title of Cause, Testimony of Jerome Daly," is that correct?

A That is what it says, yes.

Q And "Transcript of testimony of Jerome Daly taken at 1081 First National Bank Building," is that correct?

A Well, that is right. But I want to object to all this as being immaterial. I was ordered to appear --

Q All right.

A Now, when I make these statements, I am not waiving anything.

Q Okay.

A I was ordered to appear before Revenue Agent Ehlers on January 6, 1967, at West 1081 First National Bank Building, St. Paul, Minnesota, for questioning pursuant to Title 26, United States Code 7602, 3 and 4 (a), and I did appear for questioning.

Q And certain questions --

A And questions were asked and I gave answers.

Q All right. Now, a copy of that transcript you have reproduced in the record, is that correct; had printed and filed in the Eighth Circuit?

A That is right.

Q And you have that before you now?

A That's right.

Q All right. Now, to return to the question then, "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?" You answered: "Well, I wonder if we might -- the purpose of your examination is to ascertain information to complete the 1965 return, is that right?"

A Well, we have already gone over that three times,

and I admitted that that question was asked and that that answer was given.

Q All right. The next question is: "Yes, it is; to determine your tax liability.

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

A That answer was given.

Q And you go on to say: "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."

Is that correct?

A Well, that is the answer that I made, yes.

THE COURT: Is that still your answer?

THE WITNESS: Is that still my answer?

THE COURT: Yes.

THE WITNESS: That is still my position, yes.

THE COURT: All right. That required the production of papers and documents, personal papers of his, for the purpose of ascertaining his income tax liability, which the next step might be to ascertain his criminal liability for income tax evasion, and he won't have to answer that question. Go on to the next.

MR. CUDD: Well, Your Honor, may I be heard on that question?

THE COURT: Go ahead.

MR. CUDD: Well, it is our position that this is the filing of a tax return in blank, and it is our position that the production of records in order to determine tax liability in the first instance does not furnish a link nor does it incriminate him, because if the entire records are furnished and the tax return is accurately compiled, no one is incriminated.

THE COURT: He didn't file a return, I take it, or he filed a blank, which is about the same as not filing it, and he may show sufficient income to expose him to criminal liability. If he should have filed it and he

didn't file it, which is about what he did when he filed it in blank, it may lead to criminal liability. My ruling on that will stand, Mr. Cudd.

MR. CUDD: All right.

By Mr. Cudd:

Q The next question is: "Do you have any such records in your possession or that's under your control?

"Answer: The same answer. When I say 'the same answer,' I am referring to the same -- without having to clutter up the record -- the same objection."

I take it you again decline to answer on the grounds of the Constitution of the United States, and more specifically the Fourth, Fifth and Sixth Amendments, is that correct?

A That is right.

Q And do you still decline to answer that question?

A That's right.

Q And would you state your grounds for declining?

A 7210 states: "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, 6421, 7602, 3 and 4, "neglects to appear or produce such books, accounts, records, memoranda, or other papers, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned for not more than one year, or both, together with costs of prosecution."

Q But the question is, "Do you have any such records in your possession or that's under your control?" Do you decline to answer that question?

A I refuse to answer that question on the grounds that it might tend to incriminate me.

MR. CUDD: Move the Court for an order directing the witness to answer.

THE COURT: How do you think it might incriminate you, Mr. Daly?

THE WITNESS: "Any person who, being duly summoned to appear to testify, or to appear and produce records, accounts, records, memoranda, or other papers, as required under sections" and so forth, "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 for not more than one year". It makes it a criminal offense not to produce books, records, memoranda, or other papers, in pursuance to summons.

MR. CUDD: Well, Your Honor, he is pulling himself up by his own bookstraps. He appeared pursuant to the summons, and he then declined to answer on the grounds of the Fourth, Fifth and Sixth Amendments. He now asserts that under that section if he answers the question he would be incriminated, and he has not

at any instance failed to comply with the summons or failed to produce the records because he has asserted a privilege, and the ground is not well taken.

THE COURT: Do you have any other basis other than the fact that by refusing to produce on that day you might have run counter to the statutes that you have just read?

THE WITNESS: Well, they have attempted to -- I was ordered for a trial before my adversary, and they make it a criminal offense if you don't submit to a trial before your adversary and bring all of your books and records.

THE COURT: All right. Let us go back to the basic question of production of your books and records. How do you maintain that the production of those books and records might tend to incriminate you?

THE WITNESS: Well, of course, now I refuse to answer that question on the grounds that it may tend to incriminate me.

THE COURT: All right. Let's be out from under oath. Somebody has got to make this representation for you in order that I can intelligently rule on it. Why don't you, as a lawyer and as an advocate here, just make your argument as to what the possibilities are?

THE WITNESS: Well, they are unlimited. You can't --

as I read these statutes, there is only one person that is not subject to criminal liability, and that is an employee who files a return and claims no deductions. Everybody else, every businessman, is subjected to a criminal prosecution at the whim of the Government, and it is by this medium that they have made slaves out of the people.

THE COURT: Well, how could this incriminate you if you were to respond to that question?

THE WITNESS: Well, the question was asked -- here is the question that was asked: "Do you have any such records in your possession or that's under your control?" Any such records. Well, now, if I had the records in my possession and under my control and if I didn't bring them pursuant to the summons, then I could be prosecuted for failure to obey the summons.

THE COURT: Well, let's not talk about that. Let's talk about what that might have to do with regard to any criminal liability for income taxes. Would you address yourself to that? Basically they say, "Bring in your records for your income taxes." And you say, "No, it might incriminate me." Now, how might it incriminate you?

THE WITNESS: Well, we are talking about this question here, right now: "Do you have any such records

in your possession or that's under your control?"

THE COURT: Yes.

THE WITNESS: We are talking specifically about that question.

THE COURT: Right.

THE WITNESS: Now, if I admitted that I had such records in my possession and under my control and I did not bring them pursuant to their Internal Revenue summons, to the agent's office, then I theoretically violated the mandate of the summons and I am subjected to a criminal liability, and this is all there is to it.

THE COURT: What do you say to that, Mr. Cudd?

MR. CUDD: Well, I say, Your Honor, that that is not a correct position because he responded to the summons. He came there and he asserted a privilege that he didn't have to produce them. Until the privilege relied on has been ruled on, he can't possibly use that section to tend to incriminate himself, because he has yet at this time not refused to produce them.

THE COURT: All right.

MR. CUDD: He has not obeyed the summons. He has asserted a privilege, and that is what we are here to determine.

THE COURT: Now, Mr. Daly, I am going to advise you that I have adopted Mr. Cudd's reasoning with regard

to this argument, that on that specific question no criminal liability could develop as of this point since the matter has been on appeal and in the jurisdiction of this Court to determine whether or not you properly or improperly refused to bring them.

THE WITNESS: Now, the only question, the only issue, before the Court is this question,--

THE COURT: To tell whether or not you have them.

THE WITNESS: -- "Do you have any such records in your possession or that's under your control?" That's the only question that is before the Court.

THE COURT: Right.

THE WITNESS: And to answer that question under the law could tend to incriminate me.

THE COURT: All right. I want to get you back to the other more basic problem which I alluded to in response to --

THE WITNESS: Well, I think we should stick to the questions. That is what the --

THE COURT: Well, thank you for that.

THE WITNESS: That is what that judge that is masquerading as a Circuit Judge has indicated.

THE COURT: Let's talk, however, about your further objection. I think that is rather a tenuous objection to this problem. This particular question now; address

yourself to that question: Do you have in your possession such records? What other prospects do you see of criminal liability developing based upon your answer to that question?

THE WITNESS: Well, you see, here is the problem. If we had officials in the Government of the United States that were acting according to reason and acting logically and were following the law, why, that would be one thing, but they are out of their heads. And then they try to claim it's the people are the ones that are sick.

THE COURT: Well, tell us then --

THE WITNESS: Well, there is absolutely -- the procedure is by whim and not by law at all. There has been a complete breakdown in our form of government, and it's not safe for a citizen to answer a question propounded by any of them. They are not to be trusted to any degree.

THE COURT: All right. My question is: What might happen if you answered that question?

THE WITNESS: Well, only God knows.

THE COURT: Well, God isn't here, and I have to decide that question. I have to decide whether there is a reasonable probability that the answer to that question would incriminate you.

THE WITNESS: Well, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." They have issued no search warrant. They had no more business in my books and records than Ho Chi Min.

THE COURT: Why do you think that you had a right to those books and records, Mr. Cudd?

MR. CUDD: A right to the books and records?

THE COURT: Yes. Why do you think that he is wrong in asserting his privilege here?

MR. CUDD: Well, Your Honor, the purpose of the books and records is to determine the amount of income tax liability, and the production of records is in order to determine tax liability. If the taxpayer produces his records and answers the questions propounded accurately and fully, his entire income is disclosed, his deductions are disclosed, his taxes computed, he has complied with the law and he has not incriminated himself. It is that simple.

THE COURT: So that your position is that he should be required to disclose whether or not he has records

and to produce them -- to go back to the other question?

MR. CUDD: That is correct. And in fact if he doesn't have records, it doesn't necessarily incriminate anyone, because if you can reconstruct your income from some other source accurately and file a return, you suffer no criminal liability.

THE WITNESS: Well, it is a crime to fail to keep records, according to the --

THE COURT: Let me ask you this question. Maybe I can lead you a little bit. Is it your position that if you were to produce the records of your income, if you had them and if you were to produce them, that it might conceivably lead to a criminal liability on your part.

THE WITNESS: That is right. It might conceivably lead to a criminal prosecution.

THE COURT: All right. And why? You don't have to make any admissions, but what is your theory as to how that might lead to a criminal prosecution?

THE WITNESS: Well, 7203: "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 6016), keep any records, or to supply any information, who wilfully

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, be fined not more than $10,000, or imprisoned not more than one year, or both, together with the costs of the prosecution." That is sweeping.

THE COURT: Mr. Cudd.

MR. CUDD: Well, Your Honor, I think, first, the issue here is not whether he failed to file a tax return. He filed the tax return. He then asserts a privilege to the entire tax return except for his name and Social Security number. So the question is whether his claim of self-incrimination warrants his refusal to disclose. In other words, we are not here on a possible prosecution on failure to file because the tax return was filed. What we are here to determine is whether the answer to the question can incriminate him on the tax return, or the production of the records for the tax return. So he is again "bootstrapping" himself.

THE COURT: It is your position that he cannot be charged with failure to file, he cannot be charged at this point with a failure to produce records, and that he cannot be charged with understating his income?

MR. CUDD: At this point, no, because he hasn't stated any income.

THE COURT: What is your response to that, Mr. Daly, counselor Daly?

THE WITNESS: Well, the point is, I don't know what they have been up to. You see, my office was burglarized in January -- December or January -- December of '65 or January of '66 -- and I am pretty well satisfied that it's the CIA that did it. And at the same time my apartment was burglarized and it was rummaged through. They stole a safe out of my office and they rummaged through my apartment. So just what they have done -- it's just absolutely is not safe to answer any questions or submit to their interrogation.

THE COURT: Let's go to the next question.

THE WITNESS: And it follows a pattern of anybody that has been connected or has any information involving the Kennedy assassination.

MR. CUDD: Well, Your Honor, if I may, I am going to skip over to page 10 of Government's Exhibit B.

And, Mr. Daly, if I may examine that record, I can show you where I am so that we can save ourselves some time.

Okay. I am going to refer to this question right here. (Indicating)

Q All right, Mr. Daly. At that hearing was this question propounded to you: "Have you with you your record reflecting receipts in 1967" -- no, strike that question.

Drop down two questions; this one right here. (Indicating) Were you asked this question: "What were the sources of your receipts?"

A "What were the sources of your receipts?"

Q And you answered "Same objection."to that I said

A Well, you must understand that these were a list of questions that Mr. Ehlers had made up previous and he read the questions off of a list one after another without any continuity.

Q All right. Did he say, "What were the sources of your receipts?" -- and you answered "Same objection"?

A Can you tell me what he meant by that? I don't know right now.

Q That is not the question. The question is, did he ask that question and did you say "Same objection"?

A Oh, that question was asked -- for purposes of this I will admit it was asked and this was the answer that I gave.

Q All right. And the question immediately before it is, "What were your receipts and income in 1965?" Is that correct?

A That's right.

Q And you answered "Same objection". Is that correct?

A That is right.

Q All right. Now, with respect to the question of "What were your receipts and income in 1965?", when you said, "Same objection" I take it you were asserting a constitutional objection, is that correct?

A Well, I previous to that --

Q Well, let's strike that portion --

A Let me answer this now. Previous to that I said "Same objection," and I also wanted 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 or deprive me of my rights as secured by the Fourth, Fifth and Sixth Amendments.

Q All right. Now, do you decline to answer the question "What were your receipts and income in 1965?" today?

A I do.

Q You decline to answer that question?

A On the grounds as stated in the exhibit you are reading from.

Q Would you please state your grounds here now?

A Well, as I stated at that time, "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." 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. And I am standing on that objection here today.

Q All right. With respect to the Fourth Amendment, what is your assertion there for declining to answer that question?

A Do you want me to read it to you again?

Q No. I want you to state what your ground is.

THE COURT: How do you think the facts here might bring you within --

MR. CUDD: The Fourth Amendment.

THE COURT: -- the purview of the Fourth Amendment?

THE WITNESS: Well, I think the Fourth Amendment is clear.

By Mr. Cudd:

Q I didn't ask you for the clarity; I asked you for the statement of your reason.

A "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." And that has to be

taken and read in conjunction with the Fifth Amendment, "nor shall any person 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".

THE COURT: All right. Let's talk about that now. How might your answer to that question and the first question having to do with your '65 return -- how might your answer to that tend to incriminate you?

THE WITNESS: Well, here's the question that was asked: "What were your receipts and income in 1965?"

"Same objection."

Now, the next question: "What were the sources of your receipts?" Well, they want to know the sources of my receipts, if there were any. The sources of the receipts -- I would have to give the information to people so they could go and contact. That supplies a link in the chain.

THE COURT: Where would the end of the chain be hooked to? Jail?

THE WITNESS: Penitentiary.

THE COURT: On what theory? What statute or what possible criminal liability could result to you there?

THE WITNESS: "Any person who wilfully 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, by guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than five years, or both".

THE COURT: All right. What is the next question? We will take those two as covered by this objection. What is the next question, Mr. Cudd?

By Mr. Cudd:

Q "Have you with you your statements reflecting purchases and sales of assets in 1965?" And you declined to answer that question, is that correct?

A That's right.

Q And you asserted as an answer, "Same objection", is that correct?

A That's right.

Q And do you decline to answer that question here today?

A That's right.

Q And would you please state your grounds for declining to answer?

A Well, it's the same grounds as I stated with reference to "Do you have any such records in your possession or that's under your control?" In other words, it's a different way of asking if I have any records with me. That is all it is.

THE COURT: Now, your theory -- let me state this

for you and see if you can give me an answer one way or another -- is that you don't have to answer these questions on the theory that the Fifth Amendment protects you from giving information which might state the amount of your income, and that the amount of your income once stated might lead to criminal prosecution?

THE WITNESS: That's right. It's a crime -- it's even a criminal offense for failure to file an estimated tax.

THE COURT: All right. What is the next question, Mr. Cudd?

By Mr. Cudd:

Q "Do you recall what your purchases and sales of assets were in 1965?" And you answered, "Same objection," is that correct?

A That's right.

Q And do you decline to answer that question today?

A (No answer.)

Q Do you decline to answer that question today?

A Well, this is asking if I have a recollection.

Q It says, "Do you recall what your purchases and sales of assets were in 1965?" You answered at the time you were before the Revenue people, "Same objection." Do you decline to answer the question today?

A Yes, I do.

Q And would you state the grounds for your declining to answer?

A Well, the Fourth Amendment.

Q Do you have any grounds other than the Fourth Amendment?

A Well, part of -- my recollection is part of the right to be left alone, and I don't think it is any of their business what my recollection was at that stage of the proceeding.

Q Other than those two do you have any other grounds?

THE COURT: The Fifth Amendment?

THE WITNESS: That's right.

THE COURT: Go on to the next one, Mr. Cudd.

MR. CUDD: All right.

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

"Answer: Same objection."

Do you decline to answer that question today, "Have you with you your records reflecting your basis on the assets you sold?"

A Well, that's another one with reference to records, and the same objection.

Q And again would you specifically state the grounds?

A Well, it's the grounds as have been previously stated.

Q Well, would you specifically state them, please?

THE COURT: You won't have to read the Fourth Amendment. What is the rationalization that you followed when you said that to give such an answer might incriminate you?

THE WITNESS: He asked me if I had with me records reflecting on the -- my basis on the assets that I sold.

THE COURT: Yes.

THE WITNESS: If I had such records with me. Well, it's a -- I was purportedly summoned to bring records. Now, it was a -- the question was asked whether I had my records with me.

THE COURT: You know what we are looking for. Just put it on the record why you think it might incriminate you and then I can rule on it.

THE WITNESS: Well, 7203.

THE COURT: But now you have read me the law and you have read me the question. Will you bridge the gap and give the rationale as to why you, Jerome Daly, at that time and place thought, if I answer this question, 7203 might come into effect? Now, what thoughts entered into your mind at that time? What were the facts that caused you to use that privilege?

THE WITNESS: They asked me if I had brought my records with me.

THE COURT: Yes. And if you had brought your records, what possibly could have happened?

THE WITNESS: What if I hadn't brought them?

THE COURT: Yes. All right. Let's say, what if you had brought them. Answer them one at a time.

THE WITNESS: If I had brought them, well, then, I suppose it is a failure to supply information. And if I hadn't brought them and had them, then I could be convicted for failure to conform to the Internal Revenue summons.

THE COURT: And if you had brought them and they showed a substantial tax liability, then what could have happened?

THE WITNESS: Well, I could be convicted of wilful evasion.

THE COURT: Let's adjourn until 2:00 o'clock. Will you be sure and read those cases, Mr. Daly? Mr. Daly, the lawyer, will you read those cases that are cited by the Court of Appeals?

(Whereupon, a recess was taken at 12:25 o'clock, p. m., until 2:00 o'clock, p. m.)

Wednesday Afternoon Session
July 17, 1968
2:00 o'clock, p. m.

(Appearances as heretofore noted, except that Mr. Patrick J. Foley and Mr. William E. Falvey were not present.)

JEROME DALY,

resumed the stand and testified further, as follows:

THE COURT: May the record show that the witness is again on the stand.

Mr. Cudd.

MR. CUDD: Would you read back the last question just before we recessed, Mr. Reporter?

(The last question asked by the Court and the answer were read.)

MR. CUDD: Well, would you read back a little further? I am trying to pick up on the transcript which question I left off.

(The following testimony and proceedings were read:)

"Question: 'Have you with you your records reflecting your basis on the assets you sold?

"'Answer: Same objection.'

"Do you decline to answer that question today, 'Have you with you your records reflecting your basis of the assets you sold?'

"Answer: Well, that's another one with reference to records, and the same objection.

"Question: And again would you specifically state the grounds?

"Answer: Well, it's the grounds as have been previously stated.

"Question: Well, would you specifically state them, please?

"THE COURT: You won't have to read the Fourth Amendment. What is the rationalization that you followed when you said that to give such an answer might incriminate you?

"THE WITNESS: He asked me if I had with me records reflecting on the -- my basis on the assets that I sold.

"THE COURT: Yes.

"THE WITNESS: If I had such records with me. Well, it's a -- I was purportedly summoned to bring records. Now, it was a -- the question was asked whether I had my records with me.

"THE COURT: You know what we are looking for. Just put it on the record why you think it might incriminate you and then I can rule on it.

"THE WITNESS: Well, 7203.

"THE COURT: But now you have read me the law and you have read me the question. Will you bridge the gap and give the rationale as to why you, Jerome Daly, at that time and place thought, if I answer this question,

7203 might come into effect? Now, what thoughts entered into your mind at that time? What were the facts that caused you to use that privilege?

"THE WITNESS: They asked me if I had brought my records with me.

"THE COURT: Yes. And if you had brought your records, what possibly could have happened?

"THE WITNESS: What if I hadn't brought them?

"THE COURT: Yes. All right. Let's say, what if you had brought them. Answer them one at a time.

"THE WITNESS: If I had brought them, well, then, I suppose it is a failure to supply information. And if I hadn't brought them and had them, then I could be convicted for failure to conform to the Internal Revenue summons.

"THE COURT: And if you had brought them and they showed a substantial tax liability, then what could have happened?

"THE WITNESS: Well, I could be convicted of wilful evasion."

By Mr. Cudd:

Q All right, Mr. Daly. Then continuing in the transcript the next question is: "Do you recall what your basis on such assets was?" And you answered, "The same objection." Do you decline to answer the question today, "Do you recall

what your basis on such assets was?"

A I do, yes.

Q And would you state the grounds for asserting your refusal to answer?

A Well, it's asking for information relative to a basis for the assets that he was talking about. It could lead to information which might tend to incriminate me.

Q For the year 1965?

A That's right.

Q Do you have any other claim besides the Fifth Amendment?

A Well, I said the Fourth, Fifth and Sixth.

Q All right. Now, the next question at the time you appeared before the Revenue Agent was: "Have you with you your cash disbursements" --

THE COURT: Excuse me. Why don't we rule on these one at a time, Mr. Cudd? I see that there are several, and we might get our ruling, our discourse on each one and dispose of it.

MR. CUDD: Well, that is agreeable.

THE COURT: Unless you want to submit a brief on each question.

MR. CUDD: Well, I didn't know how the Court wanted to handle it, whether the Court wanted to run through these and have the objections stated by the witness and

then to have both sides follow with briefs and then the Court make an order, or whether you want to make the ruling forthwith.

THE COURT: I have rethought this. I believe we will make our rulings as we go along. And so with regard to this last question -- read it once more.

MR. CUDD: "Do you recall what your basis on such assets was?"

THE COURT: And I have in mind his response. I have in mind the circumstances under which this response is made. This man has filed a return that gives no information, and I will uphold his privilege.

And I might say as a blanket matter here, Mr. Cudd, that under these circumstances in similar situations I would be tempted to rule the same as to those matters which deal with his tax liability and the amount thereof for the year involved. I would say that his use of the constitutional privilege, of his availing himself of the Fifth Amendment, would be upheld by the Court.

MR. CUDD: Well, Your Honor, it is our position that if someone files a tax return then and asserts on the face of the tax return that in order to fill out the answers he would incriminate himself, and then later to have his privilege upheld merely because he has filed a tax return, enables him to pull himself up by his

own bootstraps. How can someone be incriminated by just filing a plain tax return and asserting thereon? The question is --

THE COURT: Shouldn't you go the other route, Mr. Cudd, and when somebody just puts in a piece of paper with their name on it, they haven't filed a return? And I think the Government would be upheld in that position. And for that reason, when he goes beyond the date for filing and he has put in nothing but a piece of paper, I don't think he has filed a return. All he has done is put his name in. It seems to me that at this point he is probably liable for failure to file, and any information that he gives you which would establish that he did have enough income to require his filing will lead to his prosecution. That is the rationale that I have been following here.

MR. CUDD: Well, I understand the basis for the Court's ruling. I will proceed.

THE COURT: I don't think this man has filed a return, and I think for you to give any credence to this superficial act on his part, to say that he has filed a return, is to concede too much on behalf of the Government; and I think on further reflection you will probably consider that he has refused to file and proceed accordingly.

Now, then, to repeat myself again, if having done that thing he is required to disclose that he has enough income to take him up to the statutory minimum that requires filing, every item that he gives that leads to taxable income, therefore, is incriminating.

MR. CUDD: I will proceed to the next question then, Your Honor.

THE COURT: All right.

By Mr. Cudd:

Q The next question asked you is: "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?

"Answer: Same objection."

Do you decline to answer that question today?

A That's right.

THE COURT: Mr. Cudd, now excuse me. I want to make this clear for the record, because this may come before me again at another time, and I am not going to be disqualified as having made up my mind to the ultimate issue in that case. For the purpose of this motion by the Government, to hold this man in contempt for the failure to answer these questions, I have decided that he has not filed a return. However, if the Government later brings a criminal action against him for failing

to file a return, I will have a completely open mind on the matter and will then decide on the basis of what the Government then proves as to whether or not he has filed. And in that way I am not disqualifying myself from a future case which the Government may or may not bring.

Excuse me for interrupting, but I wanted the record to reflect that, because we may be referring to it at another time. Go ahead.

By Mr. Cudd:

Q Then again proceeding to the next question: "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?

"Answer: Same objection."

And do you decline to answer that question today?

A Yes, and each and every other question that you have on here.

Q Well, I will continue to go --

THE COURT: The same ruling, Mr. Cudd. I will rule the same on that.

MR. CUDD: Could I have him state his grounds, Your Honor, for declining to answer the question?

THE COURT: Go ahead, Mr. Daly.

THE WITNESS: Well, it's the grounds that I have previously stated.

By Mr. Cudd:

Q And I would like to have you state the grounds specifically.

THE WITNESS: (To the Court) Well, is that necessary, to clutter up the record?

THE COURT: Go ahead.

A Well, that it may tend to lead to information which may tend to incriminate me.

By Mr. Cudd:

Q Incriminate you for the calendar year 1965?

A No, I am not going to limit it to that. Under Chapter 75, "Crimes, Other Offenses, and Forfeitures." And I think Chapter -- yes, Chapter 75.

Q Chapter 75 of what?

A Title 26, United States Code.

Q And do you have any other specific reasons for declining to answer?

A Well, on the grounds that it may tend to incriminate me, and under the Fourth, Fifth and Sixth Amendments; and also there is no immunity here from state prosecution from the evidence disclosed.

THE COURT: Mr. Cudd, if you will take what I have said, that I think there is a reasonable possibility that this man may have violated the law by not filing, without prejudging that in its ultimate in case a case

is brought against him, and thus the question is, if he failed to file, did he have sufficient statutory income to file -- you apply that to the next questions -- I think the admonition of the Court of Appeals to me to ask each and every question is at least so that this man has a chance on each question to give his explanation. Now, if you concede by reading the question -- and I know you understand, Mr. Cudd, that I am only trying to help you through this thing; I don't want to cut you off -- but if you concede by reading the question that it will probably be in the purview of the ruling that I made on these previous questions, maybe we could skip along to one where you think it isn't covered by that and ask that. I won't require that you read every question, especially where you can see that I am not going to hold the man in contempt anyway.

MR. CUDD: Well, I would respectfully suggest to the Court that I prefer to read each and every question and have him specify his answer and have the Court make a ruling.

THE COURT: Go ahead.

MR. CUDD: And I am not sure where we are.

THE COURT: Haven't you got the question before you?

MR. CUDD: I am not sure that the Court has made a

ruling.

THE COURT: I will rule that he not required to answer the question on the basis that he stated.

By Mr. Cudd:

Q The next question is: "How about regarding the rental of 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?

"Answer: Well, I am going to make the same objection".

Do you decline to answer that question today?

A That's right.

Q And would you state the grounds?

A The same grounds I have previously stated.

Q And I would prefer if you state them specifically.

A Well, upon the grounds that it may tend to incriminate me either under state or federal law, and it infringes upon my rights as secured by the Fourth, Fifth and Sixth Amendments.

THE COURT: I will rule that he does not have to answer the question.

By Mr. Cudd:

Q The next question is: "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?

"Answer: Well, that's the same objection."

Do you decline to answer that question today?

A That's right.

Q And would you state the grounds?

A The same as I previously stated.

THE COURT: Just repeat them. Mr. Cudd wants the grounds and he is entitled to them, so just give them.

THE WITNESS: All right. On the grounds that it may tend to incriminate me or lead to information which may tend to incriminate me either under state or federal law, and it infringes upon my rights as secured by the Fourth, Fifth and Sixth Amendments.

THE COURT: I will rule that he does not have to answer the question.

By Mr. Cudd:

Q And that objection is based on your tax return for 1965?

A The objection is based on the Constitution of the United States.

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

"Answer: Same objection."

Do you decline to answer that question today?

A I do, on the grounds just previously stated.

THE COURT: Will you please repeat them?

THE WITNESS: I refuse to answer on the grounds that it may tend to incriminate me under either state or federal law, and it infringes upon my rights as secured by the Fourth, Fifth and Sixth Amendments of the Constitution of the United States.

THE COURT: I will rule that he is not required to answer the question.

By Mr. Cudd:

Q "Question: Do you recall what such expenses were?

"Answer: Same objection."

Do you decline to answer it today?

A I do, upon the grounds that it may lead to information which may tend to incriminate me.

THE COURT: I will rule that he is not required to answer the question. If you get one that comes out of this category specifically, I will call for a little further argument.

By Mr. Cudd:

Q "Question: Have you brought with you your appointment book reflecting appointments with clients during 1965?

"Answer: Same objection."

Do you decline to answer here today?

A That is right, upon the grounds of self-incrimination.

THE COURT: I will rule that he is not required to

answer the question.

By Mr. Cudd:

Q "Question: Do you recall the number of appointments you had with clients during 1965?

"Answer: The number of appointments?

"Question: The number of appointments you had with clients; with your clients.

"Answer: I think the same objection."

Do you decline to answer the question, "Do you recall the number of appointments you had with clients during 1965?" today?

A Yes, upon the same grounds, self-incrimination.

THE COURT: I will rule that he will not be required to answer the question. But Mr. Cudd wants in the record a more specific response, and I direct that you make it from here on.

THE WITNESS: I refuse to answer on the grounds that it may tend to incriminate me under either state or federal law, and it infringes upon my rights as secured by the Fourth, Fifth and Sixth Amendments, and the Ninth.

By Mr. Cudd:

Q Any others?

A Well, the First.

Q Well, I just want to make sure you have got them

all in there. I don't want to cut you off.

THE COURT: Well, that is enough. You will not have to answer the question.

Go on to the next one.

By Mr. Cudd:

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

"Answer: Same objection."

Do you decline to answer today?

A I do.

Q And would you state the grounds, please?

A On the grounds that it may tend to incriminate me under either state or federal law, and it infringes upon my rights as secured by the First, Fourth, Fifth, Sixth and Ninth Amendments, and also Article VI of the United States Constitution, and the common law which is incorporated into the Constitution by that article.

THE COURT: I will rule that he will not be required to answer the question.

By Mr. Cudd:

Q "Question: What's your total estimate of what your billings were -- to your clients were during 1965?

"Answer: Same objection."

Do you decline to answer the question today?

A I refuse to answer on the grounds that it may tend

to incriminate me and upon the grounds previously stated.

Q I would prefer that you state the grounds specifically.

THE WITNESS: (To the Court) Is it necessary for me to read each --

THE COURT: No. You give the general statement as you did a few questions ago.

A All right. On the grounds that it may tend to incriminate me under either state or federal law, and that it infringes upon my rights as secured by the United States Constitution, Article VI, and amendments I, IV, V, VI and IX.

THE COURT: I will rule that he will not be required to answer the question.

By Mr. Cudd:

Q "Question: What percentage of receipts" -- that is the one I just asked. Excuse me. "Have you brought with you your depreciation records or other records reflecting assets subject to depreciation in 1965?

"Answer: Same objection."

Do you decline to answer the question today.

A I do, on the grounds that it may tend to incriminate me under either state or federal law and that it infringes upon my rights as secured by Article VI, amendments I, IV, V, VI and IX of the United States Constitution.

Q "Question: Do you have such records as reflect

the basis of such assets?

"Answer: Same objection."

Do you decline to answer the question?

A Yes, I do, and I refuse to answer it upon the grounds that it may tend to incriminate me under either state or federal law and that it infringes upon my rights as secured by Article VI and amendments I, IV, V, VI and IX of the United States Constitution.

THE COURT: I will rule that he will not be required to answer the question.

By Mr. Cudd:

Q "Question: Or the improvements to such assets?

"Answer: Same objection."

Do you decline to answer that question today?

A Upon the grounds that it may tend to incriminate me under either state or federal law and upon the grounds that it infringes upon my rights as secured by Article VI and amendments I, IV, V, VI and IX of the United States Constitution.

THE COURT: I will rule that he will not be required to answer the question.

By Mr. Cudd:

Q "Question: Depreciation allowed for such assets?

"Answer: Same objection."

Do you decline to answer it today?

A I refuse to answer on the grounds that it may tend to incriminate me under either state or federal law and it infringes upon my rights as secured by Article VI and amendments I, IV, V, VI and IX of the United States Constitution, and also based upon the decision of Hoffman versus the United States, 341 United States, page 490, in that "If Congress should hereafter conclude that full disclosure * * * by the witnesses is of greater importance than the possibility of punishing them for some crime in the past, it can, as in other cases, confer the power of unrestricted examination by providing complete immunity." And complete immunity has not been provided here by federal law.

THE COURT: I will rule that he will not be required to answer the question.

By Mr. Cudd:

Q The next question: "The useful life of such assets?

"Answer: Same objection.

Do you decline to answer the question today?

A I decline to answer the question on the grounds that it may tend to incriminate me under either state or federal law, that it infringes upon my rights as secured by Article VI and amendments I, IV, V, VI and IX of the United States Constitution, and based upon the case of Hoffman versus United States, 341 U. S. page 490.

THE COURT: All right. I will rule that he will not

be required to answer the question.

By Mr. Cudd:

Q The next question: "And the salvage value thereof?

"Answer: Same objection."

Do you decline to answer it today?

A Upon the same grounds, yes.

Q Would you state them, please?

A Upon the grounds that it may tend to provide information which may tend to incriminate me under either state or federal law, that it infringes upon my rights as secured by Article VI and Amendments I, IV, V, VI and IX of the United States Constitution, including the Declaration and Resolves of the First Continental Congress, and upon the decision stated in Hoffman versus the United States, 341 U. S., page 490.

THE COURT: I will rule that he will not be required to answer the question.

By Mr. Cudd:

Q Next question: "Do you recall what assets you may have had of such type during the year 1965?

"Answer: Same objection."

Do you still decline to answer that question?

A I do.

Q And would you state the grounds for such declination?

A Upon the grounds that it may tend to incriminate me

under either state or federal law -- by the way, are you trying to get some information here for political hay, I suppose?

MR. CUDD: I will move that the last remark be stricken, Your Honor.

THE COURT: It may be stricken.

MR. CUDD: And the witness directed to answer the question.

THE COURT: Answer the question.

A If that is what you are after, I will answer it. On the grounds that it may tend to incriminate me under either state or federal law and that it infringes upon my rights as secured by Article VI and the Declaration and Resolves of the First Continental Congress, the Declaration of Independence, and amendments I, IV, V, VI and IX of the United States Constitution, and the opinion in Hoffman versus the United States, 341 U. S., page 479, the same as if read in full into the record.

THE COURT: Read that question once more, please? Read the last question, please, Mr. Cudd. You see, you have my transcript there.

MR. CUDD: "Do you recall what assets you may have had of such type during the year 1965?"

THE COURT: I will rule that he will not be required to answer the question.

By Mr. Cudd:

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

"Answer: Same objection."

Do you decline to answer it today?

A I do.

Q And would you state your grounds for such declination?

A Upon the grounds that it may tend to incriminate me under either state or federal law and that it infringes upon my rights as secured by Article VI and amendments I, IV, V, VI, and IX of the United States Constitution, and also upon the grounds previously stated.

THE COURT: I will rule that he will not be required to answer the question.

By Mr. Cudd:

Q The next question: "Mr. Daly, have you brought with you your records and documents reflecting your gross income in 1965?

"Answer: Same objection."

Do you still wish to make the same declination to answer to that question?

A I do.

Q And would you state your grounds for so declining?

A Upon the grounds that it may tend to incriminate me under either state or federal law and infringes upon my

rights as secured by amendments I, IV, V, VI and IX and Article VI of the United States Constitution, the Declaration of Independence and the Declaration and Resolves of the First Continental Congress, and the Declaration of Causes of Taking Up Arms.

THE COURT: I will rule that he will not be required to answer the question.

By Mr. Cudd:

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

"Answer: Same objection."

Do you decline to answer that question today?

A That's right.

Q And would you state the grounds for so declining, please?

A The same grounds.

Q Would you please state them specifically?

A Upon the grounds that it may tend to incriminate me under state or federal law and infringes upon my rights as secured by Article VI of the United States Constitution and amendments I, IV, V, VI and IX, and the Declaration and Resolves of the First Continental Congress, the Declaration of Causes of Taking Up Arms, the Declaration of Independence, and the case of Hoffman versus the United States, 341 U. S., at page 490.

THE COURT: I will rule that he will not be required

to answer the question.

By Mr. Cudd:

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

"Answer: In 1965?

"Yes." Strike that.

THE COURT: What did you strike?

MR. CUDD: I will strike that question and the series of answers.

Q THE COURT: Very well.

By Mr. Cudd:

Q The next question is: "Have you with you any documents related to any credit deduction allowance which you may be entitled to for the year 1965?

"Answer: Same objection."

Do you decline to answer that question today?

A I do, upon the same grounds.

Q And please state them.

A Upon the grounds that it may tend to incriminate me under either state or federal law and infringes upon my rights as secured by the Fourth, Fifth and Sixth Amendments of the United States Constitution, Article VI, Amendments I and IX also, and upon the grounds previously stated.

THE COURT: I will rule that he will not be required

to answer the question.

By Mr. Cudd:

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

The answer "Same objection."

Do you decline to answer that question here today?

A Upon the same grounds. Upon the grounds that it may tend to incriminate me under either state or federal law and infringes upon my rights secured by Article VI and Amendments I, IV, V and IX, and upon the grounds previously stated.

Q The next question --

A And upon the further grounds that the United States does not own an absolute property right and unbounded power over myself.

THE COURT: I will rule that he will not be required to answer the question.

By Mr. Cudd:

Q "Question: Did you have a gross income of $600 or more during 1965?

"Answer: Same objection."

Do you still decline to answer that question?

A Upon the same grounds I do, yes.

Q Would you state those grounds, please?

A Upon the grounds that it may tend to incriminate me and infringes upon my rights as secured by Article VI and

Amendments I, IV, V, VI and IX of the United States Constitution, and upon the grounds as previously stated.

THE COURT: I will rule that he will not be required to answer the question.

By Mr. Cudd:

Q "Who does your bookkeeping?

"Answer: Same objection."

Do you still decline to answer that question?

A I do.

Q And would you state the grounds for such declination?

A Upon the grounds that it may tend to incriminate me under either state or federal law and infringes upon my rights as secured by Article VI and Amendments I, IV, V, VI and IX of the United States Constitution, and upon other grounds previously stated.

THE COURT: I will rule that he will not be required to answer the question.

By Mr. Cudd:

Q "Question: What was the amount of your gross receipts in 1965?

"Answer: Same objection."

Do you still decline to answer that question.

A I do.

Q And would you assert the grounds for such declination?

A Upon the same grounds as previously stated, that it may tend to incriminate me under either state or federal law, that it infringes upon my rights as secured by Article VI and Amendments I, IV, V, VI and IX of the United States Constitution, and upon the grounds previously stated, including those stated in the return.

THE COURT: I will rule that he will not be required to answer the question.

By Mr. Cudd:

Q Now, when you say the grounds stated in the return, are you talking about the exhibit which you attached to the return?

A That's right.

THE COURT: My ruling is on the Fifth Amendment aspect of it.

By Mr. Cudd:

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

"Answer: Same objection."

Do you still decline to answer that question?

A On the grounds that it may tend to incriminate me under either state or federal law and infringes upon my rights as secured by the Fifth Amendment, and also upon all other grounds previously stated.

THE COURT: I will rule that he will not be required

to answer the question.

By Mr. Cudd:

Q The next question was: "What was the amount of your total business expenses?" You declined to answer, stating "Same objection." Do you still decline to answer that question?

A I do.

Q And would you state your grounds?

A Upon the grounds that it infringes upon my rights as secured by the Fourth, Fifth and Sixth Amendments, it may tend to lead to information which may tend to incriminate me under either state or federal law.

THE COURT: I will rule that he will not be required to answer the question.

By Mr. Cudd:

Q The next question: "Have you anyone who you claim as a dependent under the provisions of the Internal Revenue Code for the year 1965?" You objected to answering that question. Do you still decline to answer?

A I do.

Q And would you please assert the grounds for such declination?

A Upon the grounds that it may tend to incriminate me under either state or federal law and infringes upon my rights as secured by Article VI and Amendments I, IV, V, VI

and IX.

THE COURT: I will rule that he will not be required to answer the question.

By Mr. Cudd:

Q The next question: "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?" And you said "Same objection." Do you decline to answer that question?

THE COURT: You can answer that question yes or no.

A Where is that -- ?

THE COURT: Of course, that presupposes that he has books and records, doesn't it?

THE WITNESS: Yes, it does.

THE COURT: Which then in effect answers one of the other questions. What is your basis for refusing to answer that?

THE WITNESS: I refuse to answer upon the grounds that it may tend to incriminate me under either state or federal law and infringes upon my rights as secured by the First, Fourth, Fifth, Sixth and Ninth Amendments and Article VI.

THE COURT: Based upon the form of the questions and under the circumstances I will rule that he is not

required to answer that question.

By Mr. Cudd:

Q Well, going back then towards the front of the transcript, maybe I can direct you to where I am so you can follow with me.

THE COURT: That is because the witness doesn't have the same page numbers as you in this transcript?

MR. CUDD: That is correct. He has the appellate record.

By Mr. Cudd:

Q Beginning right there. (Indicating) Question by Mr. Ehlers: "Do you recall amounts and dates of your deposits of such accounts during the year 1965?" And that is referring to checking deposits, savings deposits and trust accounts. And you answered "Same objection." Do you decline to answer the question today?

A I do.

Q And would you state the grounds for such objection?

A Upon the grounds that it may tend to incriminate me under either state or federal law and infringes upon my rights as secured by the Fifth Amendment, together with the others previously stated.

THE COURT: I will rule that he is not required to answer the question.

By Mr. Cudd:

Q "Question: What was the source of the deposits?

"Answer: Same objection."

Do you still persist in declining to answer that question, "What was the source of the deposits?"

A Where are you now?

Q I am one question down where I was before.

A Well, I am going to refuse to answer upon the grounds that it may tend to incriminate me under either state or federal law and infringes upon my rights as secured by the First, Fourth, Fifth, Sixth and Ninth Amendments.

THE COURT: I will rule that he is not required to answer the question.

By Mr. Cudd:

Q Next question: "Mr. Daly, do you have with you your cancelled checks executed by you during the year 1965?

"Answer: Same objection."

Do you still decline to answer that question?

A I do, upon the grounds that it may tend to incriminate me under either state or federal law, infringes upon my rights as secured by the Fourth, Fifth and Sixth Amendments, and upon other grounds previously stated.

THE COURT: I will rule that he is not required to answer the question.

By Mr. Cudd:

Q The next question is: "Do you recall the amounts

and dates of each of such checks executed by you during '65?

"Answer: Same objection."

Do you still decline to answer that question?

A Yes, upon the grounds that it may tend to incriminate me under either state or federal law, and it infringes upon my rights secured by the Fourth, Fifth and Sixth Amendments, and upon other grounds that I have previously stated.

THE COURT: I will rule that he is not required to answer that question.

Off the record.

(Off-the-record discussion.)

THE COURT: Go ahead.

By Mr. Cudd:

Q The next question: "Have you with you bank statements received by you relative to deposits to and disbursements from bank accounts during 1965?

"Answer: Same objection."

Do you still decline to answer that question?

A I do.

Q And would you state the grounds?

A Upon the grounds that it may tend to incriminate me under either state or federal law and that it infringes upon my rights as secured by the Fourth, Fifth and Sixth Amendments, and upon other grounds previously stated.

THE COURT: I will rule that he is not required

to answer the question.

Mr. Cudd, would you at some point here, in order to complete the record, -- it can be after -- get it on the record whether or not he has filed his returns for subsequent years, because that will have a bearing on the circumstances under which I now operate? My thought is that if he hasn't filed the last few years, that actually fortifies his position.

MR. CUDD: Well, I --

THE COURT: You go ahead with your questions, but Mr. Ehlers may want to think about that in order to be able to advise you, or take the stand and say what his records show or if he knows.

By Mr. Cudd:

Q The next question was: "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?

"Answer: Same objection."

Do you still decline to answer that question?

A I do.

Q And would you state the grounds?

A Upon the grounds that it may tend to incriminate me under either state or federal law and infringes upon my rights as secured by the Fourth, Fifth and Sixth Amendments,

and upon other grounds previously stated.

THE COURT: I will rule that he will not be required to answer.

By Mr. Cudd:

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

"Answer: Same objection."

Do you still decline to answer that question?

A I do.

Q And would you state your reasons for so declining?

A Upon the grounds that it may tend to incriminate me under either state or federal law, it infringes upon my Fifth Amendment rights and other rights as previously indicated.

THE COURT: I will rule that he will not be required to answer.

By Mr. Cudd:

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

"Answer: Same objection."

Do you still decline to answer that question.

A I do.

Q And would you state your reasons for such declination?

A Upon the grounds that it infringes upon my rights as secured by the Fourth, Fifth and Sixth Amendments and may

tend to lead to information which may tend to incriminate me, and upon all other grounds previously stated.

THE COURT: I will rule that he will not be required to answer the question.

By Mr. Cudd:

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

"Answer: Same objection."

Do you still decline to answer it?

A I do, upon the same self-incrimination grounds, and upon other grounds previously stated.

THE COURT: I will rule that he is not required to answer.

By Mr. Cudd:

Q "Do you recall what trust or escrow arrangements you may have executed during 1965?

"Answer: The same objection."

Do you still decline to answer that question?

A I do.

Q And upon what grounds?

A Upon the same grounds as previously stated and upon the grounds of self-incrimination.

THE COURT: I will rule that he will not be required to answer the question.

By Mr. Cudd:

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

"Answer: Same objection."

Do you still decline to answer that question?

A I do, upon the grounds of self-incrimination and all other grounds previously stated.

THE COURT: I will rule that he will not be required to answer that question.

By Mr. Cudd:

Q "Question: 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?

"Answer: Same objection."

Do you still decline to answer that question.

A I do, upon the grounds previously stated and upon the grounds that it may tend to incriminate me.

THE COURT: I will rule that he may not be required to answer that question.

By Mr. Cudd:

Q "Have you with you your cash receipt journal?

"Answer: Same objection."

Do you still decline to answer that question?

A I do.

Q And would you state the grounds for such declination?

A Upon the grounds as previously stated and upon the

grounds that it may tend to incriminate me.

THE COURT: Did you have an answer?

THE WITNESS: Upon the grounds that it may tend to incriminate me under the Fourth, Fifth and Sixth Amendments under either state or federal law.

THE COURT: I will not require that he answer the question.

By Mr. Cudd:

Q The next question: "Have you with you your general ledger?

"Answer: Same objection."

Do you still decline to answer that question.

A I do, upon the grounds as previously stated and upon the grounds that it may tend to incriminate me under either state or federal law.

THE COURT: I will rule that he will not be required to answer.

By Mr. Cudd:

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

"Answer: Same objection."

Do you still decline to answer that question?

A I do.

Q State the grounds, please.

A Upon the grounds that it may tend to incriminate me

under either state or federal law and upon other grounds previously stated.

THE COURT: I will rule that he is not required to answer it.

By Mr. Cudd:

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

"Answer: Well, same objection."

Do you still decline to answer that question?

A I do.

Q And would you state the grounds?

A Upon the grounds that it may tend to incriminate me under either state or federal law and infringes upon my rights as secured by the Fourth, Fifth and Sixth Amendments, and upon other grounds previously stated.

THE COURT: I will rule that he will not be required to answer the question.

By Mr. Cudd:

Q "Question: Do you have with you your records reflecting receipts from the business of farming?

"Answer: Same objection."

THE COURT: I think you have been on this one.

A You have covered that.

THE COURT: The last two, it seems to me, you have.

MR. CUDD: Well, Your Honor, then we don't have a

ruling on the questions that we went over this morning. Does the Court wish to rule on those?

THE COURT: I will rule that he will not be required to answer any of the questions that have been put to him because they all bear, either directly or indirectly, on the question of what was his income during the year '65.

Now, Mr. Cudd, I have ruled specifically on that point, but there are some additional circumstances which may be of interest for the record that I would like you to develop in terms of what his position is today.

MR. CUDD: Well, Your Honor, if I might have a moment.

THE COURT: All right.

MR. CUDD: In fact, if I might ask one or two questions and then have a short recess.

THE COURT: All right.

By Mr. Cudd:

Q Mr. Daly, then I take it it's your position here that you decline to produce any records that you may have pertaining to your income or expenses for the year 1965, is that correct?

A I refuse to answer that question on the grounds that it may tend to incriminate me.

Q You, therefore, then decline to produce any records that you may have pertaining to your farming or other

occupation or practice of law on the ground that it may tend to incriminate you, is that correct?

A I refuse to answer the question on the grounds that it may tend to incriminate me and infringes upon my rights as secured by the Fourth, Fifth and Sixth Amendments and upon all of the grounds previously stated.

THE COURT: You see, Mr. Cudd, what you have done is presuppose that he has those records, and if he answers that question in the affirmative, it may be said that he admitted that he had such records.

MR. CUDD: I understand that.

Q And you decline to answer any questions put to you by the Internal Revenue Service with respect to whether or not you earned any income or did not earn any income or incurred any expenses or did not incur any expenses for the calendar year 1965, is that correct?

A I refuse to answer that question upon the grounds that it may tend to incriminate me under either state or federal law and it infringes upon my rights as secured by the First, Fourth, Fifth, Sixth and Ninth Amendments.

MR. CUDD: Your Honor, then if we could have about a five-minute or ten-minute recess.

THE COURT: Very well, we will take a ten-minute recess.

(Recess.)

THE COURT: Mr. Cudd.

MR. CUDD: Your Honor, the Government has nothing further.

THE COURT: Well, could I get some response to a couple of questions here? Do you know whether or not this man has filed returns for the years '66 and '67?

MR. CUDD: Well, Your Honor, I don't know whether -- I don't know specifically the answer to that question. And even assuming that I did, I have a reservation that I can disclose it, even though I have it, without permission of both the Internal Revenue superiors and my superiors.

THE COURT: All right. I am going on the theory that he probably hasn't, but that is not dispositive of the ruling.

Now, let me just explain to you something of what I have had in mind here as I made these rulings. This man has filed what purports to be a tax return for the year '65. He didn't give enough information to be useful to the Government in making the determination as to whether or not it is correct, nor did he, as a result of this filing, pay any tax. Under these circumstances, I have a real question as to whether or not he has filed his return for the year in question. That being the case, I have assumed that there is a reasonable

likelihood that he will be charged with failure to file, or that he has, at least, left himself open to that charge.

Now, having failed to file, he has to have a certain minimum income. And what is that amount? You might tell me at this point. Is it fifteen hundred for an individual that claims no exemptions?

MR. CUDD: I think it is still six hundred, Your Honor.

THE COURT: Pardon me, I had something else in mind. Six hundred dollars. So, every penny that he discloses by his own mouth or by producing his own records adds up toward that $600 minimum, which gets him to the point where he has committed a crime by his failure to file.

Now, as I have said, I have only made that assumption for the purpose of ruling on this motion. Now, there are other bases upon which I might have ruled, but I think if you find a reasonable likelihood that under any circumstance it will convict him of any crime, that he can avail himself of the Fifth Amendment .

Now, maybe under certain circumstances, which I am not aware of, some of these questions might be frivolous, but under these circumstances I have ruled and will continue to rule that he is not required to answer these

questions at this time.

Then I might say to Mr. Daly -- and this is parenthetical -- I have made my ruling.

If you want it formalized, I will do that, Mr. Cudd.

MR. CUDD: We would so request, Your Honor.

THE COURT: All right. You draw, if you will, Mr. Cudd, an order along the lines that I have orally indicated, and I will approve it and sign it. You may show it to Mr. Daly. Mr. Daly, don't add a lot of truck about the monetary system and and the World Bank and all of those things. You look over the order before it is signed and get to the meat of it. You see what I mean? The order will say that you are not in contempt for your failure to answer the questions previously posited by the Revenue Agent.

MR. DALY: Are you going to make findings of fact and conclusinns of law and order?

THE COURT: Do you think you will need that, Mr. Cudd? I take it you intend to appeal?

MR. CUDD: Well, at this point I don't know, Your Honor.

THE COURT: All right.

MR. CUDD: If I am to prepare the order, I will prepare one in such form that I think is reasonable, and if it's not approved by other people --

THE COURT: All right.

MR. CUDD: I don't know at this time, but I believe an order should be prepared.

THE COURT: All right.

Now, Mr. Daly, you are a friendly, likeable chap. I have no personal animosity towards you. I have invited you and Mr. Joyce both in at any time to talk. The only result of such a conversation that I would like to see would be for you to conform to the rules that apply to other citizens, that you not take this position like some of the governors have taken, of interposition, of you standing and risking your own freedom in order to save some imaginary constitutional rights that all people are endowed with. I would like to see you get your tax returns up to date. Try to practice law like other people practice law and to be a good citizen, like you could be. I suppose that is just whistling into the wind. But if there is anything I could say or do to get you straightened out, -- you are capable of practicing law, making a good living at it and not being in trouble with the courts -- I would wish you would do it.

So, thanks for coming. You have won today's round. I am not sure you will always be that lucky.

Go ahead, Mr. Cudd.

MR. CUDD: There is one thing I would like to

move for in connection with other procedures here, just to put it on the record. We move the Court for an order requiring the defendant to produce the records required in the subpoena, which is the original document from which this proceeding arose.

MR. DALY: Well, let the record note that I object to it as not proper and without foundational basis.

THE COURT: On the same basis and rationalization as my previous ruling, I will deny the Government's motion.

I want you to know, Mr. Ehler, that I feel that I have no alternative to rule in this manner under these circumstances. Under another circumstance the ruling might be different.

We will adjourn now.

(Whereupon, the proceedings in the above-entitled matter were concluded at 3:32 o'clock, p. m.)

REPORTER'S CERTIFICATE

I certify the foregoing pages of typewritten matter to be a true and correct transcript of the proceedings had in the above-entitled matter on the 17th day of July, 1968.

Oswald C. Brenn
Official Court Reporter

Official Court Reporter

Petitioner Exhs

63 thru 71

Mr Joyce Sworn

DD 8 Sworn:

Do the addresses of
these defendants check your
Polks or other Bank directory

Jerome Daly

42174

PETITIONER"S EXHIBIT 63
2/11/70 L.M.F.

The Wichita Eagle

WICHITA, KANSAS 67201, FRIDAY, JULY 19, 1968

Permission to reprint granted

Court Shakes IRS Authority

By NANCY HARRIS
Eagle Staff Writer

A court order which may seriously affect Internal Revenue Service efforts to insure individual taxpayer compliance with regulations was handed down Wednesday by a U.S. District Court judge in the District of Minnesota.

Judge Miles W. Lord dismissed a civil contempt of court case against attorney Jerome Daly. Daly had refused to produce personal records or answer questions for IRS agents regarding his personal income. He invoked his constitutional rights against self-incrimination.

DALY, a Savage, Minn., attorney, was legal counsel last year in the income tax evasion trial of Wichitan A. J. Porth.

Porth, 1806 Everett, has fought the filing of income tax forms for years on the grounds that to be required to sign a statement which could later be used against one in a criminal proceeding is unconstitutional.

Regarding a possible appeal of the decision by the IRS, Gilbert Engle, assistant director for the service in the District of Minnesota, and the agency's attorney, D. R. Brennan, told The Eagle by phone that no decision has been made. "The final determination will be by the Department of Justice," Brennan said.

COMMENTING on what may be a landmark decision in the history of the income tax, Patrick Foley, the government's attorney in the Minnesota case, said, "This does set a precedent as to this particular remedy (for handling persons suspected of tax evasion)."

Case No. 3-66 CIV 349

'Fifth' Applied to U.S. Tax Laws

★ From Page 1

Harry Scribner, IRS district director for Kansas, said, "I think you must distinguish between things civil and things criminal. Taxpayers who file their return are performing a civic duty. Because their answers are honest and correct to the best of their knowledge there is no more a question of self-incrimination here than there is in completing the necessary form for taking out a driver's license. It is just another matter of compliance with things necessary in a complex society.

"This court order could, however, provide a loophole for persons wishing to defraud the government," he added.

PORTH, presently awaiting appeal to the 10th U.S. Circuit Court following his conviction for income tax evasion, was elated with the news. "This is the beginning of the end of income tax," he said.

Daly, in a telephone interview with The Eagle, was more reserved. But he said, "This decision means that a person cannot now be compelled to testify before a revenue agent."

He added, "If a taxpayer refuses to cooperate, the IRS must now proceed against that person in a civil suit (rather than through contempt proceedings which could result in imprisonment)."

Daly had refused to file completed income tax forms since 1965 and in July 1966 the IRS served a summons requiring him to appear to testify and produce various records concerning his personal income.

DALY APPEARED but refused to be sworn to give testimony regarding tax liabilities for 1965, the year in question.

Following what IRS officials describe as "routine procedure" in such cases, a U.S. attorney then filed a "Petition to Enforce Internal Revenue Summons" in the District of Minnesota.

In subsequent action, the District Court ordered Daly to appear Jan. 6, 1967, before revenue agents for examination regarding his income. Daly did appear at the appointed time and place and was sworn.

He then, under oath, recited several legal statutes and internal revenue codes under which criminal action may be taken against individuals. He then stated, "In the face of those criminal statutes, I am going to refuse to answer (questions asked by the agent) 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."

RECORDS OF this hearing were turned over to the court which ordered Daly to appear on April 27, 1967, to show cause why he should not be judged "in contempt for refusal to comply."

In his appeal later to the 8th U.S. Circuit Court of Appeals at St. Louis, Daly said that on the 27th of April he was given 20 days to submit a brief "showing cause", but, without a hearing, the District Court entered findings a week later adjudging Daly in contempt and directing that he be arrested and confined until such time as he complied with the court's order.

Daly appealed the judgment to the 8th Circuit, and on April 11 this year the appeal court reversed the contempt findings and remanded the case, requiring the District Court to hear Daly's objections.

In remanding the case to the lower court, the appellate court judges stated that, under specific court decisions, (Sullivan vs. U.S.; Albertson vs. SACB), a "blanket objection filed with an income tax return is not valid."

"However," they continued, "even (these rulings) indicate that certain specific questions may bring into play the proper assertion of the privilege (against self-incrimination)."

In a five-hour hearing before Judge Lord Wednesday, Daly was permitted to explain his objection regarding self-incrimination to each of the revenue agents' questions.

Judge Lord then directed that an order be drawn dismissing the contempt charge against Daly.

Rules and Regulations Title 26, United States Internal Revenue Code, as promulgated and enforced under the "Administrative Procedure Act of 1946," is in complete violation of the rights of all citizens under the Constitution of the United States and Title 18, Section 241, U.S. Criminal Code.

There is nothing in the law that states that taxpayers, under threat of prison sentences, shall be forced, unlawfully via withholding taxes, audits, liens, levies, seizure notices, summons and court orders, to pay the Federal Income Taxes of approximately 1,200,000 tax exempt organizations that unlawfully escape the payment of twenty-five to fifty billions of dollars each year in Federal Income Taxes.

Government officials that repudiate their oath and do not uphold the Constitution of the United States in the performance of their duties are subject to prosecution for perjury in violation of Title 18, Section 1001, U.S.Code.

Prepared for use of Austin T. Flett, 134 So. La Salle St., Chicago, 3, Illinois

This, and the Attached Exhibits, is the undersigned's amended Return for the Year designated.

Form 1040 U.S. Individual Income Tax Return

U.S. Treasury Department, Internal Revenue Service — for the year January 1–December 31, [redacted] 19 65

or other taxable year beginning ..... 1968, ending ....., 19.....

Please print or type

First name and initial (If joint return, use first names and middle initials of both)	Last name	Your social security number
Jerome	Daly	[redacted]

Home address (Number and street or rural route): [redacted]

City, town or post office, and State: Rosemount, Minnesota — ZIP code

Your occupation: Lawyer and Farmer

Spouse's social security number:

Spouse's occupation:

Enter below name and address used on your return for 1967 (if same as above, write "Same"). If none filed, give reason. If changing from separate to joint or joint to separate returns, enter 1967 names and addresses.

Your present employer and address: Note See Attached Exhibits

Your Filing Status—check only one:

1a ☐ Single

1b ☐ Married filing joint return (even if only one had income)

1c ☐ Married filing separately. If spouse is also filing a return, enter her (his) social security number in space provided above and give first name here _____

1d ☐ Unmarried Head of Household

1e ☐ Surviving widow(er) with dependent child

Your Exemptions

	Regular	65 or over	Blind	
2a Yourself . . .	☐	☐	☐	Enter number of boxes checked ▶
2b Spouse . . .	☐	☐	☐	

3a First names of your dependent children *who lived with you* _____ Enter number ▶

3b Number of other dependents (from page 2, Part I, line 3)

4 Total exemptions claimed . . . . . ▶

Please attach Copy B of Form W-2 here

Income If joint return include all income of both husband and wife	5	Wages, salaries, tips, etc. If not shown on attached Forms W–2 attach explanation	5	
	6	Other income (from page 2, Part II, line 8)	6	
	7	Total (add lines 5 and 6)	7	
	8	Adjustments to income (from page 2, Part III, line 5)	8	
	9	Total income ("adjusted gross income") (subtract line 8 from line 7)	9	
Find tax from table —OR— Figure tax using tax rate schedules	10	If you do not itemize deductions and line 9 is under $5,000, find tax in tables on pages 12–14 of instructions. Omit lines 11a, b, c, or d. **Enter tax on line 12a.**	10	
	11a	If you itemize deductions, enter total from page 2, Part IV, line 17. If you do not itemize deductions, and line 9 is $5,000 or more enter the larger of: (1) 10 percent of line 9; **OR** (2) $200 ($100 if married and filing separate return) plus $100 for each exemption claimed on line 4, above. **Deduction under (1) or (2) limited to $1,000 ($500 if married and filing separately).**	11a	
	11b	Subtract line 11a from line 9. Enter balance on this line	11b	
	11c	Multiply total number of exemptions on line 4, above, by $600	11c	
	11d	Subtract line 11c from line 11b. Enter balance on this line. (Figure your tax on this amount by using tax rate schedule on page 11 of instructions.) **Enter tax on line 12a.**	11d	

Please attach Check or Money Order here

Your Tax, Credits, and Payments	12a	Tax (Check if from: Tax Table ☐, Tax Rate Schedule ☐, Sch. D ☐, or Sch. G ☐)	12a	
	12b	Tax surcharge. If line 12a is less than $734, find surcharge from tables on page 10 of instructions. If line 12a is $734 or more, multiply amount on line 12a by .075 and enter result. (If you claim retirement income credit, use Schedule B (Form 1040) to figure surcharge.)	12b	
	12c	Total (add lines 12a and 12b)	12c	
	13	Total credits (from page 2, Part V, line 4)	13	
	14a	Income tax (subtract line 13 from line 12c)	14a	
	14b	Tax from recomputing prior year investment credit (attach statement)	14b	
	15	Self-employment tax (Schedule C–3 or F–1)	15	
	16	Total tax (add lines 14a, 14b, and 15)	16	
	17	Total Federal income tax withheld (attach Forms W–2)	17	
	18	Excess F.I.C.A. tax withheld (two or more employers—see page 5 of instr.)	18	
	19	☐ Nonhighway Federal gasoline tax—Form 4136, ☐ Reg. Inv.—Form 2439	19	
	20	1968 Estimated tax payments (include ~~1967~~ overpayment allowed as a credit)	20	
	21	Total (add lines 17, 18, 19, and 20)	21	
Balance Due or Refund	22	If payments (line 21) are less than tax (line 16), enter **Balance Due.** Pay in full with this return	22	
	23	If payments (line 21) are larger than tax (line 16), enter **Overpayment**	23	
	24	Amount of line 23 you wish credited to 1969 Estimated Tax	24	
	25	Subtract line 24 from 23. Apply to: ☐ **U.S. Savings Bonds, with excess refunded** or ☐ **Refund only**	25	

Make check or money order payable to Internal Revenue Service.

Under penalties of perjury I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which he has any knowledge.

Sign here ▶ Your signature: Jerome Daly Feb 4 1970 Date

Spouse's signature (If filing jointly, BOTH must sign even if only one had income)

Signature of preparer other than taxpayer — Date

Address

o59—16—60159-1

Resubmitted Ex C Amt 2/10/70 42174

this trust. This is not her money and it never was her money. She never earned it.

THE COURT: Well, now, we are getting into another matter, Mr. Daly, which I don't care to explore with you now.

You will send a copy of your letter memorandum to Mr. Daly.

MR. DYGERT: Yes.

THE COURT: In the meantime, I have made orders attempting to preserve the status quo, that is, an order restraining Dr. Peterson from disposing of whatever trust assets he has possession of; and some thought might be given of further maintaining the status quo by advising the corporations whose stock was part of the trust assets, advising them of this pending litigation so that new stock certificates are not issued.

MR. DYGERT: That is being done, Your Honor.

MR. RORRIS: And a few more people are going to be informed, Your Honor.

MR. DYGERT: May I have permission of the Court and clerk to withdraw the exhibits introduced today for the purpose of making copies?

THE COURT: Yes.

-o-

FEDERAL RESERVE BANK OF KANSAS CITY
FEDERAL RESERVE STATION
KANSAS CITY, MISSOURI 64198

CERTIFICATE

I, Roger Guffey, Secretary of the Federal Reserve Bank of Kansas City, Kansas City, Missouri, do hereby certify that on April 14, 1966, a summons issued from the United States District Court for the District of Kansas was served upon this bank in the case of A. J. Porth et al. vs. Federal Reserve Bank of Kansas City et al., being No. W-3630. Further, that a true and correct copy of the summons is attached hereto.

Roger Guffey
Secretary

February 4, 1970

42174

PETITIONER'S EXHIBIT 64
2/11/70 L.M.F.

Suit - a. C. Porth et al versus Federal Reserve Bank of Kansas City, et al

1/14/70

SUMMONS IN A CIVIL ACTION

CIV. 1a (2-64)
(Formerly D. C. Form No. 45a Rev. (6-49))

United States District Court

FOR THE

DISTRICT OF KANSAS

Served on Geo. A. Clark 14 April 1966 1:50 PM

A. J. PORTH, EVERETT ELLIOTT HULL, MELVIN L MARLEY, RICHARD ROE AND JOHN DOE

CIVIL ACTION FILE NO. W-3630

Plaintiff

v.

FEDERAL RESERVE BANK OF KANSAS CITY, MISSOURI FIRST NATIONAL BANK OF WICHITA, KANSAS:; FOURTH NATIONAL BANK OF WICHITA, KANSAS; UNION NATIONAL BANK OF WICHITA, KANSAS; LYNDON B. JOHNSON, PRESIDENT OF THE UNITED STATES OF AMERICA; HENRY H. FOWLER, SECRETARY OF THE U.S. TREASURY; THE UNITED STATES OF AMERICA; WALTER H. PEERY, TREASURER OF THE STATE OF KANSAS; RICHARD ROE and JOHN DOE

Defendants

SUMMONS

To the above named Defendant : Federal Reserve Bank of Kansas City, Missouri

You are hereby summoned and required to ~~serve upon~~ file in the office of the Clerk, U. S. District Court, U. S. Courthouse, Wichita, Kansas and serve upon:

George E. Hasty

plaintiff's attorney , whose address is: 2144 N. Market, Wichita, Kansas

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, judgement by default will be taken against you for the relief demanded in the complaint.

CHARLES W. CAHILL
Clerk of Court.

Dusky E. Broadus
Deputy Clerk.

Date: April 12, 1966

[Seal of Court]

Note:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

42174

PETITIONER'S EXHIBIT 65
2/11/70 L.M.F.

A. J. Porth,
Everett Elliott Hull,
Melvin L Marley
Richard Roe and John Doe,

Plaintiffs,

vs.

COMPLAINT

W-3630

Federal Reserve Bank of Kansas City, Missouri, First National Bank of Wichita, Kansas, Fourth National Bank of Wichita, Kansas, Union National Bank of Wichita, Kansas, Lyndon B. Johnson, President of the United States of America, Henry H Fowler, Secretary of the U. S. Treasury, The United States of America, Walter H. Peery, Treasurer of the State of Kansas, Richard Roe and John Doe,

Defendants.

FILED
APR 11 1966
CHARLES W. CAHILL, Clerk
By D. M. Zuello, Deputy

COME NOW THE PLAINTIFFS, in the full exercise of their individual sovereign 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. That Plaintiffs bring this action as representative taxpayers, on behalf of, in the interest of, themselves and 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 and State of Kansas 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 of said state and United States. That there is a common question

(1)

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 Kansas 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 Kansas and to retire their lawful obligations.

II.

That jurisdiction of this Court exists because this is a case in law and equity arising 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 The Preamble, Article I Section 8 Clause 1, Article I Section 8 Clause 5, Article I Section 8 Clause 6, Article I Section 10, Article III, Article I V, Article V, Article VI, Amendments 1, 5, 7, 9, 10, and 13.

III.

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 of and basis of our social compact. With the exception of powers granted to the Government by the Constitution, sovereignty 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 sovereign governmental powers based upon their natural and inherent rights. Beyond that, as against the individual, the U. S. Government has no rights, its obligations consists 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 banker's selfish gains. That the defendant Federal Reserve Bank of Kansas City, Missouri, 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 as a Federal Reserve Note, an original of which is attached, issued by the Federal Reserve Bank of Kansas City, Missouri, No. JO7044993A

attached to copy of complaint in safe

as opposed to the retired lawful money in the form of a Silver Certificate, an original of which is attached, No. XO4539208A

Same

IV.

That defendant Federal Reserve Bank of Kansas City, Missouri, a privately owned corporation, organized and existing by virtue of Title 12, U. S. Code Annotated, is a part of the Federal Reserve System under the complete domination, direction and control of a Board of Governors of the Federal Reserve System, operating completely independently of the United States.

V.

That the defendant National Banks named herein are private corporations 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 robbery and 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 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 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. Walter H. Peery is the Treasurer of Kansas and is legally authorized by law to retire lawful obligations of the State of Kansas.

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 Kansas, as necessary parties the exact names 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) percent is paid upon purported legal obligations, principal and interest, and more specifically on the attempted obligations hereinafter referred to. That the said income tax, as levied, becomes a first and immediate lien upon all the property of Plaintiffs, real, personal and otherwise, including the Homestead, without benefit of any exemption whatsoever as to personal property.

That the State of Kansas does impose a direct tax upon income of all citizens, which money is used to pay all the State held obligations of the First National Bank of Wichita, Kansas, Fourth National Bank of Wichita, Kansas, and Union National Bank of Wichita, Kansas.

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 Federal Reserve System including defendant Federal Reserve Bank of Kansas City, Missouri, is the only instrumentality endowed by U. S. Statutes with discretionary power to create and extinguish the money and credit that serves as the public credit and cash. That the defendants First National Bank of Wichita, Fourth National Bank of Wichita, Kansas, and Union National Bank of Wichita, Kansas, are private corporations created, organized and existing by virtue of the National Banking Act and the Federal Reserve Act.

That at all times herein material the defendants Federal Reserve Bank of Kansas City, Missouri, First National Bank of Wichita, Kansas, Fourth National Bank of Wichita, Kansas, and Union National Bank of Wichita, Kansas, 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 Kansas and its governmental subdivisions and are illegally receiving interest thereon.

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 Kansas and its governmental subdivisions which bonds are unlawful, void, worthless and no obligation owing. Upon information and belief, the Federal Reserve Bank of Kansas City, Missouri holds the amount of $1,404,166,000.00, more or less, of U. S. Securities; the First National Bank of Wichita, Kansas, holds the amount of $21,926,757.00, more or less, of U. S Securities, the amount of $1,344,194.00, more or less, of State of Kansas Bonds and Municipal Bonds, and the amount of $6,578,909.00, more or less of other Bonds and Securities; that the Fourth National Bank of Wichita, Kansas, holds the amount of $31,650,258.00, more or less, of U. S. Securities, and the amount of $20,253,939.00, more or less, of other Bonds and Securities; and that the Union National Bank of Wichita, Kansas, holds the amount of $12,089,626.00, more or less, of U. S. Securities, and the amount of $7,448,650.00, more or less, of other Bonds and Securities.

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 the United States Government and State of Kansas 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 the State of Kansas, a violation of the Federal and State Constitutions.

WHEREFORE, Plaintiffs, individually, as citizens and taxpayers, demand judgment and relief as follows:

1. 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 Kansas and its Governmental subdivisions 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 or the State of Kansas and its Governmental subdivisions to the said defendant banks named herein.

2. 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.

3. That the defendant Lyndon B. Johnson, as President, and the 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 Walter H. Peery, as Treasurer of the State of Kansas, be enjoined from applying any of the monies, tax or otherwise, of the State of Kansas toward the payment of said purported obligations held by defendant banks or any interest thereon.

4. 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.

Dated this 14th day of April 1966.

Geo. B. Hasty

Phillip Leon
2144 No. Market
Wichita, Kansas.

Jerome Daly
Attorney at Law
28 East Minnesota Street
Savage, Minnesota
Phone: 890-2274

U. S. Marshal, Kansas

Docket No.

SUMMONS IN A CIVIL ACTION

CIV. 1 (2-64)
(Formerly D. C. Form No. 45 Rev. (6-49))

United States District Court

FOR THE

DISTRICT OF KANSAS

CIVIL ACTION FILE NO. W-3630

A. J. PORTH, EVERETT ELLIOTT HULL, MELVIN L. MARLEY, RICHARD ROE AND JOHN DOE

Plaintiff

v.

FEDERAL RESERVE BANK OF KANSAS CITY, MISSOURI; FIRST NATIONAL BANK OF WICHITA, KANSAS: FOURTH NATIONAL BANK OF WICHITA, KANSAS; UNION NATIONAL BANK OF WICHITA, KANSAS; LYNDON B. JOHNSON, PRESIDENT OF THE UNITED STATES OF AMERICA; HENRY H. FOWLER, SECRETARY OF THE U. S. TREASURY; THE UNITED STATES OF AMERICA; WALTER H. PEERY, TREASURER OF THE STATE OF KANSAS; THE STATE OF KANSAS; RICHARD ROE AND JOHN DOE

Defendant

SUMMONS

FILED

JUL 5 1966

CHARLES W. CAHILL, Clerk

By: _____ Deputy

To the above named Defendant : THE STATE OF KANSAS by serving: Robert Londerholm, Attorney General for the State of Kansas, Topeka, Kansas

You are hereby summoned and required to ~~serve upon~~ FILE IN THE OFFICE OF THE CLERK, U. S. DISTRICT COURT, U. S. COURTHOUSE, WICHITA, KANSAS AND SERVE UPON:

George E. Hasty

plaintiff's attorney , whose address is: 2144 N. Market, Wichita, Kansas

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, judgement by default will be taken against you for the relief demanded in the complaint.

CHARLES W. CAHILL
Clerk of Court.

_____
Deputy Clerk.
Dusky E. Broadus

Date: June 28, 1966

[Seal of Court]

Note:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(34)

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 29th day of JUNE 19 66,

I received this summons and served it together with the complaint herein as follows: Served on the within-named defendant THE STATE OF KANSAS, by personally delivering to Kenton C. Granger, Assistant Attorney General for the State of Kansas, he being one of the persons designated to accept service in the absents of Robert Londerholm, Attorney General for the State of Kansas, a true and certified copy of this Writ with all endorsements thereon, and at the same time and in like manner I served a copy of the Amended Complaint filed in this case. This I did this 30th Day of June, 1966 at Topeka, Kansas, at the Office of The Attorney General in the Statehouse.

MARSHAL'S FEES

Travel $ 0.00

Service 3.00

$ 3.00

Vance W. Collins
United States Marshal.

By Ronald Mills Mangrum
Deputy United States Marshal.

Ronald Mills Mangrum,

Subscribed and sworn to before me, a this

day of , 19 .

[SEAL]

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

No.

United States District Court
FOR THE

v.

SUMMONS IN CIVIL ACTION

Returnable not later than days after service.

Attorney for Plaintiff.

FPI—LK—3-2-64—140M—3194

U. S. Marshal Kansas

Docket No. 3187 F111-666

SUMMONS IN A CIVIL ACTION

CIV. 1 (2-64)
(Formerly D. C. Form No. 45 Rev. (6-49))

United States District Court

FOR THE

DISTRICT OF KANSAS

CIVIL ACTION FILE NO. W-3630

A. J. PORTH, EVERETT ELLIOTT HULL, MELVIN L. MARLEY, RICHARD ROE AND JOHN DOE

Plaintiff

v.

FEDERAL RESERVE BANK OF KANSAS CITY, MISSOURI; FIRST NATIONAL BANK OF WICHITA, KANSAS; FOURTH NATIONAL BANK OF WICHITA, KANSAS; UNION NATIONAL BANK OF WICHITA, KANSAS; LYNDON B. JOHNSON, PRESIDENT OF THE UNITED STATES OF AMERICA; HENRY H. FOWLER, SECRETARY OF THE U.S. TREASURY; THE UNITED STATES OF AMERICA, WALTER H. PEERY, TREASURER OF THE STATE OF KANSAS; RICHARD ROE AND JOHN DOE Defendants

SUMMONS

FILED

MAY 11 1966

CHARLES W. CAHILL, Clerk

By Dusky E. Broadus Deputy

To the above named Defendant : LYNDON B. JOHNSON, PRESIDENT OF THE UNITED STATES OF AMERICA, THE WHITE HOUSE, WASHINGTON, D.C.

You are hereby summoned and required to ~~serve upon~~ FILE IN THE OFFICE OF THE CLERK, U. S. DISTRICT COURT, U. S. COURTHOUSE, WICHITA, KANSAS AND SERVE UPON:

George E. Hasty

plaintiff's attorney , whose address is: 2144 N. Market, Wichita, Kansas

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint.

CHARLES W. CAHILL
Clerk of Court.

Dusky E. Broadus
Deputy Clerk.

[Seal of Court]

Date: April 12, 1966

Note:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

15

TWENTY-EIGHTH DAY, MARCH TERM, WEDNESDAY, APRIL 26th, 1967.

Before Honorable Alfred P. Murrah, Chief Judge,
and Honorable Jean S. Breitenstein, Circuit Judge.

A. J. Porth, Everett Elliott Hull, Melvin L. Marley, Richard Roe and John Doe,

Appellants,

9431 vs.

Federal Reserve Bank of Kansas City, Missouri; First National Bank of Wichita, Kansas; Fourth National Bank of Wichita, Kansas; Union National Bank of Wichita, Kansas; Lyndon B. Johnson, President of the United States of America; Henry H. Fowler, Secretary of the U. S. Treasury; The United States of America; Walter H. Peery, Treasurer of the State of Kansas; Richard Roe and John Doe; State of Kansas,

Appellees.

Appeal from the United States District Court for the District of Kansas.

FILED
JUN 5 1967
CHARLES W. CAHILL, Clerk
By [signature] Deputy

On consideration of appellees' motions to docket the cause and dismiss the appeal herein , it is ordered that the said motions be and the same are hereby granted; that appellees may docket the cause instanter, which is accordingly done, and that the appeal in this cause be and the same is hereby dismissed out of this court for failure of appellants diligently to prosecute the same.

A true copy

Teste:

William L. Whittaker

William L. Whittaker
Clerk, U.S. Court of
Appeals, Tenth Circuit

(70)

SUMMONS IN A CIVIL ACTION

U. S. Marshal, [illegible] Docket No. 8387 Civ 4666

CIV. 1 (2-64)
(Formerly D. C. Form No. 45 Rev. (6-49))

United States District Court

FOR THE

DISTRICT OF KANSAS

CIVIL ACTION FILE NO. W-3630

A. J. PORTH, EVERETT ELLIOTT HULL, MELVIN L. MARLEY, RICHARD ROE AND JOHN DOE

Plaintiff

v.

FEDERAL RESERVE BANK OF KANSAS CITY, MISSOURI; FIRST NATIONAL BANK OF WICHITA, KANSAS; FOURTH NATIONAL BANK OF WICHITA, KANSAS; UNION NATIONAL BANK OF WICHITA, KANSAS; LYNDON B. JOHNSON, PRESIDENT OF THE UNITED STATES OF AMERICA; HENRY H. FOWLER, SECRETARY OF THE U. S. TREASURY; THE UNITED STATES OF AMERICA, WALTER H. PEERY, TREASURER OF THE STATE OF KANSAS; RICHARD ROE and JOHN DOE Defendant s

SUMMONS

FILED
MAY 1 0 1966
CHARLES W. CAHILL, Clerk
Dusky E. Broadus Dep. Clerk

To the above named Defendant : Henry H. Fowler, Secretary of the U. S. Treasury, Washington, D.C.

You are hereby summoned and required to ~~serve upon~~ FILE IN THE OFFICE OF THE CLERK, U. S. DISTRICT COURT, U. S. COURTHOUSE, WICHITA, KANSAS AND SERVE UPON:

George E. Hasty

plaintiff's attorney , whose address is: 2144 N. Market, Wichita, Kansas

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint.

CHARLES W. CAHILL
Clerk of Court.

Dusky E. Broadus *Deputy Clerk.*

[Seal of Court]

Date: April 12, 1966

Note:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(14)

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the Fifteenth day of April 19 66,

I received this summons and served it together with the complaint herein as follows:

I hereby certify and return that I served the annexed Summons and complaint on the therein-named Henry H. Fowler, Secretary of the United States Treasury, by handing to and leaving a true and correct copy of the Summons and Complaint with Roy T. Englert, Assistant General Counsel, personally at the United States Treasury Department in the City of Washington, District of Columbia, on the Eighteenth day of April, 1966, at 12:30 o'clock A. M.

MARSHAL'S FEES

Travel ..... $.....

Service 3.00

Total 1.00

4.00

/3/ Luke C. Moore

United States Marshal.

By William H. Becker

Deputy United States Marshal.

William H. Becker -

Subscribed and sworn to before me, a Notary Public this 5th day of May, 19 66.

[SEAL]

Ann R. Kaufman

Notary Public-District of Columbia.

Note:—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

No.....

United States District Court
FOR THE

v.

SUMMONS IN CIVIL ACTION

Returnable not later than ..... days after service.

Attorney for Plaintiff

FPI—LK—7-20-65—140M—5003

Form No. USM-299
Edition 4-22-58

Conrad E-111-666

RETURN ON SERVICE OF WRIT

United States of America,
DISTRICT OF Columbia } ss:

A. J. Forth vs
Henry H Fowler

I hereby certify and return that I served the annexed Summon Complaint (Writ)
on the therein-named Henry H Fowler (Individual, company, corporation, etc.)
Secretary of the U.S. Treasury
by handing to and leaving a true and correct copy thereof with
Roy T Englert Asst General Counsel (Individual or agent of company, corporation, etc.)
personally at U.S. Treasury Dept (Address—Street number, apartment number, rural route, etc.)
at Washington - DC (City) (State) in the said District
at 12 30 a. m. p. m., on the day of APR 18 1966, 19

Marshal's fees 2 00

Mileage —

Fwd Fee 1.00

TIME Co. MARK

United States Marshal.

By William T Becker
Deputy.

U.S. GOVERNMENT PRINTING OFFICE: 1963—O-673716

FILED
MAY 10 1966
CHARLES W. CAHILL, Clerk
By _____ Deputy

U. S. Marshal, Kansas

SUMMONS IN A CIVIL ACTION

Docket No. 8587

CIV. 1 (2-64)
(Formerly D. C. Form No. 45 Rev. (6-49))

United States District Court

FOR THE

DISTRICT OF KANSAS

CIVIL ACTION FILE NO. W-3630

A. J. PORTH, EVERETT ELLIOTT HULL, MELVIN L. MARLEY, RICHARD ROE AND JOHN DOE

Plaintiff

v.

FEDERAL RESERVE BANK OF KANSAS CITY, MISSOURI; FIRST NATIONAL BANK OF WICHITA, KANSAS; FOURTH NATIONAL BANK OF WICHITA, KANSAS; UNION NATIONAL BANK OF WICHITA, KANSAS; LYNDON B. JOHNSON, PRESIDENT OF THE UNITED STATES OF AMERICA; HENRY H. FOWLER, SECRETARY OF THE U.S. TREASURY; THE UNITED STATES OF AMERICA; WALTER H. PEERY, TREASURER OF THE STATE OF KANSAS; RICHARD ROE and JOHN DOE Defendants

SUMMONS

FILED
APR 22 1966
CHARLES W. CAHILL, Clerk
By Dusky E. Broadus Deputy

To the above named Defendant : Fourth National Bank of Wichita, Kansas

You are hereby summoned and required to ~~serve upon~~ file in the Office of the Clerk, U. S. District Court, U. S. Courthouse, Wichita, Kansas and serve upon:

George E. Hasty

plaintiff's attorney , whose address is: 2144 N. Market, Wichita, Kansas

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, judgement by default will be taken against you for the relief demanded in the complaint.

CHARLES W. CAHILL
Clerk of Court.

Dusky E. Broadus
Deputy Clerk.

[Seal of Court]

Date: April 12, 1966

Note:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

8

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 13th day of April 1966, at Topeka, Kansas,
I received this summons and served it together with the complaint herein as follows:

SERVED the within-named FOURTH NATIONAL BANK OF WICHITA, KANSAS, by personally delivering to Robert R. Welsh, Vice-president & Cashier of said Bank, no other or higher officer being found a true and certified copy of this writ with all endorsements thereon at the Fourth National Bank, 200 East Douglas, Wichita, Kansas, at the hour of 11:20 A. M. on April 19th, 1966. At the same time and in like manner I served a copy of the Memorandum to the Court filed in this case.

MARSHAL'S FEES

Travel ..... $ none
Service 3.00
$ 3.00

VANCE W. COLLINS
United States Marshal.

By .....
Deputy United States Marshal.

Subscribed and sworn to before me, a this
day of , 19 .

[SEAL]

Note:—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

No. .....

United States District Court
FOR THE

.....

.....

SUMMONS IN CIVIL ACTION

Returnable not later than days after service.

.....
Attorney for Plaintiff

FPI—LK—7-20-65—10M—6003

U. S. Dist. Ct., Kansas

Docket No. 3587

SUMMONS IN A CIVIL ACTION

CIV. 1 (2-64)
(Formerly D. C. Form No. 45 Rev. (6-49))

United States District Court

FOR THE

DISTRICT OF KANSAS

CIVIL ACTION FILE NO. W-3630

A. J. PORTH, EVERETT ELLIOTT HULL, MELVIN L. MARLEY, RICHARD ROE AND JOHN DOE

Plaintiff

v.

FEDERAL RESERVE BANK OF KANSAS CITY, MISSOURI; FIRST NATIONAL BANK OF WICHITA, KANSAS; FOURTH NATIONAL BANK OF WICHITA, KANSAS; UNION NATIONAL BANK OF WICHITA, KANSAS; LYNDON B. JOHNSON, PRESIDENT OF THE UNITED STATES OF AMERICA; HENRY H. FOWLER, SECRETARY OF THE U.S. TREASURY; THE UNITED STATES OF AMERICA: WALTER H. PEERY, TREASURER OF THE STATE OF KANSAS; RICHARD ROE and JOHN DOE Defendants

SUMMONS

FILED
APR 22 1966
CHARLES W. CAHILL, Clerk
By Dusky E. Broadus Deputy

To the above named Defendant : First National Bank of Wichita, Kansas

You are hereby summoned and required to ~~serve upon~~ file in the office of the Clerk, U. S. District Court, U. S. Courthouse, Wichita, Kansas and serve upon:

George E. Hasty

plaintiff's attorney , whose address is: 2144 N. Market, Wichita, Kansas

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, judgement by default will be taken against you for the relief demanded in the complaint.

CHARLES W. CAHILL
Clerk of Court.

Dusky E. Broadus
Deputy Clerk.

[Seal of Court]

Date: April 12, 1966

Note:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 13th day of April 19 66, at Topeka, Kansas,
I received this summons and served it together with the complaint herein as follows:

SERVED the within-named FIRST NATIONAL BANK OF WICHITA, KANSAS, by personally delivering to Darwin D. Roberts, Assistant Cashier of said Bank, no other or higher officer being found, a true and certified copy of this writ with all endorsements thereon, at the First NationalBank, 106 West Douglas, Wichita, Kansas, at the hour of 11:10 A. M. on April 19th, 1966. At the same time and in like manner I served a copy of the Memorandum to the Court filed in this case.

MARSHAL'S FEES

Travel ..... $ none
Service 3.00
$ 3.00

VANCE W. COLLINS
United States Marshal.

By Lawrence E. Hoyt
Deputy United States Marshal.

Subscribed and sworn to before me, a this
day of , 19 .

[SEAL]

Note:—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

No.

United States District Court
FOR THE

v.

SUMMONS IN CIVIL ACTION

Returnable not later than days after service.

Attorney for Plaintiff

FPI—LK—7-20-65—140M—5003

U. S. Marshal, Kansas

Docket No. 8587

SUMMONS IN A CIVIL ACTION

CIV. 1 (2-64)
(Formerly D. C. Form No. 45 Rev. (6-49))

United States District Court

FOR THE

DISTRICT OF KANSAS

CIVIL ACTION FILE NO. W-3630

A. J. PORTH, EVERETT ELLIOTT HULL, MELVIN L. MARLEY, RICHARD ROE AND JOHN DOE

Plaintiff

v.

FEDERAL RESERVE BANK OF KANSAS CITY, MISSOURI; FIRST NATIONAL BANK OF WICHITA, KANSAS; FOURTH NATIONAL BANK OF WICHITA, KANSAS; UNION NATIONAL BANK OF WICHITA, KANSAS; LYNDON B. JOHNSON, PRESIDENT OF THE UNITED STATES OF AMERICA; HENRY H. FOWLER, SECRETARY OF THE U.S. TREASURY; THE UNITED STATES OF AMERICA, WALTER H. PEERY, TREASURER OF THE STATE OF KANSAS; RICHARD ROE and JOHN DOE Defendant

SUMMONS

FILED
APR 22 1966
CHARLES W. CAHILL, Clerk
By Dusky E. Broadus Deputy

To the above named Defendant : Union National Bank of Wichita, Kansas

You are hereby summoned and required to ~~serve upon~~ file in the Office of the Clerk, U. S. District Court, U. S. Courthouse, Wichita, Kansas, and serve upon:

George E. Hasty

plaintiff's attorney , whose address is: 2144 N. Market, Wichita, Kansas

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, judgement by default will be taken against you for the relief demanded in the complaint.

CHARLES W. CAHILL
Clerk of Court.

Dusky E. Broadus
Deputy Clerk.

[Seal of Court]

Date: April 12, 1966

Note:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(6)

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 13th day of April 1966, at Topeka, Kansas,
I received this summons and served it together with the complaint herein as follows:

SERVED the within-named UNION NATIONAL BANK OF WICHITA, KANSAS, by personally delivering to Richard W. Bruner, Executive Vice-president of said Bank, no other or higher officer being found, a true and certified copy of this writ with all endorsements thereon at the Union National Bank, 150 North Main St., Wichita, Kansas, at the hour of 11:00 A. M. on April 19th, 1966. At the same time and in like manner I served a copy of the Memorandum to the Court filed in this case.

MARSHAL'S FEES

Travel ..... $ none
Service 3.00
$ 3.00

VANCE W. COLLINS
United States Marshal.

By Laurence E. Hoy
Deputy United States Marshal.

Subscribed and sworn to before me, a this
day of , 19 .

[SEAL]

Note:—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

No.....

United States District Court
FOR THE

v.

SUMMONS IN CIVIL ACTION

Returnable not later than days after service.

Attorney for Plaintiff

FPI—LK—7-20-65—140M—5003

U. S. Marshal, Kansas

SUMMONS IN A CIVIL ACTION Docket No. 8587

CIV. 1 (2-64) (Formerly D. C. Form No. 45 Rev. (6-49))

United States District Court

FOR THE

DISTRICT OF KANSAS

A. J. PORTH, EVERETT ELLIOTT HULL, MELVIN L MARLEY, RICHARD ROE AND JOHN DOE

Plaintiff

v.

FEDERAL RESERVE BANK OF KANSAS CITY, MISSOURI FIRST NATIONAL BANK OF WICHITA, KANSAS:; FOURTH NATIONAL BANK OF WICHITA, KANSAS; UNION NATIONAL BANK OF WICHITA, KANSAS; LYNDON B. JOHNSON, PRESIDENT OF THE UNITED STATES OF AMERICA; HENRY H. FOWLER, SECRETARY OF THE U.S. TREASURY; THE UNITED STATES OF AMERICA; WALTER H. PEERY, TREASURER OF THE STATE OF KANSAS; RICHARD ROE and JOHN DOE Defendants

CIVIL ACTION FILE NO. W-3630

SUMMONS

FILED

APR 21 1966

CHARLES W. CAHILL, Clerk

By Jack Cummins Deputy

To the above named Defendant : Federal Reserve Bank of Kansas City, Missouri

You are hereby summoned and required to ~~serve upon~~ ~~xxxxxxxxxx~~ file in the office of the Clerk, U. S. District Court, U. S. Courthouse, Wichita, Kansas and serve upon:

George E. Hasty

plaintiff's attorney , whose address is: 2144 N. Market, Wichita, Kansas

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, judgement by default will be taken against you for the relief demanded in the complaint.

CHARLES W. CAHILL
Clerk of Court.

Dusky E. Broadus
Deputy Clerk.

Dusky E. Broadus

[Seal of Court]

Date: April 12, 1966

Note:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

5

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 14th day of April 1966,

I received this summons and served it together with the complaint herein as follows: By serving Federal Reserve Bank by handing and leaving a true copy of Summons and Complaint Memorandum to Court with George H Clay Pres. of the Federal Reserve Bank K.C. Mo. personally at 1:50 PM on this the 14th day of March 1966

april

MARSHAL'S FEES

Out of Dist Service 1.00

Travel ..... $.....

Service 1 ..... 3.00

.....

4.00

FRANCIS M. WILSON

United States Marshal.

By .....

Deputy United States Marshal.

FRANCIS R. WALLIS

Subscribed and sworn to before me, a this

day of , 19 .

[SEAL]

.....

Note:—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

No. .....

United States District Court
FOR THE

.....

v.

SUMMONS IN CIVIL ACTION

Returnable not later than days after service.

.....

Attorney for Plaintiff

PI—LK—7-20-65—140M—5003

U. S. Marshal, K ...
Docket No. 8871

SUMMONS IN A CIVIL ACTION

CIV. 1 (2-64)
(Formerly D. C. Form No. 45 Rev. (6-49))

United States District Court

FOR THE

DISTRICT OF KANSAS

CIVIL ACTION FILE NO. W-3630

A. J. PORTH, EVERETT ELLIOTT HULL, MELVIN L. MARLEY, RICHARD ROE AND JOHN DOE

Plaintiff

v.

FEDERAL RESERVE BANK OF KANSAS CITY, MISSOURI; FIRST NATIONAL BANK OF WICHITA, KANSAS; FOURTH NATIONAL BANK OF WICHITA, KANSAS; UNION NATIONAL BANK OF WICHITA, KANSAS; LYNDON B. JOHNSON, PRESIDENT OF THE UNITED STATES OF AMERICA; HENRY H. FOWLER, SECRETARY OF THE U.S. TREASURY; THE UNITED STATES OF AMERICA; WALTER H. PEERY, TREASURER OF THE STATE OF KANSAS; RICHARD ROE and JOHN DOE Defendant s

SUMMONS

FILED
APR 19 1966
CHARLES W. CAHILL, Clerk
By Dusky E. Broadus Deputy

To the above named Defendant : Walter H. Peery, Treasurer of the State of Kansas, Topeka, Kansas

You are hereby summoned and required to ~~serve upon~~ FILE IN THE OFFICE OF THE CLERK, U. S. DISTRICT COURT, U. S. COURTHOUSE, WICHITA, KANSAS AND SERVE UPON:

George E. Hasty

plaintiff's attorney , whose address is: 2144 N. Market, Wichita, Kansas

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, judgement by default will be taken against you for the relief demanded in the complaint.

CHARLES W. CAHILL
Clerk of Court.

Dusky E. Broadus
Deputy Clerk.

[Seal of Court]

Date: April 12, 1966

Note:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(4)

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 13th day of APRIL 19 66,

I received this summons and served it together with the complaint herein as follows: By personally delivering to the within named Walter H. PEERY, TREASURER OF THE STATE OF KANSAS, a true and certified copy of this Writ with all endorsements tthereon, a t The State Capitol Bldg. Office of the State Treasurer, Topeka, Kansas the 13th Day of April, 1966. At the same time and in like manner I served a copy of the Complaint filed in this case together with a Memorandum To The Court.

MARSHAL'S FEES

Travel ..... $ 0.00

Service 3.00

$3.00

Vance W. Collins

United States Marshal.

By Ronald Mills Mangrum

Deputy United States Marshal.

Ronald Mills Mangrum,

Subscribed and sworn to before me, a this

day of , 19 .

[SEAL]

Note:—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

No.

United States District Court
FOR THE

v.

SUMMONS IN CIVIL ACTION

Returnable not later than days after service.

Attorney for Plaintiff

FPI—LK—7-20-65—140M—5003

SUMMONS IN A CIVIL ACTION

CIV. 1 (7-64)
(Formerly D. C. Form No. 45 Rev. (6-49))

United States District Court

FOR THE

DISTRICT OF KANSAS

CIVIL ACTION FILE NO. W-3630

A. J. PORTH, EVERETT ELLIOTT HULL, MELVIN L. MARLEY, RICHARD ROE AND JOHN DOE

Plaintiff

v.

FEDERAL RESERVE BANK OF KANSAS CITY, MISSOURI; FIRST NATIONAL BANK OF WICHITA, KANSAS; FOURTH NATIONAL BANK OF WICHITA, KANSAS; UNION NATIONAL BANK OF WICHITA, KANSAS; LYNDON B. JOHNSON, PRESIDENT OF THE UNITED STATES OF AMERICA; HENRY H. FOWLER, SECRETARY OF THE U.S. TREASURY; THE UNITED STATES OF AMERICA; WALTER H. PEERY, TREASURER OF THE STATE OF KANSAS; RICHARD ROE and JOHN DOE

Defendants

SUMMONS

FILED
APR 19 1966
CHARLES W. CAHILL, Clerk
By Dusky E. Broadus Deputy

To the above named Defendant : UNITED STATES OF AMERICA: Serve: U. S. Attorney, Federal Bldg. Topeka, Kansas and Attorney General of the United States, Washington, D.C. by certified mail.

You are hereby summoned and required to ~~serve upon~~ FILE IN THE OFFICE OF THE CLERK, U. S. DISTRICT COURT, U. S. COURTHOUSE, WICHITA, KANSAS AND SERVE UPON:

George E. Hasty

plaintiff's attorney , whose address is: 2144 N. Market, Wichita, Kansas

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint.

CHARLES W. CAHILL
Clerk of Court.

Dusky E. Broadus
Deputy Clerk.

[Seal of Court]

Date: April 12, 1966

Note:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

3

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 13th day of April 1966,

I received this summons and served it together with the complaint herein as follows: Served on the within-named United States of America by delivering to Mrs. Besse Wallace, Administrative Assistant in office of U.S. Attorney, District of Kansas, whe being designated to receive service for Mr Newell A George, United States Attorney, at Topeka,Kansas on April 18, 1966, a true and certified copy of this summons, together with a copy ot the complaint and copy of Memorandum to the Court filed in this case; and by mailing, by certified mail to the Attorney General of the United States Washington, D. C. April 18, 1966 two duly certified copies of this Summons, together with two copies of the Complaint and two copies of the Memorandum to the Court filed in this case.

MARSHAL'S FEES

Travel ..... $ --

Service $3.00

$3.00

VANCE W. COLLINS
United States Marshal.

By Ronald Mytt, Wyman
Deputy United States Marshal.

Subscribed and sworn to before me, a this

day of , 19 .

[SEAL]

Note:—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

No.

United States District Court
FOR THE

v.

SUMMONS IN CIVIL ACTION

Returnable not later than days after service.

Attorney for Plaintiff

FPI—LK—7-20-65—140M—5003

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

A. J. PORTH, et al., Plaintiffs vs. FEDERAL RESERVE BANK OF KANSAS CITY, MISSOURI, UNITED STATES OF AMERICA, et al., Defendants.	Civil Action No. W-3630

FILED
NOV 22 1966
CHARLES W. CAHILL, Clerk
By Deputy

MEMORANDUM SUSTAINING MOTION TO DISMISS

This civil action is before the court on defendants' motion to dismiss. There is also before the court an application by plaintiffs for a three judge court, pursuant to 28 U.S.C. § 2281 et seq.

The second amended complaint alleges that the plaintiffs are "residents, freeholders, voters, citizens and taxpayers" of the United States and the State of Kansas, and that they are proceeding in a representative capacity, in behalf of all taxpayers of the United States and the State of Kansas. The object of the action is to set aside and declare void all bonds and other securities of the governments of the United States and the State of Kansas held by defendant banks.

Plaintiffs rely on Art. I, Section 8, of the United States Constitution, which provides that Congress shall have the power "to coin money, regulate the Value thereof, and of foreign Coin . . . . " They assert that this power has been unconstitutionally delegated to the Federal Reserve Corporation, defendant national banks, and state banks which are members of the Federal Reserve, which the complaint describes as a privately owned corporation,

58 (63)

completely dominated by its Board of Governors, and operated independently of the United States. Thus, it is claimed that the defendant banks are unlawfully uttering and circulating unlawfully money in the "deluding and deceiving form of authentic U. S. currency." It is alleged that the defendant banks are creating money and credit on their own books without consideration therefor, thereby usurping the legislative powers of Congress to do so, and that with such unlawful currency, they are acquiring federal and state government securities, and illegally receiving interest thereon.

This issuance of allegedly unlawful currency is attacked inter alia as a common law nuisance and aggravated forgery. [Complaint, ¶¶ V, IX] The purchase of government securities with such currency is described as grand larceny, as defined in K.S.A. 21-533, and the obtaining of property by false token. The defendants banks' receipt of interest on the securities so acquired and held is attacked as a violation of the Kansas usury laws, K.S.A., Ch. 16. It is alleged that the conduct of the remainder of the defendants, excepting the defendant governments of the United States and the State of Kansas, in aiding the banks' conspiracy to commit the above acts constitutes a willful violation of their oaths to support the Constitution, and thus constitutes perjury as defined by K.S.A. 21-701. The above course of conduct is alleged to be illegal in other respects, also, which it is unnecessary to recite at length.

Plaintiffs seek an order, described as an interlocutory judgment, determining the number, nature and extent of all persons and corporations claiming any interest or title to federal, state, county, city, township and school district bonds held by defendant banks, and a final judgment that these obligations be declared null

59

and void. Lastly, plaintiffs seek a permanent injunction against the defendants' alleged nuisance activity of unlawful coinage of money, and against the President and the Secretary of the Treasury, enjoining further application of government monies to payment of such obligations, or interest thereon. A like injunction is sought against the Treasurer of the State of Kansas.

The defendants have moved to dismiss on two grounds common to all of them: first, that plaintiffs have no standing to question the constitutionality of the statutes involved, and second, that the complaint fails to state a claim upon which relief can be granted. Walter H. Peery, Treasurer of the State of Kansas, asserts, in addition, that the court lacks jurisdiction inasmuch as the action constitutes an unconsented suit against the sovereign State of Kansas. Four defendants, the Federal Reserve Bank of Kansas City, Missouri, Lyndon B. Johnson, President of the United States, Henry H. Fowler, Secretary of the Treasury, and the United States of America, move in the alternative for summary judgment, and state as additional grounds, that the court lacks jurisdiction to compel or restrain official action relating to discretionary governmental functions, and that the suit is an unconsented suit against the federal government. As to two defendants, President Johnson and Secretary Fowler, venue is claimed to be improper.

In our view, the only question we need reach is that of plaintiffs' standing to maintain this action. Plaintiffs assert that they bring this action "as representative taxpayers . . . . in the interest of themselves and the people of the United States and the State of Kansas . . . ." [Complaint ¶ I] They allege no standing order than that of taxpayers. [See ¶ VIII] It is alleged that the federal government imposes and collects a direct tax upon the income of all citizens of the United States, including plaintiffs, half the proceeds of which are applied to the

obligations attacked herein as illegal and unconstitutional. Thus, plaintiffs' standing derives solely from the alleged misapplication of half the tax monies paid by them to the federal government.

The much-quoted case of Frothingham v. Mellon, 262 U.S. 477, 67 L.ed 1078, 43 S.Ct. 597, is determinative. The following passage is particularly apt:

> "We have no power per se to review the annul acts of Congress on the ground that they are unconstitutional. That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act. Then the power exercised is that of ascertaining and declaring the law applicable to the controversy. It amounts to little more than the negative power to disregard an unconstitutional enactment, which otherwise would stand in the way of the enforcement of a legal right. The party who invokes the power must be able to show not only that the statute is invalid, but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally." (Emphasis supplied).

That case is epitomized thus in Alabama Power Co. v. Ickes, 302 U.S. 464, 82 L.ed 375: "The interest of a taxpayer in the moneys of the Federal treasury furnishes no bases for an appeal to the preventive powers of a court of equity." 302 U.S. at 478, 82 L.ed at 378. The term "direct injury" is used in its legal sense, as meaning a wrong which directly results in the violation of a legal right. It must be, moreover, a wrong which is peculiar to the plaintiff, and not an indirect injury which is suffered in common with the population generally, which is precisely that of which plaintiffs complain, namely the application of federal tax revenues to allegedly illegal obligations. The court in Frothingham v. Mellon, supra, states the following:

> "His [a taxpayer's] interest in the moneys of the Treasury--partly realized from taxation and partly from other sources--is shared with

> millions of others; is comparatively minute and indeterminable; and the effect upon future taxation of any payment out of the funds so remote, fluctuating, and uncertain that no basis is afforded for an appeal to the preventive powers of a court of equity."

The complaint in Horne v. Federal Reserve Bank of Minneapolis, 344 F.2d 725 (8th Cir. 1965), is virtually identical to that in the instant case. The Court stated:

> "Any damage claimed to be suffered thereby [by the above expenditures] is suffered in common with all taxpayers, and simply will not suffice to establish requisite standing to sue."

See also Bryan v. Federal Open Market Committee, 235 F. Supp. 877 (D. Mont. 1964), and the authorities cited therein.

The court concludes that plaintiffs clearly lack standing to maintain this action. For this reason, the defendants' motions to dismiss are granted with costs to plaintiffs. Accordingly, plaintiffs' application for a three-judge court is hereby denied.

The Clerk will enter judgment as provided in Rule 58, F.R.C.P., 28 U.S.C.

At Wichita, Kansas this 22dn day of November, 1966.

Wesley E. Brown
United States District Judge

6285

TWENTY-EIGHTH DAY, MARCH TERM, WEDNESDAY, APRIL 26th, 1967.

Before Honorable Alfred P. Murrah, Chief Judge,
and Honorable Jean S. Breitenstein, Circuit Judge.

A. J. Porth, Everett Elliott Hull, Melvin L. Marley, Richard Roe and John Doe,

Appellants,

9431 vs.

Federal Reserve Bank of Kansas City, Missouri; First National Bank of Wichita, Kansas; Fourth National Bank of Wichita, Kansas; Union National Bank of Wichita, Kansas; Lyndon B. Johnson, President of the United States of America; Henry H. Fowler, Secretary of the U. S. Treasury; The United States of America; Walter H. Peery, Treasurer of the State of Kansas; Richard Roe and John Doe; State of Kansas,

Appellees.

Appeal from the United States District Court for the District of Kansas.

FILED
JUN 5 1967
CHARLES W. CAHILL, Clerk
By Deputy

On consideration of appellees' motions to docket the cause and dismiss the appeal herein , it is ordered that the said motions be and the same are hereby granted; that appellees may docket the cause instanter, which is accordingly done, and that the appeal in this cause be and the same is hereby dismissed out of this court for failure of appellants diligently to prosecute the same.

A true copy

Teste.

William L. Whittaker

William L. Whittaker
Clerk, U.S. Court of
Appeals, Tenth Circuit

(70)

CERTIFIED COPY (Rev. April 1953) D. C. Form No. 30

United States of America

DISTRICT OF KANSAS } ss:

I, CHARLES W. CAHILL, Clerk of the United States District Court for the ..... District of KANSAS, do hereby certify that the annexed and foregoing is a true and full copy of the original **Complaint; Summons to the State of Kansas; Summons to Lyndon B. Johnson, President of U. S.; Summons to Henry H. Fowler, Sec'y. of the U. S. Treasury; Summons to Fourth National Bank of Wichita, Kansas; Summons to First National Bank of Wichita, Kansas; Summons to Union National Bank of Wichita, Kansas; Summons to Federal Reserve Bank of Kansas City, Missouri; Summons to Walter H. Peery, Treasurer of State of Kansas; Summons to United States of America; Memorandum Sustaining Motion to Dismiss and Mandate from United States Court of Appeals, in Civil Action W-3630, A. J. Porth, et al vs. Federal Reserve Bank of Kansas City, Missouri, et al.**

now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Wichita, Kansas this 4th day of February, A. D. 19 70

CHARLES W. CAHILL
Clerk.

By Helen Hope
Helen Hope *Deputy Clerk.*

FPI ATLANTA—12-3-57—40M—39

PETITIONER'S EXHIBIT 66
2/11/70 L.M.F.

BOARD OF GOVERNOR
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

4217

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

September 2, 1969.

Mr. R. D. Graham, General Counsel
and Assistant Secretary
Federal Reserve Bank of Minneapolis
73 South Fifth Street
Minneapolis, Minnesota 55440

Dear Rollie:

In accordance with our recent telephone conversation, the following is a list of correspondence relating to First National Bank of Montgomery v. Jerome Daly that has been answered by the Treasury or the Board through August 1969. Except as indicated by an asterisk, the inquiry giving rise to such answer refers to Myers' Finance Review. The list is by date of the answer, since in a number of instances the date of the inquiry is unknown.

June 26, 1969

General Counsel of the Treasury in response to a letter to the Secretary of the Treasury from a resident of Illinois;
General Counsel of the Treasury to a Congressman with respect to a letter from the same resident of Illinois;
General Counsel of the Treasury in response to a letter from a Congressman from Massachusetts;
*General Counsel of the Treasury to a Congressman with respect to a letter from a resident of California (enclosing a copy of an ad, a copy of which is enclosed herewith);
General Counsel of the Treasury in response to a letter to the President from a resident of California;
*General Counsel of the Treasury in response to a letter to the President from a resident of California (enclosing C. W. Ritter's column).

June 30, 1969

Assistant Secretary of the Federal Reserve Board in response to a letter from a resident of California.

July 1, 1969

*General Counsel of the Treasury in response to a letter to a Congressman from a resident of California (enclosing Ralph de Toledano's column).

July 3, 1969

Acting General Counsel of the Treasury to a Congressman with respect to a letter from a resident of Massachusetts;
Acting General Counsel of the Treasury to a Senator with respect to a letter from a resident of California;
Assistant General Counsel of the Treasury to a Senator with respect to a letter from a resident of California.

July 15, 1969

*General Counsel of the Treasury to a Senator with respect to a letter from a resident of California (enclosing Ralph de Toledano's column);
Assistant General Counsel of the Treasury to a Congressman with respect to a letter from a resident of South Carolina.

July 17, 1969

*Director of the Office of Domestic Gold and Silver Operations of the Treasury to a Congressman with respect to a letter from a resident of New Jersey.

July 18, 1969

General Counsel of the Treasury to a Congressman with respect to a letter from a resident of Minnesota.

July 24, 1969

Chairman of the Federal Reserve Board to a Congressman with respect to a letter from a resident of Florida.

August 13, 1969

Chairman of the Federal Reserve Board to a Senator with respect to a letter from a resident of Georgia.

August 14, 1969

*General Counsel of the Federal Reserve Board, at the request of a Congresswoman, in response to a letter from a resident of Washington State (enclosing a reprint from "The Daly Eagle" of February 7, 1969).

August 15, 1969

Chairman of the Federal Reserve Board to a Senator with respect to a letter from a resident of Florida.

August 18, 1969

Chairman of the Federal Reserve Board to a Senator with respect to a letter from a resident of California;
Assistant Secretary of the Board in response to a letter from a resident of Ohio.

August 19, 1969

General Counsel of the Federal Reserve Board to a resident of Tennessee in response to a letter referred from the Justice Department.

August 20, 1969

*Vice Chairman of the Federal Reserve Board to a Senator with respect to a letter from a resident of Oregon.

August 21, 1969

*General Counsel of the Treasury to a Congressman with respect to a letter from a resident of Wisconsin (enclosing Ralph de Toledano's column).

August 25, 1969

*Vice Chairman of the Federal Reserve Board to a Senator with respect to a letter from a resident of Alabama.

We have no knowledge of the number of inquiries that have been received and answered by the Federal Reserve Banks. Also, we have no knowledge of the number of inquiries Senators and Congressmen have answered without reference to the Treasury or the Board or upon the basis of the information we have furnished them.

It is understood that the foregoing information may be forwarded to the Ethics Committee of the Minnesota State Bar Association for that Committee's confidential use in connection with an investigation of Mr. Daly's activities.

Sincerely yours,

Robert F. Sanders
Assistant General Counsel

THE INCOME TAX IS IN TROUBLE

1. A Minnesota court has ruled that Federal Reserve Notes (the dollars in your billfold) are NOT LEGALLY U.S. DOLLARS. The Notes are null and void and do not constitute lawful money as set forth in the Constitution of the United States. Under IRS regulations, unless an individual has an income of 600 U.S. Dollars or more, he need not file an income tax form.

2. Furthermore, a U.S. District Court ruled that Jerome Daly was within his constitutional rights in refusing to provide the IRS with information requested on the 1040 income tax form. Based on these court rulings, Jerome Daly, A. J. Porth and others pay no State or Federal income tax.

Mr. A. J. Porth • Mr. Jerome Daly

(Tax Consultant) (Attorney at Law)

Will discuss these two legal cases and comment on their application:

Saturday, June 14, 1969
7:30 P.M.

RUSS AUDITORIUM

12th & Russ Street

•

Admission: $2.00 (Federal Reserve Notes)
or $1.00 (Silver Coin)

Individually Sponsored by Mr. Ralph Richter

Issue - June 23rd 1969 Los Angeles Co Chronicle

We are thankful for Newspapers who are not afraid to print the truth. Few people know anything about the problem.

Dear Pres. Nixon - please read

Court rules Federal Reserve notes are not legal tender

By CARL W. RITTER
Copley News Service

An obscure justice of the peace in a small Midwest community is creating some restiveness among banking authorities because of an opinion handed down in connection with a real estate foreclosure case.

Central to everything involved is the question of whether Federal Reserve notes originating with a mere bookkeeping entry constitute legal tender in payment of debt.

An opinion by Martin V. Maloney, justice of the peace, Credit River Township, Scott County, Minn., holds to the negative.

In turning down an appeal after the case moved from 1968 into 1969, Maloney commented as follows in reference to two Federal Reserve notes involved in a payment:

"The Federal Reserve notes in question in this case (issued by San Francisco and Minneapolis banks) are unlawful and void upon the following grounds:

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

"B. The notes obviously are not gold or silver coins. . . ."

The justice of the peace elaborated somewhat further on his opinion, including a contention that part of the U.S. Code is unconstitutional insofar as it attempts to make Federal Reserve notes and circulating notes of Federal Reserve Banks and national banking associations a legal tender for all debts, public and private.

His contention identifies with the question of whether a bank operating as an individual unit — the "Fed" banks and the national banks have been privately owned since 1913 — can legally bring out a monetary instrument with which to discharge debt obligations when the state cannot.

Article 1, Section 10 of the Constitution of the United States, reads as follows:

"No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything 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."

The obvious implication is perpetuation of gold and silver's role in the money system through the Constitution, placing something of relatively substantial intrinsic worth behind, or redeemable for, created money. Neither gold nor silver, since March 18, 1933, has backed up Federal Reserve notes.

Jerome Daly, an attorney in Savage, Minn., representing himself, was the central figure opposing a Minnesota bank in the case, which resulted in a jury trial presided over by Maloney and which led to Maloney's opinion supporting jury findings in favor of Daly.

Maloney pointed out that the Federal Reserve Banks and national banks create money and credit upon their books by bookkeeping entry when they acquire U.S. bonds and securities, state bonds and securities, mortgages on private real property and mortgages on private personal property.

"The first time the money comes into existence is when they create it on their bank books by bookkeeping entry," noted Maloney. "The banks create it out of nothing. No substantial fund of gold or silver is back of it, or any fund at all."

He traced the mechanics followed in the acquisition of U.S. bonds and concluded that the net effect was that the banks obtain Federal Reserve notes for the cost of printing only, which he said is less than one cent each.

A Constitutional amendment may be necessary, ultimately, to resolve the matter, Daly said.

We do hope you give this Mother (your son Bonnie Aden) a loan.

Sincerely,

P. K. Kenyon & family

9754 Emerson Ave.
Arcadia, Calif.
91006

We pay taxes to our Govt - in turn our Govt. give our U.S. Bonds to this private Corporation & pays it interest on such Bonds - for this paper money they produce for us!

Why?

Our constitution gave Congress the right to coin money & establish the value. It should have kept control of the Fed. Reserve Bank. Our Govt. is responsible for this unfair practice. It is a deplorable burden on the taxpayers. We are thankful this movie brought up the issue & let us know the root cause of our money problems & could help correct it. Congressmen are worse & worse!

42174
PETITIONER'S EXHIBIT 67
2/11/70 L.M.F.

Ralph De Toledano

Worthless Dollars

It could be the biggest story of our times — or it could be nothing. But a court in Minnesota has ruled that Federal Reserve notes — the paper money you carry in your pocket — are worthless. These are the facts, up to this time ignored by the mass media:

In May of 1964, Jerome Daly, an attorney of Savage, Minn., borrowed $14,000 from the First National Bank, securing the loan with a mortgage on real property. In the spring of 1967, Daly was in arrears to the sum of $476.00, and the bank foreclosed, buying the property at a sheriff's sale on June 28, 1967. Daly did not pay up in the following 12 months, so the bank brought action against him for possession of the property.

In a jury trial before Justice Martin V. Mahoney of Credit River, Minnesota, the plaintiff — the bank — lost on December 7, 1968. According to the jury's unanimous verdict, the bank was not "entitled to recover possession of the property," that the mortgage was void because the $14,000 received by Mr. Daly was not "a lawful consideration" — in other words, that the bank did not give Mr. Daly anything of value in return for the mortgage. The verdict further stated that the sheriff's sale was null and void, and the bank had "no right, title or interest in the said premises or lien thereon."

The First National Bank in Minnesota thereupon appealed to the Federal District Court. The fee for filing such an appeal is $2.00, and the bank presented the court with two paper one-dollar bills. This was refused. Justice Mahoney stated in categorial terms why he could not accept these dollar bills:

"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 for the redemption of said notes. The notes were without any lawful consideration and therefore void."

Justice Mahoney, however, offered the bank a full hearing to show why it considered the Federal Reserve notes legal money, but the bank did not appear before him. An appeal, however, was made to the Federal District court, and Justice Mahoney was ordered to show cause why he did not allow the bank to file an appeal. In his response, Justice Mahoney stated:

"The net effect of the entire transaction is that the Federal Reserve Bank . . . obtains Federal Reserve notes" — paper money — "for the cost of printing alone." He held that the Federal Reserve notes in question were 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 neighborhood of 9/10ths of 1 cent" — the cost of printing them — "and therefore there is not lawful consideration behind said notes . . ."

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San Diego, California

THE INCOME TAX IS IN TROUBLE

A Minnesota court has ruled that Federal Reserve Notes (the dollars in your billfold) are NOT LEGALLY U.S. DOLLARS. The Notes are null and void and do not constitute lawful money as set forth in the Constitution of the United States. Under IRS regulations, unless an individual has an income of 600 U.S. Dollars or more, he need not file an income tax form.

Furthermore, a U.S. District Court ruled that Jerome Daly was within his constitutional rights in refusing to provide the IRS with information requested on the 1040 income tax form. Based on these court rulings, Jerome Daly, A. J. Perth and others pay no State or Federal income tax.

Mr. A.J. Perth • Mr. Jerome Daly

(Tax Consultant) (Attorney at Law)

Will discuss these two legal cases and comment on their application:

Saturday, June 14, 1969
7:30 P.M.

RUSS AUDITORIUM

12th & Russ Street

•

Admission: $2.00 (Federal Reserve Notes)
or $1.00 (Silver Coin)

Individually Sponsored by Mr. Ralph Richter

Dear Judge Durda Jan 16 1970

I have a copy of your letter of Jan. 15, 1970. As I told you at the time of the Pre trail Hearing I do not want to make a complaint against Mr Daly.

I was only in his office the one time and he told me that if he could not represent me when my case come up that he would either get another lawyer or give me back my $150.00

I only tried to get hold of him twice and decided to plead guilty and get it over with without a Lawyer. As I told you I do not want to make trouble of Mr. Daly.

Sincerely Yours
Raymond Salyer

PETITIONER'S EXHIBIT 68
2/11/70 L.M.F..
42174

Based upon The Declaration of Independence found in American Jurisprudence 2d, Desk Book, Page 38, The Constitution of the United States, Am Jur 2d, Desk Book page 10, The Northwest Ordinance Desk Book page 51, The Virginia Bill of Rights, Desk Book Page 57, The Massachusetts Bill of Rights, Page 59, The Virginia Statute of Religious Liberty, Page 64, The Constitution of the State of Minnesota and the Constitution of _____, The Declaration of Resolves of the First Continental Congress of October 14,1774, The Declaration of the Causes and Necessity of Taking up Arms of July 6,1775, Magna Carta, Am Jur Desk Book, page 42, of June 15,1215, excepting therefrom all Monarchial and Clerical nonsence and more particularly based upon the 1st and 14th Amendments to the Constitution of the United States and Article 6 of the Original Constitutional Draft and American Jurisprudence 2d Sections 328 thru 360 and Sections 361 thru Sections 394 found in Volume 16 on the Subject of Constitutional Law and more especially Sections 353, 354 and 355 thereof;

Know all Men by These Presents: *That*

Wayne Allen Krull, Wilbur Krull and Mrs. Wilbur Krull

of the County of Hennepin, *State of* Minnesota

do by these presents make, constitute and appoint Jerome Daly

of the County of Dakota, *State of* Minnesota

At Law and

true and lawful attorney / in fact for _____ *and in* _____ *name, place and stead to* act in the place and stead of Wayne Allen Krull with the same force and effect in all respects as though said Wayne Allen Krull was personally present and to appear in any Court and in any action, civil or criminal in which he is is involved in and to make an appearance therein by filing a copy this power of Attorney thereihand more specifically but not limited to the following action;

Hennepin County District Court Juvenile File No. 75822 Motor Vehicle Traffic charges. Also Hennepin County Municipal Court Ticket No. 40-070775

42174

Petitioners Ex 69

2/11/80 lmf

STATE OF MINNESOTA DISTRICT COURT - JUVENILE DIVISION

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

In the Matter of the Welfare of

_____,
a Juvenile.

Juvenile Court
File No. 75822

The above matter came duly on for hearing before the Honorable Donald A. Chapman, Referee of the above-named Court, on October 1, 1969, in the Courthouse, Minneapolis, Minnesota.

APPEARANCES:

LEONARD BROD, Esq., Assistant County Attorney, appeared in behalf of the State of Minnesota;

JEROME DALY, Esq., appeared in behalf of the defendant.

Name of the juvenile involved in the above matter will be withheld pending good cause shown as to why it should be revealed.

* * *

42174

Petitioner's Ex 78
3/11/70 lmg

THE CLERK: Your Honor, this is the matter of _____, file number 75822. Present in Court is the father and the child, also present in Court is attorney Jerome Daly acting in behalf of the defendant. Referee Chapman presiding.

THE COURT: All right, Mr. Daly, this is an arraignment hearing concerning a charge of delinquency which has been filed against _____, and it is the usual procedure of this Court to proceed with an arraignment at this time.

MR. DALY: Does the Court have a complaint?

THE COURT: Don't you have a copy of the petition that was served on you?

THE FATHER: Yes, I gave it to my lawyer.

MR. DALY: I have that myself, Your Honor, but it doesn't look like a complaint to me.

THE COURT: It's a petition in Juvenile Court, Mr. Daly. The procedures in Juvenile Court vary from the criminal proceedings in adult court. _____, your date of birth is the 9th of January, 1953?

JUVENILE: Yes, sir.

THE COURT: And that makes you what, 16?

JUVENILE: Yes, sir.

THE COURT: All right, as long as he's under the age of 18, Mr. Daly, he's subject to the jurisdiction of the Juvenile Court.

MR. DALY: Well, I don't have any objection to the

jurisdiction of the Court, the only objection that I have is that there's no complaint which conforms to Constitutional procedures. Well, in other words, there is no matter brought in the name of the State of Minnesota as I see it, versus _____ as the defendant, and there's no offense set out. In other words, there's no --

THE COURT: (Interposing) Let me see the Complaint. As I read this petition, Mr. Daly, the petition in Juvenile Court is signed by Harold Westerberg, who, for your information, is employed by the Intake Division of the Department of Court Services. Under the Juvenile Code, The petition may be signed by any reputable person who has knowledge on information and belief of the violation of any particular ordinance, crime, state, federal or whatever the case might be, or delinquency act as defined under the Statute.

MR. DALY: Well, the only point I want to make here is that the usual procedure is not followed. In other words, for instance, in Municipal Court the Complaint has to be sworn to before a Judge or Magistrate and there must be a record made of whether the Magistrate has examined the complaining witness to determine if there is sufficient evidence to issue a type of warrant.

THE COURT: If you will take a look at the Juvenile Court law --

MR. DALY: (Interposing) Well, I'm familiar with it

and I claim it's unconstitutional.

THE COURT: Are you going to appeal the whole thing then and request a special hearing?

MR. DALY: Yes.

THE COURT: As such?

MR. DALY: As such.

(Whereupon a brief recess was taken.)

(Whereupon the Court reconvened.)

THE COURT: Let the record show this is the _____ matter again. Present now in Court is Mr. Leonard Brod, Assistant County Attorney, Hennepin County. Mr. Brod, for your information, Mr. Daly is appearing today supposedly on behalf of _____ in a matter of delinquency. He has filed with the Court a document which purports to be an Attorney in Fact and at Law, to act in all respects for _____. Mr. Daly, the County Attorney has advised me that pursuant to certain orders of the Supreme Court of the State of Minnesota, effective October 1, 1969, that you have been temporarily suspended from the practice of law, with leave to apply to the Supreme Court to protect the interests of any clients which you may have had pending prior to the first of October. Have you made such an application to the Supreme Court?

MR. DALY: No, not as yet.

THE COURT: Well, Mr. Daly, in view of that, I am going

to make the following Order: That I will not recognize you in this Court as an attorney at law representing this young man until such time as you can furnish the Court with the proper credentials from the Supreme Court of the State of Minnesota stating to this Court that you are duly licensed to practice law without any encumbrances whatsoever in the State of Minnesota. I certainly am not going to go against any orders regarding the status of any person, whether he be an attorney, a private citizen or otherwise, that order being in effect as of the present date. I am not going to try to infringe upon that Order of the Supreme Court of the State of Minnesota, so therefore, I am advising you that I will not recognize you in the Court, and I am not going to recognize you as the attorney for _____ and the papers which you have filed purporting to appoint you as attorney at law and in fact for _____. In my estimation it does not obviate or in any way nulify or infringe upon the order of the Supreme Court of Minnesota, so, therefore, that will be the Order of the Court insofar as you are concerned, Mr. Daly. I do feel compelled at this time to ask Mr. _____ whether he understands what I just said.

THE FATHER: Yes, sir, I do, Your Honor.

THE COURT: All right, now, until such time as Mr. Daly has the credentials which I have referred to from the Supreme Court of Minnesota, I am not going to recognize him in this Court.

THE FATHER: I don't understand, I mean our -- you know.

THE COURT: I'll put it to you in plain language, Mr. _____. Mr. Brod, I think this probably is a function which you can state on behalf of the State of Minnesota, you being Assistant County Attorney. Will you state it as simply as possible, in plain and ordinary language, as to what the Court has just ordered to Mr. _____.

MR. BROD: It's my understanding that the Juvenile Court only recognizes certain people to appear -- parties of interest and attorneys at law who are duly licensed to practice by the State of Minnesota or who are in good standing in the State of Minnesota. As of this date, pursuant to the Supreme Court ruling, Mr. Daly has been suspended from the practice of law, unless he makes application to perform a function as an attorney for a case which he is already involved, such as this one. He has not made that application, so therefore Judge Chapman is not required to recognize him as an attorney duly licensed to practice law.

THE FATHER: I see, but I hired you -- let's see, that was August what, second?

MR. BROD: Exactly, and the Court said that he has already been hired.

THE FATHER: Retainer fee and everything.

MR. BROD: Fine, fine, but the Court has allowed for that, but to protect you, if he is already involved in a case with which he has been paid a fee, he should make application to the

Court to wind up that case. He has not made such application.

MR. DALY: Well, you understand my position is that the client can appear on his own behalf. It's his prerogative to select his own agent.

THE COURT: I understand what you are talking about.

THE FATHER: I don't really follow it, myself.

THE COURT: I'll try to clear it up for you. Mr. Daly, by the Supreme Court --

THE FATHER: (Interposing) He cannot represent us?

THE COURT: He cannot act as attorney in our Court in the State of Minnesota until he has permission in writing from the Supreme Court. The Supreme Court of the State of Minnesota has suspended him from practicing law. He does have the right to apply to the Supreme Court to represent certain people, for instance, yourself, if you had paid Mr. Daly a retainer fee a month ago, let's say. He does have that right, to go over to the Supreme Court and ask the Supreme Court that he be allowed to represent you and your son, that being the matter which was pending, and you retained him prior to the date of this suspension. If the Supreme Court --

THE FATHER: (Interposing) When was the suspension, Your Honor, for him?

MR. DALY: As of today, but I say it's the client's privilege, and of course the client is the real party at interest.

THE COURT: The client can appear for himself pro se.

MR. DALY: Then he can select his own -- at least that's my position.

THE COURT: The Court is --

MR. DALY: (Interposing) Are you going to continue it then?

THE COURT: I'm advising you that I am going to continue the case, obviously for another arraignment. I'll give you approximately two weeks on the matter. That will be October 14th. During that time, Mr. _____, I am going to order you personally to appear again --

THE FATHER: (Interposing) Yes, sir.

THE COURT: --along with your son, and in the meantime, I'm going to give you, of course, sufficient time to retain the services of an attorney who is duly qualified and licensed to practice law in the State of Minnesota. I'm also giving Mr. Daly that period of time, two weeks, within which to apply to the Supreme Court if he so desires, to be admitted to practice law in this Court, in Juvenile Court, to represent your son. If he fails to make that application and if he fails to get a certification from the Supreme Court of Minnesota to that effect, he will not be able to practice law or represent you or your son in any capacity whatsoever.

THE FATHER: See, Your Honor, I didn't know nothing about this, you understand.

THE COURT: This is the reason why, Mr. _____, that

I've explained this to you, the reason why the County Attorney is here, this is the reason why I want to give you all the time in the world necessary to make up your own mind as to what you want to do. It is your prerogative, as Mr. Daly pointed out, to act as your own lawyer for your son.

THE FATHER: I'm no lawyer.

THE COURT: I understand that.

THE FATHER: I'm just a workingman.

THE COURT: Mr. _____, will you listen to me? I'm trying to explain what your rights are. You can act for yourself. Mr. Daly at this point cannot act for you. Under the law you have one or two alternatives. You can act for yourself as of the 14th of October, you can rely on Mr. Daly to apply to the Supreme Court for Mr. Daly to practice law in this Court only for this case, or you can go out and hire another attorney who is duly qualified to practice law. In any case --

THE FATHER: (Interposing) Well, ask Mr. Daly if he's going to do that, will you?

MR. DALY: Well, I'll take that up, but supposing I don't do that and suppose he refuses to take anybody else by me, then what?

THE COURT: Then I would assume, Mr. Daly, that normal legal processes would follow, which would entail subpoenas for the child, however, a subpoena will not be necessary in this case because I have personally ordered you and your son to appear

in this Court.

THE FATHER: At what time is that, Your Honor, sir?

THE COURT: You'll be notified by mail of the exact time. It will probably be in the morning, and it's up to you to appear.

THE FATHER: We most certainly will.

MR. CHAPMAN: To appear at that time either be prepared to represent yourself or have an attorney who's licensed to practice law. Whatever contractural relationship you and Mr. Daly have among yourselves, that's a matter between you and Mr. Daly.

THE FATHER: No, sir, he's got an office and we got a business out here in Savage. He's got an office there and I needed a lawyer, so I walked in and hired him, do you understand?

THE COURT: I understand that. This is why it's up to you and Mr. Daly to iron that out.

MR. DALY: Well, in any event, I was suspended without charges, trial, notice, hearing --

THE COURT: (Interposing) Mr. Daly, I don't intend to go into that. The order of the Supreme Court is outstanding and I'm respecting that order. However, because of the situation which presents itself at this time, and because obviously the father wants an attorney --

THE FATHER: (Interposing) Yes, Your Honor, I do, because I don't think this boy is guilty whatsoever on either charge.

THE COURT: Well, for the purpose of this arraignment only at this time and for the purpose of giving you whatever legal advice you think you might need or want, it is within my prerogative and within my power to appoint Legal Aid Society to represent your son, and that's what I'm going to do right now. Mr. Erlander is an attorney with Legal Aid Society. He's presently in Court, and I'm going to appoint him right now to advise both of you. The case, in any event, will be continued until the 14th of October and you will be in Court, sir, with a lawyer. Either it will be Legal Aid -- I don't know if you are qualified for Legal Aid Services.

THE FATHER: What do you mean, Your Honor, Legal Aid Services?

THE COURT: Legal Aid represents indigent people, poor people who cannot afford to pay.

THE FATHER: I can afford a lawyer.

THE COURT: Well, at least for the purpose of this particular period right now, let's say within the next half hour, I am appointing Mr. Erlander to explain to you and your son what this situation is all about so that you fully understand, and, Mr. Brod, I'm also ordering you and instructing you to help Mr. Erlander, if he so desires, to help in making this matter perfectly clear to Mr. _____.

MR. BROD: This is a traffic matter, Your Honor?

THE COURT: This is a delinquency petition, and -- let

me see the petition. The petition which has been filed in Juvenile Court on the 10th day of September on the act of delinquency, there are two of them which are alleged to have happened. That on or about August 3, 1969, drove an automobile at County Road 18 and West 82nd Street, Bloomington, while under the influence of alcohol. That is the one charge.

THE FATHER: Yes, sir.

THE COURT: The second charge is that on the same date, August the 3rd, operated a motor vehicle at County Road 18 and West 82nd Street, Bloomington, in a careless and heedless manner in disregard of the rights or safety of others or in a manner so as to endanger or be likely to endanger any person or property. That's the definition of careless driving, and those are the two acts of delinquency with which your son is being charged with in Juvenile Court. That, Mr. Brod is the nature of the petition. Mr. Erlander, that is the nature of the petition. I turn the file over to you, Mr. Erlander, so you can thoroughly familiarize yourself with this case. You can advise for the purpose of this one hearing only. Mr. _____, you ask Mr. Erlander the questions from now on.

THE FATHER: Okay, sir, but it was the 2nd or 3rd of August, wasn't it when he got the ticket?

THE COURT: It's alleged on the 3rd of August.

MR. DALY: I'll take it up with them and see what we can do.

* * * *

PETITIONER'S EXHIBIT 77
2/12/70 L.M.F.
42174

STATE OF MINNESOTA 566224 DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Faye V. Peterson,

Plaintiff,

-vs-

Palmer A. Peterson and
Paul L. Halvorson,
individually and as Trustee,

Defendants.

AMENDED
FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND
ORDER FOR JUDGMENT

The above-entitled matter came duly on for trial before the undersigned, one of the judges of the above-named court, without a jury, upon the complaint and cross-complaint of the parties, in December, 1962, in September and October, 1963, on April 20, 1964, and on August 13, 1964, in the Court house, City of Minneapolis, County of Hennepin, State of Minnesota.

James P. Rorris, Esq. and Robert W. Dygert, Esq., appeared as counsel for and in behalf of plaintiff; and Desmond F. Pratt, Esq., appeared as counsel for and in behalf of defendants.

The Court having heard and considered the evidence adduced by the parties, having read and considered the respective briefs of counsel, upon all the files and records herein, and the Court being fully advised in the premises, makes the following Findings of Fact, Conclusions of Law and Order for Judgment:

FINDINGS OF FACT

1. Plaintiff, Faye V. Peterson, is 44 years of age. Defendant Palmer A. Peterson is 47 years of age.

2. Plaintiff and defendant Palmer A. Peterson were married to each other on April 29, 1945, at LaCrosse, Wisconsin; and they are, and ever since said date have been, husband and wife.

3. Both plaintiff and defendant Palmer A. Peterson have resided in Hennepin County, Minnesota, for more than one year immediately

preceding the commencement of this action and the filing of the complaint.

4. During the marriage there were born to said parties a son, Palmer Brent Peterson, 19 years of age, having been born on November 17, 1945; a daughter, Sheri Faye Peterson, 12 years of age, having been born on August 9, 1952; and a son, Bradford Lee Peterson, 8 years of age, having been born on April 6, 1956.

5. Defendant Palmer A. Peterson has treated plaintiff in a cruel and inhuman manner. As a result thereof, plaintiff has suffered emotional strain to such an extent as to make continuation of the marriage relationship detrimental to the health and welfare of plaintiff. Plaintiff has at no time treated said defendant in a cruel and inhuman manner.

6. Plaintiff is a fit and proper person to have custody of the children of the parties.

7. Defendant Palmer A. Peterson is a medical doctor. For the calendar year 1962, he had a net income from the practice of medicine of approximately $34,000.00 before taxes. For the calendar year 1963, he had a net income, before taxes, of approximately $23,000.00.

8. Plaintiff is a housewife and has no separate income. The reasonable living expenses of plaintiff in the homestead now occupied by her are $350.00 per month; and a reasonable amount for the support and maintenance of the minor children herein is $500.00 per month.

9. Plaintiff and defendant Palmer A. Peterson are owners as joint tenants of a homestead located at 5117 Luverne Avenue, Minneapolis, Minnesota, the legal description of which is Lot 22, Block 3, Tarrymore Park, according to the plat on file and of record in the office of the Registrar of Titles of Hennepin County. The market value of said homestead is approximately $20,000, and the balance of a mortgage indebtedness as of September 23, 1963, was $5,943.00.

10. Said parties own household goods and furnishings located in said house.

11. Plaintiff is the owner of a 1950 Oldsmobile. Defendant Palmer A. Peterson is the owner of a 1962 Buick automobile.

12. There are two life insurance policies in force on the life of defendant Palmer A. Peterson, as follows:

Aid Association for Lutherans,	Policy No. 836322	$ 25,000
National Service Life, File No. F8143598	Policy No. V598	10,000

The beneficiary under each policy is Northwestern National Bank of Minneapolis, trustee under an insurance trust agreement dated August 22, 1958, entered into between defendant Palmer A. Peterson and said Bank for the benefit of plaintiff and the children of plaintiff and said defendant.

13. Defendant Palmer A. Peterson is the owner of a health and accident insurance policy which covers plaintiff and the children of said parties.

14. In connection with the practice of medicine, defendant Palmer A. Peterson, as of December 31, 1963, had accounts receivable from patients in excess of $75,000.

15. By a written instrument dated January 30, 1961, defendant Palmer A. Peterson as settlor created an inter vivos trust, with defendant Paul L. Halvorson as trustee, and the parents, brothers and sisters, and children of defendant Palmer A. Peterson as the beneficiaries of said trust. The settlor transferred to the trustee the sum of $10,000 in cash and securities of the approximate market value of $21,600, these assets constituting the trust estate. The creation of this trust and the transfer of assets to the trustee were without the knowledge or consent of plaintiff. By the creation of this trust defendant Palmer A. Peterson intended to defraud and deprive plaintiff of any interest or rights that she might have in the assets constituting the trust estate and to place said assets beyond the control of this Court in the event of a divorce action commenced by plaintiff.

16. In 1961 defendant Palmer A. Peterson withdrew in excess of $33,000 from savings accounts owned by him; and in 1962 and 1963 he cashed in certain insurance policies owned by him, receiving in excess of $3,000 therefor. Said defendant has not fully accounted

for the disposition of said savings or for the proceeds of said insurance policies, nor has said defendant fully accounted for the income which he derived from the practice of medicine over the years, particularly with respect to the calendar years 1961, 1962 and 1963.

17. On April 25, 1963, this Court entered an order directing defendant Palmer A. Peterson to pay to plaintiff, commencing May 1, 1963, the sum of $550.00 per month as temporary alimony and the sum of $300.00 per month as reasonable support for the minor children of the parties. Under said Order, $250.00 per month of the $550.00 per month allowed as temporary alimony was to be applied toward plaintiff's outstanding indebtedness of approximately $2,272.00 incurred in connection with living expenses for herself and the children. Had defendant Palmer A. Peterson complied with said Order through July, 1964, he would have paid a total of $11,272.00 in liquidation of plaintiff's indebtedness and as temporary alimony and support money. Said defendant paid $7,877.00 under said Order and is in arrears in the amount of $3,395.00.

CONCLUSIONS OF LAW

1. Plaintiff is entitled to an absolute divorce from defendant Palmer A. Peterson.

2. Plaintiff is entitled to permanent custody of the minor children of the parties, Palmer Brent Peterson, Sheri Faye Peterson and Bradford Lee Peterson, with reasonable visitation rights in defendant Palmer A. Peterson. Custody and visitation shall be under the supervision of the Hennepin County Department of Court Services.

3. Plaintiff is entitled to permanent alimony in the sum of $350.00 per month. The minor children of the parties are entitled to the sum of $500.00 per month as reasonable support for said children.

4. Plaintiff is entitled to the homestead owned by her and defendant Palmer A. Peterson, more fully described hereinabove.

5. Plaintiff is entitled to the household goods and furnishings located in said house.

6. Plaintiff is entitled to retain her 1950 Oldsmobile; and defendant Palmer A. Peterson is entitled to retain his 1962 Buick

automobile.

7. Plaintiff is entitled to have defendant Palmer A. Peterson maintain in full force and effect the two life insurance policies mentioned hereinabove and to have the proceeds of said life insurance disposed of pursuant to the insurance trust agreement mentioned hereinabove.

8. Plaintiff is entitled to have defendant Palmer A. Peterson maintain in full force and effect the health and accident insurance policy mentioned hereinabove.

9. Plaintiff is entitled to judgment against defendant Palmer A. Peterson in the sum of $3,395.00.

10. Plaintiff is entitled to have the trust hereinabove referred to set aside and to have the trustee distribute the trust assets in accordance with the directions of this Court.

IT IS ORDERED that Judgment be entered as follows:

1. Plaintiff be, and hereby is, granted an absolute divorce from defendant Palmer A. Peterson.

2. Permanent custody of the minor children of plaintiff and defendant Palmer A. Peterson be, and it hereby is, granted to plaintiff, with reasonable visitation rights in defendant Palmer A. Peterson, all subject to supervision of the Hennepin County Department of Court Services.

3. Defendant Palmer A. Peterson shall pay to plaintiff the sum of $350.00 per month as permanent alimony.

4. Defendant Palmer A. Peterson shall pay to plaintiff as reasonable support for the children of plaintiff and defendant Palmer A. Peterson the sum of $500.00 per month.

5. Plaintiff shall 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.

6. Plaintiff shall have title to the household goods and

furnishings located in said house, free and clear of any claim or interest therein by said defendant.

7. Plaintiff shall have title to the 1950 Oldsmobile, and said defendant shall have title to the 1962 Buick automobile.

8. Defendant Palmer A. Peterson shall 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 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. Said defendant shall maintain in full force and effect the health and accident policy hereinabove mentioned.

10. Judgment be entered in favor of plaintiff and against defendant Palmer A. Peterson in the sum of $3,395.00.

11. 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. 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. The Memorandum attached hereto be, and the same hereby is, made a part hereof.

14. The Court hereby orders that a hearing be held before the undersigned on December 15, 1964, at 11:00 A.M. or as soon thereafter as the matter can be heard, with respect to the following:

a. The nature and value of the trust assets now

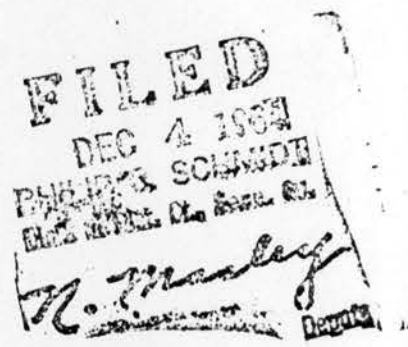
held by defendant Paul L. Halvorson and the distribution to be made thereof.

b. Attorney fees to be allowed to plaintiff.

BY THE COURT:

Irving R. Brand
District Judge

Dated: December 4, 1964.



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 - 5 1970
GERALD R. NELSON, Clerk of District Court
BY R. L. Anderson Deputy

MEMORANDUM

Having had marital difficulties with his wife for a number of years, which were evidenced, in part, by the commencement and dismissal of one or more divorce actions by his wife, defendant Peterson, (hereinafter referred to as defendant) in anticipation of a divorce action against him which would conceivably be carried through to a conclusion, beginning in 1961* carried out a systematic and deliberate plan of disposing of the bulk of his assets in an attempt to place them beyond the reach of his wife. The inter vivos trust involved herein was part and parcel of this plan.

In October, 1960, plaintiff told defendant that after the Christmas holidays she would divorce him.

Plaintiff and defendant were owners as joint tenants of a house, which was their homestead. It was a $20,000 home in which the parties had an equity of approximately $12,000 or $13,000. In his will, executed in 1958, defendant had devised the homestead to plaintiff. But in view of the nature of the ownership of the house, the will gave plaintiff no more than she had anyway. Because of the joint tenancy and because of plaintiff's dower rights, defendant was hardly in a position to deprive her of any rights she might have in his interest in the homestead. And so he made no attempt to transfer away his interest therein.

In 1958 with respect to life insurance policies in the face amount of $85,000 defendant executed an insurance trust agreement (Pl's Exh.R) under which the proceeds of the policies were to constitute the trust estate, the trustee was to pay the net income to plaintiff while living or until her remarriage and thereafter to the parties' children, and the trustee had discretion while plaintiff was living to invade the principal for the benefit of plaintiff or the children. However defendant reserved the right during his lifetime without

*A plan to reduce plaintiff's interest in his assets may have been conceived by defendant as early as 1958.

anyone's consent to receive the surrender value of any policy, to sell any policy, to change the beneficiary, or to revoke the agreement. In 1962 and 1963 defendant surrendered and received the cash values of policies in the face amount of $50,000, leaving $35,000 worth of insurance as the principal of that trust on his death.

As of January 1, 1961, defendant had cash in the bank totalling approximately $33,400, and securities worth about $21,600. During January he withdrew about $24,300. $14,300 of this sum, together with $6,000 withdrawn in February and $3,100 withdrawn in April, was disposed of by defendant. His testimony was that he paid living expenses and bills with this $23,400. Defendant did not otherwise account for this cash sum, and no part thereof was in existence at trial time.

Plaintiff commenced her divorce action on February 1, 1961. Attempts were made five or six times to serve defendant for several days prior thereto, but these were to no avail.

For short periods on several days just prior to January 30, but essentially on that day, defendant met with his attorney to iron out the final details of the inter vivos trust in question.* The trust agreement was dated January 30, 1961,** and while blank pages may have been signed on that date, it was not actually completed until some date subsequent thereto in February. The trust estate consisted of $10,000 in cash (part of the $33,400 withdrawn from defendant's savings accounts) and the $21,600 worth of securities, all of which were transferred to defendant's brother-in-law, the trustee, defendant Halvorson. Plaintiff was not a beneficiary of the trust. She was not told of it by defendant, and she had no knowledge thereof until some time later. The creation of the inter vivos trust completed

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* Defendant had talked to his attorney about a trust in 1958, the year in which plaintiff previously commenced a divorce action, and again in 1960. He had discussions about the instant trust on January 18, 1961.

** On January 30 defendant Halvorson knew a divorce action by plaintiff was contemplated. Presumably this information came to him from defendant Peterson.

the disposition by defendant of practically all of his assets.

The Court is of the view that the trust served no purpose other than to put defendant's assets beyond the reach of plaintiff.

Defendant testified that he created the trust because his wife could not manage money or handle finances, that he was concerned about his children's welfare, that the trust was primarily for his children and their education and secondarily for his parents and brothers and sisters. An inter vivos trust was absolutely unnecessary to carry out those purposes. During his lifetime defendant could have managed money matters instead of having his wife do so. He could have provided for his children and all of their needs, including their education, and he could have assisted his parents and his brothers and sisters, without a trust. He could have taken care of their needs after his death by means of a testamentary trust. Secondly, defendant's children were not the primary beneficiaries of the trust. The instrument itself contradicts defendant's testimony. Net income in the first instance was to go not tohis children, but rather to defendant's parents and his brother Hilmer. The trustee was empowered to invade principal for his parents and brother, not necessarily ahead of the children but at least on a par with them. It was only after the death of his parents and Hilmer that net income was payable to defendant's children. Finally, under the trust agreement defendant made his two sisters and his brother Melford beneficiaries of the trust to the extent that the trustee was authorized to invade principal for their "special needs" (without any definition of that phrase). Those persons were in no financial need.

Defendant further testified that he created the trust for income tax purposes. There was no testimony as to what tax bracket defendant was in for the year 1960 or 1961 or what the potential income of the trust would be, or what the tax saving to defendant would be if the income from the trust assets was taxed to the trust rather than to him. In fact, in the light of defendant's income and the actual

earnings of the trust assets, the tax saving was negligible. The Court is not persauded that the trust was set up by defendant as a tax saving device.

The actual administration of the trust is tangible evidence that defendant regarded the trust assets as his own and that he, rather than defendant Halvorson, was the trustee in fact. Halvorson testified that he didn't know the value of the securities held in trust and that at no time did he have discussions with the stock broker concerning what stocks should be sold or retained as trust assets. The broker had his discussions with defendant.* While the trustee was authorized to pay for benefits in addition to the basic support which defendant was obligated to provide for the children, the trustee at no time contacted plaintiff as to their needs.

In view of the foregoing the trust in question should be set aside and the trust assets treated as assets of defendant Peterson, subject to the jurisdiction of this Court.

I.R.B.

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* The account with the stock broker for some time after the creation of the trust was not in the name of the trust. It remained in the name of defendant (i.e. Peterson).

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

May 23, 1968.

AIR MAIL

Mr. Lambert Schuyler,
Heron House Publishers,
Bainbridge Island, Washington. 98110

Dear Mr. Schuyler:

This is in reply to your letter of May 10, 1968, in which you raised questions about Congressional support of the Federal Reserve Act when passed in 1913, and the earnings of Federal Reserve Banks.

The Federal Reserve Act, in the form in which it was signed into law by President Woodrow Wilson on December 23, 1913, was passed in the Senate by a vote of 43 to 25 (27 not voting) and in the House of Representatives by a vote of 298 to 60 (76 not voting). Carter Glass, then a member of the House of Representatives, voted for the bill. Nelson Aldrich, who spoke in opposition to the legislation, was no longer a member of the Senate in 1913 and thus did not vote on the bill.

Vanard says he did

The practice of paying Federal Reserve earnings to the U.S. Government (through the Treasury) had its origin in the Federal Reserve Act of 1913. The extent of the payments has changed from time to time.

It has averaged 6% from the start

Prior to 1933 the Act provided that each Federal Reserve Bank pay a franchise tax to the Government equal to 90 per cent of its net earnings after it had accumulated a surplus equal to its subscribed capital. Under the Banking Act of 1933 each Reserve Bank was required to pay an amount equal to one-half of its surplus on January 1, 1933 for capital stock of the Federal Deposit Insurance Corporation. These payments reduced the surplus of Reserve Banks to considerably less than one-half of their subscribed capital at that time. In order to permit them to rebuild their surplus accounts from future earnings, Congress eliminated the franchise tax.

By the end of 1946 the combined surplus of the Reserve Banks exceeded the subscribed capital. In April 1947 the Board of Governors decided to invoke the authority contained in Section 16 of the Federal Reserve Act to levy an interest charge on Federal Reserve notes issued

Respondent's Ex SS
2/16/70 [illegible]

42174

I stand in defence inst wild and groundless accu ons against the Fed. I also stand four-square against the loan business and its Deposit & Loan banking system, the same model system which wrecked ancient Babylon, Greece and Rome. Read my book. Incidentally, Rome went bankrupt in the same way we are doing WITHOUT THE HELP OF A FEDERAL RESERVE CENTRAL BANK!

Why be wrong, Mister? The Jew-promoted loan business is the wrecker of civiliza tions.

by the Federal Reserve Banks, thereby making it possible to transmit to the Treasury approximately 90 per cent of the earnings of each Reserve Bank after the payment of expenses and dividends. This procedure continued through 1958.

In 1959 the Board of Governors concluded that the maintenance of surplus at the level of subscribed capital would be appropriate under current conditions and the Treasury was paid the amount by which the surplus accounts exceeded subscribed capital. This procedure was followed until 1964 when the Board concluded that the growth in the capital and accumulated surplus of the Reserve Banks, as well as their net earnings, warranted reducing the surplus of the Reserve Banks to the level of paid-in rather than subscribed capital. (Member banks are required by Section 5 of the Federal Reserve Act, as amended, to subscribe to Reserve Bank stock in an amount equal to 6 per cent of their own capital and surplus and to pay in one-half of the subscribed amount.) For the years 1964 through 1967 the Reserve Banks have paid all their earnings to the Treasury after providing for expenses, the statutory dividend of 6 per cent to member banks (Section 7 of the Federal Reserve Act), and any additions necessary to maintain each Reserve Bank's surplus at the level of its paid-in capital.

As you requested, we are enclosing the most recent issue of "The Federal Reserve System, Purposes and Functions," in which there is a discussion of Reserve Bank earnings on pages 196-197. There is also enclosed a booklet on the history of the Federal Reserve Act, which we thought might be of interest.

We hope that the information and enclosures will be helpful to you.

Very truly yours,

Elizabeth L. Carmichael

Elizabeth L. Carmichael,
Assistant Secretary.

Enclosures

When I was a boy, gold coins were in wide circulation. I have carried many in my own pockets. The first National Bank Notes were in the form of warehouse receits for gold. As the ratio of gold coinage to bank deposits widened, it was necessary to abandon the pretense that all banknotes were redeemable. The U. S. went on an irredeemable legal tender basis during FDR's reign. The Fed Act of 1933 made most Govt. obligations eligible for conversion by the FED into currency. Since then Fed dollars have risen from about 4.5 billion to the present 45 billion---of necessity to keep pace with the enormous growth of demand deposits (now $600 billion!)

All you hare-brained critics of the Fed seem to ignore the fact that there is a fellow called Comptroller of the Currency serving actively and under Congress' supervision as a watchdog to make sure the Fed behaves properly. I am old enough to remember well the days when there were thousands of "National Banks of Issue" all issuing dollar currency. It was a mess. Since banks(or "a bank" of issue) of issue are essential under the loan principle, the Fed is fine, constitutional, too, despite your hog-wash court decision.

GERMAN PAPER-MONEY INFLATION
1920 to 1923



Ten-Mark German banknote of 1920, nominally worth $2.50.





Scrip Money

In the late 1920 bank panic, confidence vanished and German banks could no longer function. So cities printed their own local *emergency money, (NOTGELD)*——often in serial issues, like the above, to encourage collectors.



Notice the date on this hundred million Mark note: Berlin the 22nd of August, 1923. Twelve weeks later came the final demise of the Mark.

On November 15th, 1923, one U. S. dollar would purchase 25 of these notes!

To save press time, printed on only one side!

THE DOLLAR DEATH RATTLE

There is a beginning and an end to everything. We are witnessing the end of the dollar. It began in 1791 as a silver coin. It showed vigor in its youth, founded a money economy in this country that broke every record in history. But now it is sick, dying. The copper-clad quarter sounds the dollar's death rattle when you drop it on the table. At best it has a life-expectancy of two or three years.

It is not possible to devise a formula for a sound dollar by looking at the present scene, no more than you could reconstruct a hen's egg from the scrambled mess on your breakfast plate. Actually, the dollar today is not even a coin (find one if you can;) it is a banknote, a "Federal Reserve Note," it says. It is a "promissory note" which says you can swap it for another FED note, if you insist. Actually, it is paper with printing on it, like a handbill. Never mind what the print reads. It is meaningless.

One hears rumors that the GOVT is about to "call in" all silver coins. That may fool some people. A few might surrender the coins they are saving, thus showing their ignorance of what money really is. Those 1791 original silver dollars built trade because *possession denoted ownership*. The same is true today. It is because you *own* the coin in your hand that the GOVT cannot "call it in." Can it call in your dog?

If the coin in your hand is silver, it is valuable and can be traded for something equally valuable. Indeed, that is the best definition of money that you can figure. Money must have *intrinsic* value if it is to support trade. Which is to say that a banknote is not money; it may be a promise to *pay* money (coins), in which case it is no better than the bank's willingness or ability to hand the coins over to you. By that measure, however, the present FED "notes" pass in trade only because people have not yet begun to suspect them, to suspect that there is actually no *substance* to them, that they are redeemable in nothing but another piece of printed paper. Meanwhile, they circulate from habit, because of a public state of mind, of accepting without question that to which we are accustomed. Some call it confidence. Could it be indifference? Confidence can vanish between breakfast and lunch. Indifference could last a lot longer!

Consider "dollar debts." But how? Can you consider 1,300 billion of *anything?* If so, who are you? Another Einstein? At $35 to an ounce, that could represent one million, three hundred thousand *tons of gold*. Can you imagine that? Of course not! Ask yourself, how did something so big that you can't even imagine it ever have grown out of a shipload or two of silver dollars? Even all the FED "dollars" in existence are only a spot on 1,300 billion! A relatively few people *own* those 1,300 billion dollars in debts. Somebody else *owns* the mortgage on your house. Or banks own those debts, carry them as assets against deposits. Here, right here, we have stumbled upon the source of the trouble. "Deposit & Loan" banking has a built-in time bomb. You deposit dollars, the bank loans them. They are redeposited and reloaned. It is a never ending circle. Round and round. Debts agaist dollar deposits by the thousands, millions, tens of millions, billions, hundreds of billions. Reality is left behind. Depositors today claim 520 billion dollars in deposits which they can withdraw without advance notice; 520 billion dollars that are chiefly nothing but inkmarks on ledgers or balance sheets. A potentially explosive mass!

Having bugged out your eyes with this picture, let's glance at history. Ancient Rome, for instance. Rome's gold denarius coinage went round and round through the Deposit & Loan machine until the mere size of the debts on the one hand and the deposits on the other scared the gold coins into hiding. Next, as a substitute, silver coins. Same story. Debts payable in the silver denarius were declared payable in just half a silver denarius after the coins were cut in two. Then Diocletian in 296 A. D. issued silver-plated copper denarii; later, why bother to plate them? Still later the copper coins grew smaller and smaller until they disappeared altogether. End of the Roman Empire. Dark Age for a thousand years. War, barbarity, plague, famine, even cannibalism! Population of 100 million people shrank to ten million. No money (valuable coins,) no trade. No trade, no civilization. Simple, what? The money lender did it all. Smart fellow? Not so smart. He went down, too.

End of story. Coming end of dollar, also; end of our money economy. Painful. Very, very painful. You'll see.

LAMBERT SCHUYLER

Bainbridge Island, Washington, Nov. 28th 1965

* * * * *

If the loss of our silver coinage does not alarm you, then you have nerves of steel. Or maybe you have just finished a course in modern economics with special emphasis on monetary theory. Or maybe you work in a bank. To you I can only say, come back six months from now (here it is Christmas, 1965) and take another look at the reverse side of this page.

But meanwhile, if history and logic appeal to you, send a $5 FED banknote for two of my books. THE TOBOGGAN and the AXE present (1) the unhappy indictment of the loan business since Ancient Babylon and (2) the only conceivable way to restore sound dollars this side of communism.

THE TOBOGGAN—$3.50, THE AXE—$2.50—both books—$5.00
Postpaid from Heron House, Publishers, Bainbridge Island, Wash.

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Ten-Mark German banknote of 1920, nominally worth $2.50.





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CIVILIZATION HANGS ON IT!

The present credit-debt economy, successor to the erstwhile money economy, is now approaching the inflation or terminal stage. History tells us that an unbacked paper currency (for example: the *assignat* disaster that summoned Napoleon to rescue France, the 1923 collapse of the German mark, the printing presses that presently spell the doom of trade in Uruguay and Brazil) has a very short life expectancy—measured in months rather han in years or decades.

Both Pres. Johnson and Pres.-elect Nixon have rated inflation as our number one problem—but the emphasis is all on run-away *prices,* with little mention being made of the collapse of the dollar's value in trade. Doubtless there is fear in the minds of our money managers that frank discussion in public of the dollar's peril might precipitate a money panic.

It is extremely unwise to dismiss this threat with the thought that it can't happen here—simply because we have been assured that "modern monetary theory," cornerstone of "the new economics," precludes such a possibility; that the financial structure has been so fortified nd reinforced against the panic and chaos of runaway inflation that the dollar and its value stand today as impregnable.

Unfortunately—indeed, undeniably—the deposit-and-loan, deposit-and-loan, deposit-and-loan principle upon which the credit-debt economy stands is itself fallacious--contains, let us say, a built-in mistake.

Ask yourself: What was it that banished our money economy (our trading with gold and silver coinages) and forced upon us this credit-debt economy whereunder we use paper banknotes in trade *not as money*—but as "evidence of credit"? (How better could you describe the present paper legal-tender dollar?)

It was that very deposit-and-loan, deposit-and-loan merry-go-round, builder of debts and credits extraordinary, that so inflated the whole currency structure as to make a gold coin a prized possession—a silver dollar almost as valuable.

You mortgage your home at the bank and what do you get? A deposit slip entitling you to draw what is now called "check money." In a sense, your house has thus become "a part of the nation's money supply."

That, even to a blind man, is *inflation.* That, too, illustrates the inherent flaw—ineradicable, mind you—in the DEPOSIT & LOAN PRINCIPLE!

Present "demand-deposits" of every sort, (including all paper assets which are cashable on demand) total over $600 billion!—*that* against possibly $50 billion in "long green," Federal Reserve "evidence of credit" banknotes, popularly called "money."

Well, it is generally admitted that nervous people, worried over those ink-mark dollars that stand to their credit as deposits, are now drawing down their savings and cashing that cashable paper *and spending—wildly,* thus upsetting the best laid plans of the monetary theorists who have been thinking that they had everything under control, adjustable and predictable, completely responsive to higher taxes and, if needed, forced unemployment.

Could there be anything wrong with the new economics?—in spite of all that applied brain power?

Of course they are not yet at their rope's end. If cutting public spending everywhere—national, state, county and municipal, regardless of the effects on employment—doesn't halt inflation, they still have some tricks in reserve—like fixing prices the way France did in Napoleon's time when people had their heads lopped off for asking more than the official price for a loaf of bread! Then there are two more schemes that haven't yet been tried. The first is to abolish the gold standard in international settlements and extend the credit-debt economy, based upon paper ("paper gold" they call it) with the World Bank dishing out an international currency. This actually is not a promise of world monetary stability so much as a threat of world-wide debt enslavement!

Finally, another device is said to be in preparation domestically, namely, the "cashless society" whereunder every ordinary purchase would be handled by check and consummated at the bank by punchcard and special telephone wires, thereby transferring payment from buyer to seller with a computerized system of bookkeeping. A worker's wages would be credited to his bank account and he could spend them only by drawing checks against that account. This scheme was conceived by some genius as a means of preventing all depositors from demanding simultaneously their non-existent deposits *in cash!*

Then, of course, if these devices failed, someone would surely come up with something else!

The annoying factor in all these attempts to outlaw inflation as an economic disease is that the disease is not just incurable—for when we try to conquer it, it gets bigger. It is like the nuclear reactor that produces its own fuel—only this reaction connot be stopped....short of....who knows?

So-o-o....we know where the trouble lies. But do we dare admit knowing?

Suppose the loan business called for a complete replacement job?

What could we use in place of it?

There are a score of cracked-pot answers to that question; but before we go off the deep end, let's see if we can't make trash money work somehow!

One world-stirring event at a time, please! We made it to the moon and back, didn't we?

Sure!—we Americans are loaded with courage and ingenuity. But let's wait until after another Dark Age before we throw out the money lenders!

Only one such history has ever been written. Read it in
THE TOBOGGAN TO TERROR
by Lambert Schuyler
Cloth bound, 322 pages, indexed, illustrated
$4.00 post paid from Heron House, Publishers
Bainbridge Island, Wa. 98110

In this short essay, you have been told little that you didn't either know or suspect. But to be thoroughly convinced of the evil that lies within the money lending business, you must read a critical history of it, from its inception 5,000 years ago to its empire-wrecking record of the recent past.

Why is it that great problems are never solved by a committee or a congress—but always by an individual?

Definition: *CAMEL* A horse designed by a committee.