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STATE OF MINNESOTA
IN SUPREME COURT

A & J BUILDERS INC., PLAINTIFF APPELLANT

VS.

OLIVER HARMS, PRESIDENT OF THE LUTHERAN CHURCH, ET AL., DEFENDANT RESPONDENTS.

APPELLANTS BRIEF.

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STATEMENT OF FACT

This appeal arises out of an action commenced in the District Court in Dakota County, Minnesota, on or about April 10, 1968 by the Plaintiff, A & J Builders, against the Defendant, The Lutheran Church Missouri Synod, its President, Dr. Oliver Harms and other defendants.

This is essentially an action for damages resulting from an conspiracy to interfere with advantageous contractural and business relationships and a conspiracy to boycott and destroy and invade a contractural relationship to Plaintiff's damage.

The Complaint which is included herein as Appendix ____ on Page _____ is referred to in this Statement of Facts as though it had been set out in full.

In addition to the facts set forth in the Complaint, the Lutheran Church Missori Synod, a Missouri Corporation, is headquartered at the Lutheran Building, 210 North Broadway Street, St. Louis, Missouri, is a Continental Church organization having parishes and colleges throughout the Continental United States and Canada.

The Lutheran Church Missouri Synod is presided over by Dr. Oliver R. Harms, its Chairman, and a Board of Directors which consists of people from throughout the United States. Within the Lutheran Church Missouri Synod, it has its Division of Church Government, Division of Higher

Education, Division of Parish Education and Services, Division of Communications and Public Relations, Division of Church Literature, Division of Finance and Division of Controllership, all under its Board of Directors.

There are 34 Synodicil Districts, more or less, The District in Minnesota involved in this case is the Missouri South District of Bloomington Church, Missouri Synod, which is a Minnesota Corporation.

The Lutheran Church Missouri Synod owns colleges in major cities throughout the United States. The particular one involved in this case is Concordia College, located in St. Paul, Minnesota. The Concordia College of St. Paul, Minnesota is wholly owned by the parent corporation, the Lutheran Church, Missori Synod and is under management, direction and control of its President and Board of Control in St. Paul.

The Lutheran Church-Missouri Synod from its total church operations took in about $163,000,000.00 Dollars in 1962 alone from contributions.

The Defendant, Dr. Eugene Linse, is one of the Professors at Concordia College, St. Paul, Minnesota, and draws his paycheck from the Lutheran Church-Missouri Synod of St. Louis, Missouri, and is under the direct supervision, management, and control of the head office at St. Paul.

Linse is the agent in fact for the Lutheran Church-Missouri Synod. He is in charge of promoting their Public Relations. He is sort of a roving Pastor and does preaching work in various congregations whenever needed.

Dr. Linse is engaged in promotional work and was instrumental in promoting Ridge Lutheran Home, Inc.

Plaintiff herein is at all times material the owner of 113 acres of land in the Village of Burnsville which is plotted into a planned unit development and zoned for hospital and nursing home facilities.

Ridge Lutheran Home was incorporated under the Minnesota Non-Profit Corporation Act. Its purpose was to establish one or more Christian homes for the elderly and incapicated and provide for their medical, nursing and spiritual care. It was to acquire the title by purchase of the 113 acre tract of land owned by A & J Builders Inc., the Plaintiff and Appellant herein. The Ridge Corporation was to borrow money to pay for the land, building and construction costs. Eugene Linse Jr. was one of the incorporators of Ridge. There was to be a Board of not less than 5 directors who were charged with the management of the Corporation. IN the event of disolution or liquidation the assets of Ridge are to be distributed to the Minnesota South District of the Lutheran Church-Missouri Synod, a Minnesota Religious Corporation.

The nursing home, which was 70% complete when construction ceased was to have a Chapel built in part of it for Church services. The whole project was under the domination, direction and control of men in the employ and connected with the Lutheran Church,- Missouri Synod. Dr. Eugene Linse in engaging in the promotion of this project was was acting in the scope of his corporate authority and employment with the head organization of the Lutheran

Church-Missouri Synod. Linse's duties generally were as professor, director of recruitment, roving Minister and the promotion of good will generally for the Lutheran Church-Missouri Synod.

Ridge Lutheran Home, Inc. entered into a contract with A & J Builders to buy the property, which is a planned unit development, for the sum of $7,000.00 per acre. Plaintiff is also the General Contractor and was to receive ten percent over and above costs, as profit for putting up the building.

Ridge Lutheran Home, Inc. was in the main incorporated by men belonging to the Lutheran Church-Missouri Synod. The Incorporators, including Linse, set up a plan whereby they would sell Church Bonds to finance the purchase of the land and construction of the building. This was to be financed mainly through the sales of bonds to the parishioners of the Lutheran Church-Missouri Synod.

The Concordia Publishing House, St. Louis, Missouri, is the official publishing house for the Lutheran Church, Missouri Synod, and puts out its annual publication and a semi-monthly newspaper. The Concordia Publishing House is wholly owned by the Lutheran Church-Missouri Synod.

The Board of Directors of Ridge Lutheran Home, Inc. contracted with the Concordia Publishing House, whereby Concordia Publishing House agreed to run Ridge Lutheran Home's ad for the sale of Bonds in their newspaper. This had the effect of an endorsement by the Lutheran Church-Missouri Synod of the sale of these Bonds.

The Bond sales continued by Ridge Lutheran Home, Inc. One of the Directors, one Luther Gronseth, was hired to run the office for the salary of approximately $1,200.00 a month, plus expenses. An office secretary was hired, also.

Carl R. Anderson was the President of A & J Builders, Inc. and was also on the Board of Directors of Ridge Lutheran Home, Inc. and was its President and Executive Secretary. Anderson's duties were mainly to supervise the construction out on the job.

All went well in the sale of Bonds and the raising of money and the construction of the nursing home which was contemplated until the Summer of 1966 when Linse and Gronseth got greedy.

The Ridge Lutheran Home ad was run in the newspaper put out by the Concordia Publishing House, and the sales of Bonds proceeded well.

Plenty of money was coming in to complete the project. Along in the summer of 1966, the number of Directors on the Board was reduced from seven to four, and Luther Gronseth was putting pressure on Carl Anderson for an increase in salary from $14,000.00 a year to $27,000.00 a year. Eugene Linse was also now putting the pressure on Carl Anderson to raise Gronseth's salary. It leter developed that Linse, who was a fulltime Professor at Concordia College in St. Paul, and who was being paid a full salary by Lutheran Church-Missouri Synod, entered into a written agreement with Gronseth whereby Linse would receive one-third of any salary increase that he could effectuate for Gronseth.

About this time, Linse attempted to borrow $20,000.00 from Carl Anderson, and from time to time attempted to borrow other sums from Anderson. Anderson looked upon this as an attempted bribe and refused to give Linse any money whatsoever. Thereafter, Linse entered into a course of activity to thwart Bond sales through the Lutheran Church-Missouri Synod, and in November, 1966, caused the Concordia Publishing House to breach its Contract with Ridge Lutheran Home, Inc. He did this for the purpose of pressuring Anderson into submitting to his and Gronseth's demands. It was Linse's intent and all of his efforts were directed toward the end that the Bond sales for the building development would be cut off and that the project fail because Anderson would not give in to his demands for loans and money and the demands of Gronseth for increases of salary.

Linse used his influence as a Minister and Professor at Concordia College, and convinced other people in the head offices of the Lutheran Church-Missouri Synod to cut off the sale of bonds and acted against the best interests of the project and the Ridge Lutheran Home, Inc.

Continued friction arose between Linse and Gronseth on the one part and Anderson and Vinge on the other part. In August, 1967, Gronseth was fired by Anderson. Gronseth and Linse took all of the books from the Ridge Lutheran Home office, making it impossible for Ridge Lutheran Home, Inc. to function.

Thereafter on August 26, 1967, Carl R. Anderson resigned from the Board of Directors of Ridge Lutheran Home, Inc. and Julian Vinge also resigned at a later date. This left Luther C. Gronseth and Dr. Eugene Linse as the only two remaining members of the Board of Directors.

Gronseth and Linse made a feeble attempt to fill out the Board with other Board Members.

Linse's main purpose was to hire a lawyer, start suit and tie up the project.

No valid attempt was made by Linse and Gronseth to fill out the Board and go forward.

Plaintiff all the time demanded that Ridge Lutheran Home, Inc. raise funds and go forward.

Gronseth and Linse refused to obtain sufficient members to fill out the Board of Directors. Hyman Edelman, Attorney herein, started an action, and enjoined A & J Builders from cancelling the Contract which A & J Builders had with Ridge Lutheran Home, Inc.

Dakota County District Court entered an Order enjoining the cancellation of the Contract and set the Bond at a minimem sum. At the present time, this injunction still stands.

The status of the action in October, 1967, was that the project for the building of the nursing home -- that is, the building itself -- was about seventy per cent complete, and there was about

$15,000.00 in the account of Ridge Lutheran Home. This was turned over to Hyman Edelman as Trustee. Ridge, under the direction of Linse and Gronseth, started turning back money for sale of additional Bonds. They would not go forward with raising any additional money, and demanded an accounting from A & J Builders, which A & J agreed to give, and has given.

All of the monies expended have been accounted for by A & J Builders and Carl R. Anderson, yet to this day, Ridge Lutheran Home refuses to go forward with raising additional funds to complete this building; thus leaving A & J Builders in a position where they are enjoined from cancelling the Contract and cannot go forward with completion of the project and transfer the title and closing the sale. Ridge, under the direction of Gronseth, Linse and Edelman, will not raise any further funds for its completion.

It is Plaintiff's position that the whole project was caused to go under by the express fraud and conspiracy of Dr. Eugene Linse who was on the payroll of the Lutheran Church-Missouri Synod of St. Louis, Missouri, and by the conspiring efforts of Gronseth with him, together with the Minnesota South District Lutheran Church-Missouri Synod and various religious ministers, together with the parent organization, the Lutheran Church-Missouri Synod, and Hyman Edelman.

Their combined activities amount to nuisance, oppression and a conspiracy to induce a breach of contract and a conspiracy to interfere with advantageous relations in attempting to, in effect, steal the property.

Under the Minnesota Non-Profit Corporation Act, Ridge could not act unless it had three people on its Board of Directors.

At the time Edelman started the suit for Ridge, only Gronseth and Linse were on its Board of Directors.

Edelman started the suit for Ridge without lawful authority from Ridge.

There was no voluntary or involuntary dissolution of Ridge, yet Edelman caused a Receiver to be appointed for Ridge.

The Receiver continues in the illegal injunction at Edelman's insistance.

There is no authority in the law for what Edelman is doing.

Notwithstanding the fact that there has been a full accounting, Edelman still persists. He has knowingly joined in Linse's and Gronseth's fraud. He is in collusion with Linse and the Lutheran Church-Missouri Synod and is representing adverse interests. He claims to be representing the Bond holders, but is not.

No action to terminate was brought, pursuant to M.S.A. 317.62.

No voluntary dissolution is made, pursuant to M.S.A. 317.44.

ARGUMENT

1. ONE WHO, OTHERWISE THAN IN THE LEGITIMATE EXERCISE OF HIS OWN RIGHTS, INTERFERS, INVADES, INJURES, DESTROYS OR IN ANY WAY PROCURES THE BREACH OF A CONTRACT OR ADVANTAGEOUS BUSINESS RELATION, IS LIABLE FOR DAMAGES.

The law supports the above proposition. See 52 Am. Jur. on Torts Sections 42,43 and 44 set out as follows:

§ 42. Contractual Interests.—Although it is held in some jurisdictions that where negotiations are pending between two parties, which may or may not eventuate in a contract, a termination of such negotiations through the interference of a third person will not make the latter liable in damages therefor, the prevailing view is that the act of maliciously inducing a person not to enter into a contract with another, which he would otherwise have entered into, is actionable if damages result.[11] The weight of authority also supports the rule that an action will lie against a person who, otherwise than in a legitimate exercise of his own rights, procures the breach of a contract.[12] Such an action is regarded as an action ex delicto and not ex contractu.[13] Moreover, interference with contract relations includes not merely the procurement of the breach of contract, but all invasions of contract relations, including any act injuring or destroying persons or property which retards, makes more difficult, or prevents performance, or makes performance of a contract of less value to the promisee.[14]

§ 43. Services.—It is a general rule of law that one unlawfully interfering with another's right to services is liable for actual or compensatory damages in the same manner that he would be in case of the interference with any other property right.[15] There is no doubt, as a general rule, of the civil liability of a third person who maliciously entices a servant in the actual service of a master to desert and quit his service.[16] It is also well established that if a third person tortiously inflicts physical injury upon a servant of another, as a result of which the servant is prevented from performing the duties owing to his master, the latter may recover from such third person damages resulting to him.[17] A like principle has been applied in the case of one inflicting an injury upon an apprentice.[18] Other instances of causes of action for loss of services include cases of interference with the right of a husband to the services of his wife,[19] and with the right of a parent to the services of his child.[20]

§ 44. **Trade or Calling.**—There are certain relations affecting a man's trade, occupation, profession, or means of gaining a livelihood, interference with which by a stranger, may, under certain circumstances or conditions, result in liability wholly apart from any question of status or contract.[1] A study of the cases demonstrates, however, that although the courts may be in agreement as respects recognition of the principles involved, they frequently differ in practical applications of such principles.[2] In this respect, it is ordinarily held that competition in business, although carried to the extent of ruining a rival, is not actionable.[3] It has also been held that no action lies for procuring the sovereign of an independent nation to perform acts to destroy the business of a competitor.[4] The right of the servant to labor is also recog-

[11] See 30 Am Jur 83, INTERFERENCE, §§ 33 et seq.

[12] See 30 Am Jur 71, INTERFERENCE, §§ 19 et seq.

As to a landlord's cause of action against a person who induces a tenant to break his contract or abandon the leased premises, see 32 Am Jur 95, LANDLORD AND TENANT, § 85.

[13] See 1 Am Jur 444, ACTIONS, § 51.

[14] See 30 Am Jur 84, INTERFERENCE, § 36.

[15] Lawyer v Fritcher, 130 NY 239, 29 NE 267, 14 LRA 700, 27 Am St Rep 521

[16] See 30 Am Jur 58, INTERFERENCE, §§ 3 et seq.

As to an action for enticing a servant away from his master as one in tort, see 30 Am Jur 97, INTERFERENCE, § 50.

[17] See 35 Am Jur 958, MASTER AND SERVANT, §§ 530, 531.

[18] See 3 Am Jur 822, APPRENTICES, § 20.

[19] See 27 Am Jur 103, HUSBAND AND WIFE, § 504.

[20] See 39 Am Jur 717, PARENT AND CHILD, § 74; 47 Am Jur 660, SEDUCTION, §§ 64 et seq.

[1] See 30 Am Jur 85, INTERFERENCE, § 37.

See also infra, TRADEMARKES, TRADENAMES, AND UNFAIR COMPETITION.

As to interference with business through the creation of monopolies and combinations, see 36 Am Jur 473, MONOPOLIES, COMBINATIONS, AND RESTRAINTS OF TRADE.

[2] See 30 Am Jur 87, INTERFERENCE, §§ 38 et seq.

[3] See 30 Am Jur 91, INTERFERENCE, § 43.

[4] American Banana Co. v. United Fruit Co. 213 US 347, 53 L ed 826, 29 S Ct 511, 16 Ann Cas 1047.

See also McKee v. Hughes, 133 Tenn 455, 181 SW 930, LRA1916D 391, Ann Cas 1918A 459, holding that citizens are not liable in

Dr. Eugene Linse occupied a position of trust with the Lutheran Church-Missouri Synod and as a Director of Ridge Lutheran Home Inc. He had a position of superiority and influence with confidence reposed in him. As a Doctor of Divinity he had a superior confidence of the people in the head organization of the Lutheran Church-Missouri Synod. As a matter of fact they held and still hold him out as such. He would be the least suspect of obtaining any personal advantage for himself since he spends much of his time going around preaching nothing but good and eschewing evil.

There was fraud and deceit on the part of Linse and a breach of good faith. The law does not permit this. See 37 AM.JUR on Fraud and Deceit, Sections 14 & 15 set out as follows:

§ 14. Necessity of overt act.

A wrong done, as well as a person wronged, is implied in a fraudulent transaction.[8] The rule is well settled that a mere intent to commit a fraud, which has not resulted in any act injurious to the person intended to be defrauded, is not sufficient to constitute actual fraud.[9] The intent must be accompanied by acts done for the purpose of carrying it into effect,[10] or, in other words, must be acted out[11] by false representations, contrivances, or artifices, or by conduct which reasonably involves a false representation.[12] Fraud in law exists only when the acts upon which it is based carry in themselves inevitable evidence of it, independently of the motive of the actor.[13] In order for a person to be guilty of constructive fraud, there must be some act or omission on his part, or a breach of duty.[14] Fraud may be effected, however, by words, acts, or conduct,[15] by concealment,[16] or even by silence when there is a duty to speak.[17]

Fraud which induces nonaction where action would otherwise have been taken is held to be as culpable and actionable as fraud which induces action.[18]

§ 15. Relationship of parties; breach of duty or abuse of confidential or fiduciary relationship.

Although no privity of contract is required between a defrauded person and the defendant in order to maintain an action for fraud and deceit,[19] it has

7. See INCOMPETENT PERSONS (Rev ed, INSANE AND OTHER INCOMPETENT PERSONS §§ 101 et seq.).

8. People v Cook, 8 NY 67.

False pretenses of friendship in advising the sale of stock in a corporation and a threat of withdrawal of business from the corporation for refusal, when not effective, do not constitute a cause of action for tort. Green v Victor Talking Mach. Co. (CA2) 24 F2d 378, 59 ALR 1091.

9. Clarke v White, 12 Pet (US) 178, 9 L ed 1046; Adams v Schiffer, 11 Colo 15, 17 P 21 (holding that a contract otherwise unimpeachable is not affected by the mere intent of one party thereto to defraud the other at some future time; and that the mere fact that one who purchases an interest in land may have intended to use his position as co-owner to defraud the vendor in subsequent transactions with respect to the property does not constitute fraud); Sachs v Blewett, 206 Ind 151, 185 NE 856, 188 NE 674, 91 ALR 1285; Keller v Johnson, 11 Ind 337; Oswego Starch Factory v Lendrum, 57 Iowa 573, 10 NW 900; Costelo v Barnard, 190 Mass 260, 76 NE 599 (holding that one who makes a note purporting to be that of a third person, with intent to defraud any person to whom it may come, is not liable to a third person who takes it for value, merely because he negligently permits it to pass out of his custody and control); People v Cook, 8 NY 67; Bunn v Ahl, 29 Pa 387; Smith v Smith, 21 Pa 367; Swift v Rounds, 19 RI 527, 35 A 45.

10. Blankinship v Porter, 142 Kan 284, 47 P2d 72; People v Cook, 8 NY 67.

A mere authority to make representations to creditors, not carried out by representations actually made, is in no sense a fraud upon them. Bunn v Ahl, 29 Pa 387.

11. Blankinship v Porter, 142 Kan 284, 47 P2d 72; Costelo v Barnard, 190 Mass 260, 76 NE 599; Bunn v Ahl, 29 Pa 387 (holding that where a judgment is confessed with intent to defraud creditors, acts are done in pursuance of the intention—namely, the giving and receiving of the judgment); Smith v Smith, 21 Pa 367.

12. Blankinship v Porter, 142 Kan 284, 47 P2d 72; Costelo v Barnard, 190 Mass 260, 76 NE 599; Smith v Smith, 21 Pa 367.

13. Delaney v Valentine, 154 NY 692, 49 NE 65.

14. § 4, supra.

15. §§ 20 et seq., infra.

16. §§ 144 et seq., infra.

17. §§ 146 et seq., infra.

18. § 225, infra.

19. § 307, infra.

been authoritatively stated that there can be no fraud in law or in fact without a breach of some legal or equitable duty.[20] But fraud is often presumed or inferred where a confidential or fiduciary relationship exists between the parties to a transaction or contract.[1]

Constructive fraud often exists where the parties to a transaction have a special confidential or fiduciary relation which affords the power and means to one to take undue advantage of, or exercise undue influence over, the other.[2] A course of dealing between persons so situated is watched with extreme jealousy and solicitude; and if there is found the slightest trace of undue influence or unfair advantage, redress will be given to the injured party.[3] No part of the jurisdiction of the court is more useful than that which it exercises in watching and controlling transactions between parties standing in such a relation of confidence to each other.[4] Thus, where the relation between a vendor and the purchaser is of a confidential nature, a court of equity will carefully scrutinize transactions between them and grant relief where imposition is apparent.[5]

Where a confidential or fiduciary relationship exists, it is the duty of the person in whom the confidence is reposed to exercise the utmost good faith

20. Delaney v Valentine, 154 **NY** 692, 49 NE 65.

There can be no fraud if there is no duty. Northwest Realty Co. v Colling (**SD**) 147 NW2d 675.

In an exchange of property, the secret inducement of an unfaithful discharge of a duty of trust, to the loss of the party extending confidence, is an actionable fraud. Erickson v Frazier, 169 **Minn** 118, 210 NW 868.

1. §§ 441, 442, infra.

2. Quinn v Phipps, 93 **Fla** 805, 113 So 419, 54 ALR 1173; Wells v Wells, 197 **Ind** 236, 150 NE 361; McCowen, P. M. Co. v Short, 69 **Ind** App 466, 118 NE 538, 119 NE 216; Van Natta v Snyder, 98 **Kan** 102, 157 P 432; Highberger v Stiffler, 21 **Md** 338; White v Trotter, 14 Smedes & M (**Miss**) 30; Wood v Rabe, 96 **NY** 414; Cowee v Cornell, 75 **NY** 91; Foreman v Henry, 87 **Okla** 272, 210 P 1026; Thomas v Thomas, 27 **Okla** 784, 109 P 825, 113 P 1058; Darlington's Appeal, 86 **Pa** 512; Smith v Smith, 21 **Pa** 367; Pressley v Kemp, 16 **SC** 334; Poole v Camden, 79 **W Va** 310, 92 **SE** 454.

A party in a semiconfidential relationship who gains an advantage, by superior knowledge and artful silence, whereby he drives an exhorbitant and unconscionable bargain, is guilty of constructive fraud against which relief in equity will be granted. Gierth v Fidelity Trust Co. 93 **NJ** Eq 163, 115 A 397, 18 ALR 976, further holding that a chief accountant of a banking institution, who conceals from a depositor both the depositor's and his own connection with such institution and makes an agreement with such depositor, who has completely lost his memory, that he will disclose the whereabouts of the depositor's funds if he is given almost half the fund, by virtue of taking advantage of his semiconfidential position to the depositor in exacting the unconscionable bargain is guilty of constructive fraud against which a court of equity will grant relief by setting aside the agreement and allowing the depositor to recover any portion of the fund paid over, under the unconscionable contract, to the accountant or his accomplice transferee. Annotation: 18 ALR 979.

3. Howard v Howe (CA7) 61 **F2d** 577, cert den 289 **US** 731, 77 L ed 1480, 53 S Ct 527; Brasher v First Nat. Bank, 232 **Ala** 340, 168 So 42; Verner v Moseley, 221 **Ala** 36, 127 So 527; Gillespie v Holland, 40 **Ark** 28; Quinn v Phipps, 93 **Fla** 805, 113 So 419, 54 ALR 1173; Sachs v Blewett, 206 **Ind** 151, 185 NE 856, 188 NE 674, 91 ALR 1285; McCowen, P. M. Co. v Short, 69 **Ind** App 466, 118 NE 538, 119 NE 216; Baker v Otto, 180 **Md** 53, 22 A2d 924 (recognizing rule); Garvin v Williams, 44 **Mo** 465; Wood v Rabe, 96 **NY** 414; Berkmeyer v Kellerman, 32 **Ohio** St 239; Foreman v Henry, 87 **Okla** 272, 210 P 1026; Thomas v Thomas, 27 **Okla** 784, 109 P 825, 113 P 1058; Gilmore v Burch, 7 **Or** 374; Darlington's Appeal, 86 **Pa** 512; Jordan v Annex Corp. 109 **Va** 625, 64 SE 1050.

4. Voellmeck v Harding, 166 **Wash** 93, 6 P2d 373, 84 ALR 608.

Where a fiduciary relationship exists between the parties to an exchange, the court will scrutinize the transaction closely if there is any suggestion of fraud, concealment of information, profit, or advantage from the transaction. Westerbeck v Cannon, 5 **Wash** 2d 106, 104 P2d 918.

5. Patrick v Bowman, 149 **US** 411, 37 L ed 790, 13 S Ct 811, 866; Juzan v Toulmin, 9 **Ala** 662; Nichols v McCarthy, 53 **Conn** 299, 23 A 93; Smith v Townshend, 27 **Md** 368; Burch v Smith, 15 **Tex** 219.

in the transaction,[6] to make full and truthful disclosures of all material facts,[7] and to refrain from abusing such confidence by obtaining any advantage to himself at the expense of the confiding party.[8] Should he obtain such advantage he will not be permitted to retain the benefit, and the transaction will be set aside even though it could not have been impeached had no such relation existed,[9] whether the unconscionable advantage was obtained by misrepresentations,[10] concealment or suppression of material facts,[11] artifice,[12] or undue influence.[13]

A confidential relation must be shown to have existed at the time when it is claimed that a fraud has been committed by the violation of it,[14] but the termination of an artificial relation created by the operation of law or course of business, such as that of guardian and ward, attorney and client, and the like, does not necessarily put an end to the application of the rule, which will apply until the dominating influence has been completely removed.[15]

6. Ferguson v Lowery, 54 Ala 510; Weaver v Lapsley, 42 Ala 601; Colton v Stanford, 82 Cal 351, 23 P 16; Meldrum v Meldrum, 15 Colo 478, 24 P 1083; Caldwell v Davis, 10 Colo 481, 15 P 696; Garvin v Williams, 44 Mo 465; Beebe v James, 91 Mont 403, 8 P2d 803 (holding that where a confidential relationship exists between a vendor and a purchaser and confidence is imposed in the vendor, he is bound to exercise utmost good faith in the transaction and refrain from abusing the confidence reposed in him by obtaining advantage to himself to the detriment of the vendee); Vail v Vail, 233 NC 109, 63 SE2d 202; Dees v Dees, 169 Okla 598, 38 P2d 508; Foreman v Henry, 87 Okla 272, 210 P 1026; Darlington's Appeal, 86 Pa 512; Kline v Kline, 57 Pa 120; Black v Simpson, 94 SC 312, 77 SE 1023.

Practice Aids.—Allegation of confidential relationship in reliance on representation. 9 Am Jur Pl & Pr Forms, Fraud and Deceit, Form 9:486.1.

7. § 149, infra.

8. Noble v Moses Bros. 81 Ala 530, 1 So 217; Ferguson v Lowery, 54 Ala 510; Gillespie v Holland, 40 Ark 28; Colton v Stanford, 82 Cal 351, 23 P 16; Meldrum v Meldrum, 15 Colo 478, 24 P 1083; Caldwell v Davis, 10 Colo 481, 15 P 696; Yale Gas Stove Co. v Wilcox, 64 Conn 101, 29 A 303; Nichols v McCarthy, 53 Conn 299, 23 A 93; Whitesell v Strickler, 167 Ind 602, 78 NE 845; Highberger v Stiffler, 21 Md 338; Jacox v Jacox, 40 Mich 473; White v Trotter, 14 Smedes & M (Miss) 30; Egger v Egger, 225 Mo 116, 123 SW 928; Connecticut Mut. L. Ins. Co. v Smith, 117 Mo 261, 22 SW 623; Beebe v James, 91 Mont 403, 8 P2d 803; Fisher v Bishop, 108 NY 25, 15 NE 331; Wood v Rabe, 96 NY 414; Vail v Vail, 233 NC 109, 63 SE2d 202; Berkmeyer v Kellerman, 32 Ohio St 239; Long v Mulford, 17 Ohio St 484; Dees v Dees, 169 Okla 598, 38 P2d 508; Thomas v Thomas, 27 Okla 784, 109 P 825, 113 P 1058; Darlington's Appeal, 86 Pa 512; Kline v Kline, 57 Pa 120; Pressley v Kemp, 16 SC 334; Jordan v Annex Corp. 109 Va 625, 64 SE 1050.

9. Gray v Gray, 246 Ala 627, 22 So 2d 21; Gerson v Gerson, 179 Md 171, 20 A2d 567; Vail v Vail, 233 NC 109, 63 SE2d 202; Dees v Dees, 169 Okla 598, 38 P2d 508; Thomas v Thomas, 27 Okla 784, 109 P 825, 113 P 1058; Darlington's Appeal, 86 Pa 512.

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Central R. Co. v Kisch (Eng) LR 2 HL 99.

11. § 149, infra.

12. Vail v Vail, 233 NC 109, 63 SE2d 202; Foreman v Henry, 87 Okla 272, 210 P 1026; Thomas v Thomas, 27 Okla 784, 109 P 825, 113 P 1058.

13. Gray v Gray, 246 Ala 627, 22 So 2d 21; Foreman v Henry, 87 Okla 272, 210 P 1026.

14. Wells-Dickey Trust Co. v Lien, 164 Minn 307, 204 NW 950; Mallory v Leach, 35 Vt 156.

15. Ferguson v Lowery, 54 Ala 510; Garvin v Williams, 44 Mo 465.

The view has been taken that the confidential relationship which ordinarily exists between husband and wife does not necessarily vanish with the dissolution of the marriage ties, particularly where the postdivorce transaction relates to the maintenance or support of minor children. Barker v Barker, 75 ND 253, 27 NW2d 576, 171 ALR 447. Annotation: 171 ALR 455.

On the other hand, it has been held that a divorce was sufficient alone to dissolve the

A conflict in the evidence concerning the termination of a confidential relationship is to be determined by the jury.[16]

§ 16. — What constitutes fiduciary or confidential relationship.

The term "fiduciary or confidential relation" is a very broad one,[17] and courts of equity have carefully refrained from defining the particular instances of fiduciary relations in such a manner as to exclude other and perhaps new cases.[18]

The cases of parent and child, guardian and ward, trustee and cestui que trust, principal and agent, and attorney and client are familiar instances in which the principle of fiduciary relationship applies in its strictest sense.[19] Its operation, however, is not confined to the dealings and transactions between parties standing in these relations, but extends to all relations in which confidence is reposed, and in which dominion and influence resulting from such confidence may be exercised by one person over another.[20] It is settled generally that the principle extends to every possible case in which a fiduciary relation exists as a fact, in which there is confidence reposed on one side and a resulting superiority and influence on the other. The relation and the

confidential relationship that was presumed to exist during the marriage, especially where one or both of the divorcees enters into a new marriage. O'Melia v Adkins, 73 Cal App 2d 143, 166 P2d 298. Annotation: 171 ALR 456.

16. McDonough v Williams, 77 Ark 261, 92 SW 783.

17. Quinn v Phipps, 93 Fla 805, 113 So 419, 54 ALR 1173.

Some courts, in dealing with the question of fraud, indiscriminately use the terms "fiducial relation" and "confidential relation," referring to them as being synonymous with each other insofar as they affect the good-faith dealings between the parties to the relation. There is, however, a technical distinction between the two terms, the former being more correctly applicable to legal relationships between the parties, such as guardian and ward, administrator and heirs, trustee and cestui que trust, principal and agent, and other similar ones, while the latter includes them and also every other relationship wherein confidence is rightfully reposed and is exercised, among which is a situation involving superiority of knowledge on the part of the one seeking to uphold the contract, and confidence reposed in him by the other. Roberts v Parsons, 195 Ky 274, 242 SW 594.

18. Quinn v Phipps, 93 Fla 805, 113 So 419, 54 ALR 1173; Gerson v Gerson, 179 Md 171, 20 A2d 567; Voellmeck v Harding, 166 Wash 93, 6 P2d 373, 84 ALR 608.

19. Crawford v Crawford, 134 Ga 114, 67 SE 673; Baker v Otto, 180 Md 53, 22 A2d 924 (attorney and client); Re Estate of Svab, 8 Ohio App 2d 80, 37 Ohio Ops 2d 86, 220 NE2d 720 (parent and child; joint and survivorship bank account); Voellmeck v Harding, 166 Wash 93, 6 P2d 373, 84 ALR 608.

20. Shipman v Furniss, 69 Ala 555; Bolander v Thompson, 57 Cal App 2d 444, 134 P2d 924; Meldrum v Meldrum, 15 Colo 478, 24 P 1083; Quinn v Phipps, 93 Fla 805, 113 So 419, 54 ALR 1173; Swiney v Womack, 343 Ill 278, 175 NE 419; Whitesell v Strickler, 167 Ind 602, 78 NE 845; Gerson v Gerson, 179 Md 171, 20 A2d 567; White v Trotter, 14 Smedes & M (Miss) 30; Fisher v Bishop, 108 NY 25, 15 NE 331; Foreman v Henry, 87 Okla 272, 210 P 1026; Thomas v Thomas, 27 Okla 784, 109 P 825, 113 P 1058; Burgdorfer v Thielemann, 153 Or 354, 55 P2d 1122, 104 ALR 1407; Voellmeck v Harding, 166 Wash 93, 6 P2d 373, 84 ALR 608.

In Barker v Barker, 75 ND 253, 27 NW2d 576, 171 ALR 447, it was said that a relationship, known as confidential relations, may exist between parties to a transaction where, by reason of kinship or professional, business, social, or family relations, confidence is naturally inspired or in fact reasonably exists.

A man occupies a relation of trust and confidence toward a woman whom he is engaged to marry, and is bound to act fairly and in good faith in his dealings with her. Jekshewitz v Groswald, 265 Mass 413, 164 NE 609, 62 ALR 525; Eaton v Eaton, 233 Mass 351, 124 NE 37, 5 ALR 1426.

Where it is alleged that a bank has acted as the financial advisor of one of its depositors for many years, and that the latter has relied upon such advice, it is a sufficient allegation that a confidential relationship in regard to financial matters exists, and if proved, the bank is subject to the rules applicable to confidential relationships in general. Stewart v Phoenix Nat. Bank, 49 Ariz 34, 64 P2d 101; 15 Chicago-Kent L Rev 328.

2. A CORPORATION IS LIABLE FOR THE TORTS OF ITS AGENTS WHILE ACTING IN THE COURSE OF THEIR DUTIES.

A Corporation is liable for the torts of its agents. At all times material Linse was acting in the scope of his duties as an employee of the Lutheran Church-Missouri Synod. His act was the Act of the Head Synod.

See 19 Am Jur 2d, Corporations Sec. 1427 and 1428 set out as follows:

XXI. TORT AND CRIMINAL LIABILITY OF CORPORATIONS

A. Tort Liability

§ 1427. Generally.

Although the liability of a corporation for a tort seems to have been denied under the early common law,[12] the old idea that because a corporation is an artificial creature which has no "soul" it could not commit a tort may now be regarded as obsolete. At the present time it is universally recognized that ordinary private corporations may commit almost every kind of a tort and be held liable therefor, and that this liability may be enforced in the same manner as if the wrong complained of had been committed by an individual.[13] It is no defense to an action against a corporation for a tort to show that it is not authorized by its charter to do wrong.[14] Grants of privileges or powers to private corporations confer no license to use them in disregard of the private rights of others and with immunity for their invasion.[15]

The rule of respondeat superior within its proper scope is applicable to corporations.[16] The well-established general rule is that a corporation is liable for the torts and wrongful acts or omissions of its officers, agents, or employees acting within the scope of their authority or the course of their employment.[17]

10. Berkwitz v Humphrey (DC Ohio) 163 F Supp 78 (involving a deferred compensation unit plan).

11. See PENSIONS AND RETIREMENT FUNDS (1st ed § 21).

12. Orr v United States Bank, 1 Ohio 36.

13. Baltimore & P. R. Co. v Fifth Baptist Church, 108 US 317, 27 L ed 739, 2 S Ct 719; National Bank v Graham, 100 US 699, 25 L ed 750; Philadelphia, W. & B. R. Co. v Quigley, 21 How (US) 202, 16 L ed 73; Chicago, G. W. R. Co. v First M. E. Church (CA8) 102 F 85; White v Central Dispensary & Emergency Hospital, 69 App DC 122, 99 F2d 355, 119 ALR 1002; Jordan v Alabama, G. S. R. Co. 74 Ala 85; Goodspeed v East Haddam Bank, 22 Conn 530; Elmore v Drainage Comrs. 135 Ill 269, 25 NE 1010; Dorsey Mach. Co. v McCaffrey, 139 Ind 545, 38 NE 208; White v International Textbook Co. 173 Iowa 192, 155 NW 298; G. & H. Cattle Co. v Commonwealth, 312 Ky 315, 227 SW2d 420; Graham v St. Charles Street R. Co. 47 La Ann 214, 16 So 806; Carter v Howe Mach. Co. 51 Md 290; Nims v Mt. Hermon Boys' School, 160 Mass 177, 35 NE 776; Wachsmuth v Merchants' Nat. Bank, 96 Mich 426, 56 NW 9; Hilsdorf v St. Louis, 45 Mo 94; Hopkins v Atlantic & St. L. R. Co. 36 NH 9; Brokaw v New Jersey R. & Transp. Co. [illegible] Floorshoire Mercantile Co. 25 NM 632, 187 P 272, 40 ALR 199; Fishkill Sav. Inst. v National Bank, 80 NY 162; Hussey v Norfolk S. R. Co. 98 NC 34, 3 SE 923; Cleveland, C. & C. R. Co. v Keary, 3 Ohio St 201; Pennsylvania R. Co. v Vandiver, 42 Pa 365; State v Eastern Coal Co. 29 RI 254, 70 A 1; Williamson v Eastern Bldg. & L. Asso. 54 SC 582, 32 SE 765; Standard Oil Co. v State, 117 Tenn 618, 100 SW 705; West Virginia Transp. Co. v Standard Oil Co. 50 W Va 611, 40 SE 591.

14. Nims v Mt. Hermon Boys' School, 160 Mass 177, 35 NE 776.

15. Baltimore & P. R. Co. v Fifth Baptist Church, 108 US 317, 27 L ed 739, 2 S Ct 719; Chicago G. W. R. Co. v First M. E. Church (CA8) 102 F 85.

16. Southern Exp. Co. v Williamson, 66 Fla 286, 63 So 433.

17. United Mine Workers v Coronado Coal Co. 259 US 344, 66 L ed 975, 42 S Ct 570, 27 ALR 762; New York C. & H. R. R. Co. v United States, 212 US 481, 53 L ed 613, 29 S Ct 304; Washington Gaslight Co. v Lansden, 172 US 534, 43 L ed 543, 19 S Ct 296; Standard Oil Co. v Gunn, 234 Ala 598, 176 So 332; Maynard v Firemen's Fund Ins. Co. 34 Cal 48; Denver, S. P. & P. R. Co. v Conway, 8 Colo 1, 5 P 142; Goodspeed v East Haddam Bank, 22 Conn 530; Aetna L. Ins.

Accordingly, a corporation that entrusts a general duty to an agent is responsible to an injured person for damages flowing from the agent's wrongful act done in the course of his general authority, even though, in doing the particular act, the agent may have failed in his duty to his principal, and disobeyed its instructions.[18] The fact that the agent may have committed a crime does not relieve the corporation from civil liability for its agents' acts.[19] On the other hand, it is equally well settled, as a general proposition and apart from the ratification thereof by the corporation,[20] that the representations or acts of an officer or agent of a corporation neither bind it nor create a liability against it, unless the agent was at the time acting within the scope of his authority.[1]

In the determination of the liability of a corporation for a tort committed by its agent, the character of the corporation, its organization, the scope of the authority of the agent who committed the tort, and the character of the business in which he was employed must be taken into consideration.[2] Like-

Co. v Brewer, 56 App DC 283, 12 F2d 818, 46 ALR 1499; Savannah Electric Co. v Wheeler, 128 Ga 550, 58 SE 38; Boyd v Chicago & N. R. Co. 217 Ill 332, 75 NE 496; Pittsburgh, C. & St. L. R. Co. v Kirk, 102 Ind 399, 1 NE 849; Russell v American Rock Crusher Co. 181 Kan 891, 317 P2d 847; Pennsylvania Iron Works Co. v Henry Vogt Mach. Co. 139 Ky 497, 96 SW 551; Wisemore v First Nat. L. Ins. Co. 190 La 1011, 183 So 247; Lamm v Port Deposit Homestead Asso. 49 Md 233; Nims v Mt. Hermon Boys' School, 160 Mass 177, 35 NE 775; Engen v Merchants' & Mfrs. State Bank, 164 Minn 293, 204 NW 963, 43 ALR 610; State ex rel. Taylor v American Ins. Co. 355 Mo 1053, 200 SW2d 1; Swift & Co. v Bleise, 63 Neb 739, 89 NW 310; Hopkins v Atlantic & St. L. R. Co. 36 NH 9; McCann v Consolidated Traction Co. 59 NJL 481, 36 A 888; Archuleta v Floersheim Mercantile Co. 25 NM 632, 187 P 272, 40 ALR 199; Nowack v Metropolitan Street R. Co. 166 NY 433, 60 NE 32; Raper v McCrory-McLellan Corp. 259 NC 199, 130 SE 2d 281; Cincinnati, N. O. & T. P. R. Co. v Citizens' Nat. Bank, 56 Ohio St 351, 47 NE 249; Chicago, R. I. & P. R. Co. v De Vore, 43 Okla 534, 143 P 864; Erie City Iron Works v Barber, 106 Pa 125; Glavin v Rhode Island Hospital, 12 RI 411; Hypes v Southern R. Co. 82 SC 315, 64 SE 395; Cook v Houston Direct Nav. Co. 76 Tex 553, 13 SW 475; Bishop v Readsboro Chair Mfg. Co. 85 Vt 141, 81 A 454; Morse v Modern Woodmen, 166 Wis 194, 164 NW 829.

Annotation: 57 ALR 302.

The usual, but now unavailing, argument against the liability of corporations for torts is that corporations can do only what by law they are authorized to do, and cannot therefore invest anyone with authority to do wrong on their behalf, and hence, that courts are driven of necessity to deal with the individuals from whose acts the injuries result. Such premises would lead to conclusions at war with the interests of society in view of the vast multiplication of corporations and the variety of interests affected thereby. Illinois C. R. Co. v Read, 37 Ill 484; Hussey v Norfolk, S. R. Co. 98 NC 34, 3 SE 923; Standard Oil Co. v State, 117 Tenn 618, 100 SW 705; West Virginia Transp. Co. v Standard Oil Co. 50 W Va 611, 40 SE 591.

A corporation of a quasi-public nature can grant to others no immunity as to its franchises which it could not claim for itself; nor can it, in behalf of its creditors, free the franchises from being answerable, out of the revenues produced by their exercise, for torts committed in the use thereof, whether such torts are committed by the corporation itself or by others using the franchise with its consent. Green v Coast Line R. Co. 97 Ga 15, 24 SE 814.

A corporation may be held liable for the wrongful act of one wielding the whole executive power. Lake Shore & M. S. R. Co. v Prentice, 147 US 101, 37 L ed 97, 13 S Ct 261.

18. Pittsburgh, C. C. & St. L. R. Co. v Sullivan, 141 Ind 83, 40 NE 138.

19. State ex rel. Taylor v American Ins. Co. 355 Mo 1053, 200 SW2d 1.

20. § 1429, infra.

1. Washington Gaslight Co. v Lansden, 72 US 534, 43 Led 543, 19 S Ct 296; Choctaw Coal & Min. Co. v Lillich, 204 Ala 533, 86 So 383, 11 ALR 1014; St. Louis, I. M. & S. R. Co. v Hackett, 58 Ark 381, 24 SW 881; Ware v Barataria & L. Canal Co. 15 La 169; Central R. Co. v Brewer, 78 Md 394, 28 A 615; Morier v St. Paul, M. & M. R. Co. 31 Minn 351, 17 NW 952; Fairchild v New Orleans & N. E. R. Co. 60 Miss 931; Brookhouse v Union Pub. Co. 73 NH 368, 62 A 219; Sawyer v Norfolk & S. R. Co. 142 NC 1, 54 SE 793; Farmer's State Guaranty Bank v Cromwell, 70 Okla 199, 173 P 826, 1 ALR 684; Commercial Nat. Bank v First Nat. Bank, 97 Tex 536, 80 SW 601.

2. Hern v Iowa State Agri. Soc. 91 Iowa 97, 58 NW 1092.

wise, in consideration of the question whether the agent has the authority of the corporation so as to make it answerable for his act, the purposes for which the company was incorporated must not be overlooked.[3]

Of course, the individual by whom the tortious act is committed cannot himself escape liability on the ground that he was acting for the corporation. Such individual and the corporation are jointly liable and may be joined as defendants.[4]

The liability of a corporation for certain kinds of torts is discussed in the articles dealing specifically with such torts.[5] The liability of a parent corporation for the torts of its subsidiary is treated in an earlier section in this article.[6]

§ 1428. Torts requiring motive, intent, or malice.[7]

Formerly, it was thought that a corporation, being an artificial person, could not act from malice or have a malicious or other intent and therefore could not be liable for a tort which required a motive and intention.[8] It is now well settled, however, that a corporation may be liable for a tort or wrongful act of its officer or agent, although the wrongful character of the act is dependent upon motive or intent or upon the maliciousness or wantonness of the act involved.[9] The malice of the corporation consists in the motives which prompt

3. Gillett v Missouri Valley R. Co. 55 Mo 315, overld on other grounds Boogher v Life Asso. of America, 75 Mo 319; Brokaw v New Jersey R. & Transp. Co. 32 NJL 328; Commercial Nat. Bank, 97 Tex 536, 80 SW 601.

4. Aetna L. Ins. Co. v Brewer, 56 App DC 283, 12 F2d 818, 46 ALR 1499; Mayer v Thompson-Hutchison Bldg. Co. 104 Ala 611, 16 So 620; Russell v American Rock Crusher Co. 181 Kan 891, 317 P2d 847.

Annotation: 26 ALR2d 1037, § 5.

5. See 6 Am Jur 2d, ASSAULT AND BATTERY §§ 131 et seq.; 16 Am Jur 2d, CONSPIRACY § 47; 18 Am Jur 2d, CONVERSION § 125; FALSE IMPRISONMENT; LIBEL AND SLANDER; MALICIOUS PROSECUTION; TRESPASS.

6. § 717, supra.

7. As to the liability of corporations for exemplary or punitive damages, see DAMAGES (1st ed § 291).

8. Goodspeed v East Haddam Bank, 22 Conn 530 (stating but repudiating this view).

In the early case of Vanderbilt v Richmond Turnp. Co. 2 NY 479, it was held that a corporation is not liable for a tortious act committed wilfully and maliciously by its servant, without authority from the directors or other governing body, even though it was done under orders from the president and general manager.

9. Lake Shore & M. S. R. Co. v Prentice, 147 US 101, 37 L ed 97, 13 S Ct 261; Salt Lake City v Hollister, 118 US 256, 30 L ed 176, 6 S Ct 1055; Hindman v First Nat. Bank (CA6) 98 F 562; Jordan v Alabama G. S. R. Co. 74 Ala 85; St. Louis, I. M. & S. R. Co. v Hewlett, 52 Ark 291, 24 SW 881; Maynard of Georgia R. Co. v Brown, 113 Ga 414, 38 SE 989; Chicago, B. & Q. R. Co. v Dickson, 63 Ill 151; Pittsburgh, C. C. & St. L. R. Co. v Sullivan, 141 Ind 83, 40 NE 138; White v International Textbook Co. 173 Iowa 192, 155 NW 298; Wheeler & W. Mfg. Co. v Boyce, 36 Kan 350, 13 P 609; Carter v Howe Mach. Co. 51 Md 290; Reed v Home Sav. Bank, 130 Mass 443; Wachsmuth v Merchants' Nat. Bank, 96 Mich 426, 56 NW 9; Aldrich v Press Printing Co. 9 Minn 133, Gil 123; Rivers v Yazoo & M. Valley R. Co. 90 Miss 196, 43 So 471; State ex rel. Taylor v American Ins. Co. 355 Mo 1053, 200 SW2d 1; McDermott v Evening Journal Asso. 43 NJL 488; Sawyer v Norfolk & S. R. Co. 142 NC 1, 54 SE 793; Passenger R. Co. v Young, 21 Ohio St 518; Redding v South Carolina R. Co. 3 SC 1; West Virginia Transp. Co. v Standard Oil Co. 50 W Va 611, 40 SE 591; Craker v Chicago & N. W. R. Co. 36 Wis 657.

Certainly the directors of a corporation who constitute the controlling power of the corporation are not to be regarded merely as its agents or servants acting under a delegated authority; and the doctrine that principals are not responsible for the wilful misconduct of their agents cannot be applied to them. Goodspeed v East Haddam Bank, 22 Conn 530.

A corporation is liable for malicious acts of its president and general manager in permitting snow to slide from a roof of its building onto neighboring property to its injury. Bishop v Readsboro Chair Mfg. Co. 85 Vt 141, 81 A 454.

Uncontradicted evidence to the effect that an agent employed to pick up cars on unpaid notes was directed by the vice president of the defendant corporation to seize the plaintiff's car, and at the time of the seizure the agent notified police that the car, which was taken

the action of its representatives.[10] This is the rule even though the acts are unknown to the president, board of directors, or manager of the corporation.[11] Indeed, a corporation may be held liable for a tort wantonly and recklessly committed by an agent in the course of his employment, even though it is against the express orders of the principal.[12]

§ 1429. Ratification by corporation.[13]

Although the tort or wrongful act of an officer or agent of a corporation may be outside the scope of his authority, the corporation may nevertheless be liable for such act if it ratifies the act, for such ratification is equivalent to original authority.[14] For example, a corporation which ratifies a slander may be liable therefor.[15] So too, failure of a corporation, having notice that a libel has been published by one purporting to act on its behalf, to repudiate the act with reasonable promptness amounts to a ratification.[16] On the other hand, it has been held that ratification of the act of a street railway superintendent in arresting a passenger for putting counterfeit coin in the box for his fare is not shown by the fact that the president of the company, the superintendent, and the driver of the streetcar gave evidence against the person arrested.[17] Nor is ratification by an insurance company of a slander by its adjuster in settling a loss shown by the mere fact that it accepted the result, if there is nothing to show that the misconduct in any way induced the insured to enter into the settlement.[18]

§ 1430. Torts arising out of ultra vires transactions.

In several early cases, it was held that if a corporation engaged in an ultra vires transaction, it would not be liable for torts committed by its officers or agents while engaged therein.[19] This view, however, has since been completely

due the defendant, when in fact no such note existed, is sufficient to establish that the seizure of the car was made by authority of the corporation and justifies the jury in finding that the seizure was malicious. Wardman-Justice Motors v Petrie, 59 App DC 262, 39 F2d 512, 69 ALR 648.

Practice Aids.—Instruction to jury as to imputing malice of corporation's agent or employee to corporation. 6 Am Jur Pl & Pr Forms 6:742.1.

10. Goodspeed v East Haddam Bank, 22 Conn 530; Tutton v Olsen, 251 Mich 642, 232 NW 399.

11. State ex rel. Crow v Firemen's Fund Ins. Co. 152 Mo 1, 52 SW 595.

12. Lake Shore & M. S. R. Co. v Prentice, 147 US 101, 37 L ed 97, 13 S Ct 261.

13. As to the essentials of ratification of the acts of officers and agents generally, see §§ 1241 et seq., supra.

14. Choctaw Coal & Min. Co. v Lillich, 204 Ala 533, 86 So 383, 11 ALR 1014; Waters-Pierce Oil Co. v Bridwell, 103 Ark 345, 147 SW 64; Southern R. Co. v Chambers, 126 Ga 404, 55 SE 37 (recognizing rule); Pennsylvania Iron Works Co. v Henry Vogt Mach. Co. 139 Ky 497, 96 SW 551; Fogg v Boston Knobley Mountain Orchard Co. v People's Bank, 99 W Va 438, 129 SE 474, 48 ALR 459 (recognizing that corporation may ratify fraud of agent).

Annotation: 55 ALR2d 860, §§ 12, 13.

15. Waters-Pierce Oil Co. v Bridwell, 103 Ark 345, 147 SW 64.

Annotation: 55 ALR2d 860, §§ 12, 13.

16. Choctaw Coal & Min. Co. v Lillich, 204 Ala 533, 86 So 383, 11 ALR 1014; Pennsylvania Iron Works Co. v Henry Vogt Mach. Co. 139 Ky 497, 96 SW 551.

17. Central R. Co. v Brewer, 78 Md 394, 28 A 615.

18. Vowles v Yakish, 191 Iowa 368, 179 NW 117, 13 ALR 1132.

Annotation: 55 ALR2d 860, § 13.

19. Bathe v Decatur County Agri. Soc. 73 Iowa 11, 34 NW 484 (wherein an agricultural society undertook to run carriages to transport people to and from its fairgrounds); Weckler v First Nat. Bank, 42 Md 581.

Annotation: 57 ALR 305.

In Youngstown Park & F. Street R. Co. v Kessler, 84 Ohio St 74, 95 NE 509, it was held that a street railway corporation could not be held liable for damages for maliciously

3. RELIGIOUS CORPORATIONS ARE SUBJECT TO THE SAME LIABILITY FOR THE TORTS OF THEIR AGENTS AS OTHER CORPORATIONS.

Public policy in Minnesota and elsewhere generally does not favor exemption of Religious Corporations from the torts of their agents. See Mulliner v. Evangelischer Diakonniessenverein, 144 M. at 396 which is as follows:

> Defendant comes within the class commonly known as charitable corporations. The fact that its patients pay for their accommodations does not make it otherwise. The distinguishing facts are that it is partly endowed by donation, and that it is not conducted for purposes of gain. 5 R. C. L. p. 373; McInerny v. St. Luke's Hospital Assn. 122 Minn. 10, 141 N. W. 837, 46 L.R.A.(N.S.) 548; Parks v. Northwestern University, 218 Ill. 381, 75 N. E. 991, 2 L.R.A.(N.S.) 556, 4 Ann. Cas. 103.
>
> There are numerous carefully considered decisions holding that such a corporation is not responsible to a patient for the negligence of its employees. 5 R. C. L. 375; Union Pac. R. Co. v. Artist, 60 Fed. 365, 9 C. C. A. 14, 23 L.R.A. 581; Powers v. Mass. Homeopathic Hospital, 109 Fed. 294, 47 C. C. A. 122, 65 L.R.A. 372; Hearns v. Waterbury Hospital, 66 Conn. 98, 33 Atl. 595, 31 L.R.A. 224; McDonald v. Mass. Gen. Hospital, 120 Mass. 432, 21 Am. Rep. 529; Downes v. Harper Hospital, 101 Mich. 555, 60 N. W. 42, 25 L.R.A. 602, 45 Am. St. 427; Duncan v. Nebraska, etc. Assn. 92 Neb. 162, 137 N. W. 1120, 41 L.R.A. (N.S.) 973, Ann. Cas. 1913E, 1127; Taylor v. Protestant Hospital Assn. 85 Oh. St. 90, 96 N. E. 1089, 39 L.R.A.(N.S.) 427; Lindler v. Columbia Hospital, 98 S. C. 25, 81 S. E. 512. There are a less number which sustain the rule of liability. Tucker v. Mobile Inf. Assn. 191 Ala. 572, 68 South. 4, L.R.A. 1915D, 1167; University of Louisville v. Hammock, 127 Ky. 564, 106 S. W. 219, 14 L.R.A.(N.S.) 784, 128 Am. St. 355; Galvin v. Rock Island Hospital, 12 R. I. 411, 34 Am. Rep. 675; Gilbert v. Corp. of Trinity House, L. R. 17 Q. B. Div. 795. See dissenting opinion, Lindler v. Columbia Hospital, 98 S. C. 25, 32, 81 S. E. 512.
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> The precise question is not foreclosed by decisions of this court. We

are free to adopt the rule which seems to us the more just. We respect the precedent of decisions of other states for the light which their reasoning may throw upon the question. In our own opinion the rule of liability seems to us best and we adopt it. Briefly stated, these considerations influence us.

The doctrine of respondeat superior, that is, that a person or corporation shall respond for damages caused by the negligence of one of its employees in the course of his employment, is the rule. It is founded on the doctrine that what one does through another, he does himself. Morier v. St. Paul, M. & M. Ry. Co. 31 Minn. 351, 17 N. W. 952, 47 Am. Rep. 793. In general it is a salutary rule. If exception is to be made, there must appear affirmative ground for the exception.

In McInerny v. St. Luke's Hospital Assn. 122 Minn. 10, 141 N. W. 837, 46 L.R.A.(N.S.) 548, and Maki v. St. Luke's Hospital Assn. 122 Minn. 444, 142 N. W. 705, this court held that, in an action brought by an employee against a charitable hospital association, for damages for injury caused by contact with machinery not guarded as required by statute, the rule of respondeat superior applies. We do not find any satisfactory ground for distinction between liability for an act or omission which disobeys a statute and one which disobeys a rule of the common law, and it is difficult for us to find any just reason for distinction between liability to an employee and liability to a patient.

One reason given for the rule of nonliability to patients is that, when a person enters a charitable hospital, he enters into a relation which exempts the association from liability for negligence of its servants in ministering to him, or, in other words, he assumes the risk of injury from such negligence. See Powers v. Mass. Homeopathic Hospital, 109 Fed. 294, 47 C. C. A. 122, 65 L.R.A. 372; Bruce v. Central M. E. Church, 147 Mich. 230, 110 N. W. 951, 10 L.R.A.(N.S.) 74, 11 Ann. Cas. 150; Adams v. University Hospital, 122 Mo. App. 675, 99 S. W. 453. As a matter of fact, the patient who enters a hospital has no thought of anything of that kind. His thought is that the hospital affords better facilities for caring for him than he has elsewhere at his command, and we see no reason why the assumption of such a risk should be imposed upon him. The same principle would exempt the hospital doctor, yet such exemption is not generally sustained. DuBois v. Becker, 130 N. Y. 325, 29 N. E. 313, 14

L.R.A. 429, 27 Am. St. 529; Burnham v. Stilling, 76 N. H. 122, 79 Atl. 987; Peck v. Hutchinson, 88 Iowa, 320, 55 N. W. 511; Viita v. Fleming, 132 Minn. 128, 133, 155 N. W. 1077, L.R.A. 1916D, 644, Ann. Cas. 1917E, 678. Men are not exempt from the consequences of negligence though on a mission of mercy. Kellogg v. Church Charity Foundation, 128 App. Div. 214, 112 N. Y. Supp. 566.

Another reason given is that, to subject the hospital corporation to liability for negligence of its employees, would authorize the diversion of the funds intrusted to it from the purposes for which they were given. That contention applied with equal force in the McInerny case. We disposed of it there adversely to defendant's contention. We do not discuss it further, except to say that the same ground of exemption would exempt hospital corporations for the consequences of negligence in selecting employees. Yet it is generally conceded that they are not so exempt. 5 R. C. L. 378, and cases cited; McDonald v. Mass. Gen. Hospital, 120 Mass. 432, 21 Am. Rep. 529. The same ground of exemption would exempt them from liability to third persons for breach of contract or tort. Yet no such exemption is recognized. Roche v. St. John's Riverside Hospital, 160 N. Y. Supp. 401; Basabo v. Salvation Army, 85 Atl. 120; 5 R. C. L. 378. The same ground of exemption would exempt churches and other corporations maintained by public benefaction, but there is no such exemption. 23 R. C. L. 459; Bruce v. Central M. E. Church, 147 Mich. 230, 10 L.R.A.(N.S.) 74, 11 Ann. Cas. 150; Hordern v. Salvation Army, 199 N. Y. 233, 92 N. E. 626, 32 L.R.A.(N.S.) 62, 139 Am. St. 889; Davis v. Central Congregational Society, 129 Mass. 367, 37 Am. Rep. 368.

Another reason urged is that such corporations do not come within the main purpose of the rule of public policy which supports the doctrine of respondeat superior, because they derive no gain from the service rendered. This contention does not seem to us a just one. This corporation must administer its functions through agents as any other corporation does. It harms and benefits third parties exactly as they are harmed or benefited by others. To the person injured the loss is the same as though the injury had been sustained in a private hospital for gain. In this case, the deceased paid for the services he expected would be rendered, but this may not be a controlling fact. We do not believe that a policy of

irresponsibility best subserves the beneficent purposes for which the hospital is maintained. We do not approve the public policy, which would require the widow and children of deceased, rather than the corporation, to suffer the loss incurred through the fault of the corporation's employees, or, in other words, which would compel the persons damaged to contribute the amount of their loss to the purposes of even the most worthy corporation. We are of the opinion that public policy does not favor exemption from liability.

Order affirmed.

This is also the rule generally.See 45 Am Jur. on Religious societies Sec. 76. These Religious Corporations are also subject to the law of the land. The Head Synod reapes the benefits by way of non-taxable contributions and donations from such projects as was being constructed by Ridge Lutheran Home in this instance. It is in the best interest of the public and the law that they be held responsible for the acts of their crooked ministers and agents. As a discipline of Linse in this case they promoted him after full knowledge of what he done. The Heads of the Lutheran Church-Missouri Synod have joined in and ratified his thievery. Of course upon disolution the assets of Ridge are to go to the Lutheran Church-Missouri Synod so it is in their interest to steal the property if they can.

4. JOINT TORT FEASORS, WHETHER ACTING INDEPENDENTLY OR IN CONSPIRACY ARE LIABLE FOR ALL RESULTING DAMAGES.

A joint tort may be committed without any separate conbination or conspiracy. All who actively participate in any manner in the commission of a Tort, or who procure, command, direct advise or encourage, aid or abet its commission are jointly and severally liable therefore, even though they act indepently or without concert of action or common purpose, provided their several acts concur in tending to produce one resulting event. See Virtue vs. Creamery Package Manuafcturing Company 123 Minn. at 39 which is as follows:

16. There is still undetermined the question of common-law liability for malicious interference with the business of plaintiffs by misrepresentation, threats and malicious prosecution. This is a distinct and separate cause of action. The gist of the cause of action tried in the Federal courts under the Federal act was, "that the defendants entered into a contract or combination in restraint of trade which caused damage to plaintiffs." 227 U. S. 8, 38, 33 Sup. Ct. 202, 57 L. ed. 407. Combination in restraint of trade is not the gist of the common-law action of interference with business or of malicious prosecution.

Conspiracy and combination in restraint of trade are here alleged, but this allegation is of no importance, so far as respects the common-law causes and ground of action. Where an action in tort is brought against two or more, it is necessary, in order to recover against all of them, to prove concurrent acts of all. For this purpose, it may be important to establish the allegation of conspiracy or combination. But this is no part of the cause of action. If it turn out on the trial that only one was concerned, the plaintiff may still recover, the same as if such one had been sued alone. The conspiracy or combination is nothing, so far as sustaining the action goes; the foundation of it being the actual damage done to the party. Hutchins v. Hutchins, 7 Hill, 104; see also Cressy v. Republic Creosoting Co. 108 Minn. 349, 122 N. W. 484; Martin v. Leslie, 93 Ill. App. 56.

17. A joint tort is here alleged, but it seems hardly necessary to

say that there may be a joint tort of this sort, without the existence of any conspiracy or combination in restraint of trade. Flaherty v. Minneapolis & St. L. Ry. Co. 39 Minn. 328, 40 N. W. 160, 1 L.R.A. 680, 12 Am. St. 654; Fortmeyer v. National Biscuit Co. 116 Minn. 158, 133 N. W. 461, 37 L.R.A.(N.S.) 569; Cooley, Torts, *145, *156, *166; Mack v. Kelsey, 61 Vt. 399, 17 Atl. 780; Bath v. Metcalf, 145 Mass. 274, 14 N. E. 133, 1 Am. St. 455; Drake v. Stewart, 76 Fed. 140, 22 C. C. A. 104.

18. It will, of course, be observed that the false representations, which in part form the basis of this action, were all made by officers or agents of the Creamery Package Manufacturing Company, and that the malicious prosecution, which in part forms the basis of the action, was in a suit to which the Owatonna Manufacturing Company alone was a party. We are of the opinion that the evidence which we have above detailed, together with other circumstances of less importance disclosed by the evidence, is sufficient to go to the jury upon the question of liability of both defendants for both classes of acts, under the rule which is well recognized that all who actively participate in any manner in the commission of a tort, or who procure, command, direct, advise, encourage, aid, or abet its commission, or who ratify it after it is done, are jointly and severally liable therefor, Cooley, Torts, *166, Mack v. Kelsey, 61 Vt. 399, 401, 402, 17 Atl. 780, even though they act independently and without concert of action or common purpose, provided their several acts concur in tending to produce one resulting event. Flaherty v. Minneapolis & St. L. Ry. Co. supra, Mayberry v. Northern Pacific Ry. Co. 100 Minn. 79, 110 N. W. 356, 12 L.R.A.(N.S.) 675, 10 Ann. Cas. 754; Fortmeyer v. National Biscuit Co. 116 Minn. 158, 133 N. W. 461; see also Sloggy v. Dilworth, 38 Minn. 179, 36 N. W. 451, 8 Am. St. 656.

We have already indicated that there must be a new trial, because of submission of the claim of malicious prosecution of the infringement suit instituted in the name of the Creamery Package Manufacturing Company, and because the evidence is insufficient as to want of probable cause for prosecution of the suit instituted in the name of the Owatonna Manufacturing Company. There were other substantial errors in the case.

The Complaint alleges facts which brings the case within the above rule as to all Defendants.

5. AN ATTORNEY IS LIABLE WHEN HE INSTITUTES PROCEEDINGS WITHOUT AUTHORITY OR WHERE HE ACTS DISHONESTLY WITH SOME SINISTER IMPROPER PURPOSE OF HIS OWN.

For the liability of an Attorney, Hyman Edelman and his partners in this Case, See Dunnell Digest Section 675 which is set out as follows:

675. Liability to third parties.

An attorney is liable to third parties only where he institutes proceedings without authority from his client, or where he and his client fraudulently conspire to do an illegal act, or where he acts dishonestly, with some sinister view or for some improper purpose of his own which the law considers malicious.[50] In the performance of his duties to his client, an attorney enjoys immunity from liability to a third person in so far as he does not materially depart from his character as a quasi-judicial officer charged with responsibility for the administration of justice.[51] An attorney is personally liable to a third party if he maliciously participates with others in an abuse of process or if he maliciously encourages and induces another to act as his instrumentality in committing an act constituting an abuse of process.[52] Assuming the joint existence of the essential element of malice and want of probable cause, an action for damages for malicious prosecution lies against an attorney if in instituting the proceedings he knew of his client's malicious motives or if he himself was actuated by malice; and then only if, in addition, he did not have, upon the disclosure of alleged facts made by the client and by him accepted in good faith as true, a reasonable basis for believing there was a probable cause for the prosecution, or if he otherwise had knowledge showing an absence of probable cause.[53]

Liability of attorney for false imprisonment.[54]

Liability on contracts made by attorney with third parties in the interest of his client.[55]

50. Farmer v. Crosby (1890) 43 Minn. 459, 45 N. W. 866. See Barry v. McGrade (1869) 14 Minn. 163(Gil. 126).

51. Hoppe v. Klapperich (1947) 224 Minn. 224, 28 N. W. (2d) 780, 173 A. L. R. 819.

52. Hoppe v. Klapperich (1947) 224 Minn. 224, 28 N. W. (2d) 780, 173 A. L. R. 819.

53. Hoppe v. Klapperich (1947) 224 Minn. 224, 28 N. W. (2d) 780, 173 A. L. R. 819.

54. Vernes v. Phillips (1935) 266 N. Y. 298, 194 N. E. 762.

55. 100 A. L. R. 533.

In this Case Hyman Edelman, attempting to act as Attorney for Ridge Luther Home started a law suit without authority from the lawful Board of Directors of Ridge Lutheran Home. There were only two persons on the Board of Ridge and there is still only two on Ridges Board of Directors. Anderson is enjoined by Edelman's unlawful activity. MSA 317.20 requires at least 3 directors to manage the business of the Corporation. See Appendix___. Edelman caused a receiver to be appointed without a voluntary or involuntary disolution of the Ridge Lutheran Home Inc. That is a prerequisite under 317.45 and 317.62.

The actions of the Receiver are also completely without jurisdiction, without authority of law and without authority from Ridge Lutheran Home.

Edelman is also attempting to represent the Bondholders whose interest conflict with Eugene Linse and also Ridge Lutheran Home, all without authority of the Bondholders. He has made a nuisance out of himself generally.

The project really came to a stand still when Edelman arived on the scene. He is also liable to plaintiff under Title 42 USC section 1983.

Edelman started the suit and has been instrumental in depriving Plaintiff of its property without authority from Ridge Lutheran Home Inc. He and his partners are liable. For the liability of an Attorney see also Hoppe vs. Klappernick, 224 Minn. 224.

CONCLUSION

It was error for the Court to grant a Summary Judgment with prejudice in this case. The Complaint states a cause of action. The Complaint must be taken in the most favorable light to Plaintiff.

Plaintiff respectfully requests that the Supreme Court reverse the Judgements entered by the District Court and that the action be remanded to the District Court for trial.

Respectfully submitted,

Feb. 24,1969.

JEROME DALY
APPELLANT'S ATTORNEY
28 EAST MINNESOTA STREET
SAVAGE,MINNESTOA

29.

APPENDIX I
EXHIBIT "1"

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF DAKOTA FIRST JUDICIAL DISTRICT

A & J Builders, Inc.,

Plaintiff,

Vs. COMPLAINT

Oliver Harms, President of the Lutheran Church, Missouri Synod, Minnesota South District of Missouri Synod Lutheran Church, Ridge Lutheran Home Inc., Concordia College of St. Paul, Minn. and Dr. Eugene Linse, Oscar J. Husby, Individually and as receiver of Ridge Lutheran Home Inc. Caroline F. Siebert, Emma Steffens, Providence Church Plan Inc., of Atlanta, Georgia, and its agent and servant, Joseph Webb, Dirk Ammerman, Martin W. Liske, Edward J. Mahnke, Rev. Harold Sweigert, Rev. August Hauptmann, Howard E. Pleuss, Howard A. Burgdorf, R.K.B. Studios, Luther C. Gronseth, individually and as Treasurer and Director of Ridge Lutheran Home Inc., Douglas Seltz, United States Fidelity and Guarantee Co., Human Edelman and the Law Office Partnership of Samuel H. Maslon, Hyman Edelman, Sheldon Kaplan, Marvin Borman, Irving R. Brand, John C. McNulty, Samuel L. Kaplan, Ralph Strangis, Stephen B. Swartz, Harvey F. Kaplan, James B. Druck, Ronald G. Valentine, Richard Shors and the First National Bank of Hudson, Wisconsin, The Lutheran Church-Missouri Synod and Concordia Publishing House of St. Louis, Missouri,

Defendants.

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

I.

That Plaintiff is a General Contracting firm doing business in the Village of Burnsville, Minnesota, developing property known as the Ridges, a Plan Unit Development at 138th Street and Nicollet Ave., in Burnsville, Minnesota, all consisting of about 113 acres of land in Burnsville, Minnesota, at all times herein material owned free and clear by A. & J. Builders and valued at a price in excess of $7,000.00 per acre.

II.

That Defendant Ridge Lutheran Home, Inc., is a Minnesota Non-profit Religious Corporation pursuant to Chapters 315 and 317 of Statutes of Minnesota. A copy of the Articles of Ridge are attached hereto and made a part hereof as though set out in full, which articles are dated January 22, 1965.

III.

That the Defendant Ridge Lutheran Home, Inc., was organized, created, founded and existed under the management, direction and control of the parent and principal Religious association and Corporation, the Defendant, the Minnesota South District of the Lutheran Church-Missouri Synod, a Minnesota Religious Corporation and its agents and servants, Concordia College of St. Paul, and Dr. Eugene Linse, Rev., Doctor and Professor thereof, Emma Steffens, Joseph Webb, Martin Liske, Edward J. Mahnke, Sweigert Hauptmann,

Douglas Seltz, Howard Pleuss, Howard A. Bergdorf and R.K.B. Studios and Luther C. Gronseth and their agents and servants and others acting under their direction, management and control.

IV.

That Plaintiff on April 26, 1966, is a Corporation that was managed by its directors and owners Carl Anderson and his wife Mary Anderson and Julian Vinge. That after a full disclosure by the Board of Directors of Ridge Lutheran Home, and the Defendants Minnesota South District of Missouri Synod Lutheran Church its agents and servants and to the Defendant Missouri Synod Lutheran Church of St. Louis, Mo., its agents and servants, Plaintiff entered into a Contract with Defendant Ridge Lutheran Home, Inc., on April 26, 1966, a copy of which is attached hereto as though set out in full.

V.

That the Defendant, The Minnesota South District of the Lutheran Church - Missouri Synod is a subsidiary Religious Corporation of Missouri Synod of St. Louis, Mo., and under its management, direction and control. That the Missouri Synod is the prindipal of all the Religious Defendants named herein.

That the Defendant Missouri Synod and the Minnesota South District of the Lutheran Church Missouri Synod are set up and created and existing under the presense that they are non-profit religious charitable organizations whereas in truth and in fact they are set up and maintained for purposes of plunder, gain and profit

to themselves and their Heads, Reverands, Doctors and Ministers and Professors.

That the Defendant Concordia Publishing House of St. Louis, Mo. is the publisher of a paper named, "The Lutheran Witness Reporter", which newspaper is an agent for and is under the management, direction and control of the Defendant Lutheran Church - Missouri Synod of St. Louis, Mo.

Using a tool, fear, threats, fraud and extortion, these Lutheran Churches and their organizations, contrary to the Thirteenth Amendment to the Constitution of the United States, maintain themselves as humane inventions, arrogating attributes of Deity to themselves for the purpose of terrifying the human race to the condition of being thralls, servants and slaves to monopolize power and profit to themselves, contrary to the express terms of the Declaration of Independance and the Constitution of the United States.

That by their plan and design, Defendants, their agents and servants have subjected Plaintiff to their wrongful and unlawful activity to Plaintiff's damage as is hereinafter alleged..

VI.

That after said Ridge Lutheran Home, Inc., was started and after Plaintiff attempted to carry out its contract, express or implied and before and after the construction of a nursing facility building was started on Plaintiff's property by Plaintiff, the Defendant's,

their agents and servants, entered into a long train of abuses, injuries, ultra vires acts, fraudulent conduct, unlawful acts and usurpations evincing a plan and design to reduce Plaintiff and the Board of Directors under absolute depotism and tyranny for purposes of causing a breach and interference of Plaintiff's Contract and theft of Plaintiff's personal and real property.

That on and before January 1, 1968, the Defendant Ridge Lutheran Home, Inc., while under the management, direction and control of other Defendants named and their agents and servants caused the contract heretofore referred to, breached to plaintiff's damage in the sum of $6,000,000.00.

That this cause of action is based upon an unlawful interference with Contract relations, fraud, breach of Contract nuisance and deprivation of rights secured by the Declaration of Independence and the Constitution of the United States and all laws passed pursuant thereto including negligence in the selection, management and control of its agents.

That the Defendants and each of them actively participated in the Commission of the unlawful acts set out in this Complaint and each of them actively participated in the deprivation of Plaintiff's liberty and property and rights including Contract rights and further procured commanded, directed, advised, encouraged, aided and abetted its commission or ratified it after it was done. That some of the Defendants acted independently, but always with

Providence Church Plan whereby Providence Church Plan would provide a million and a half dollars worth of church bonds for Ridge Lutheran Home for the cost of $26,000.00.

IX.

That the defendant Luther Gronseth had a secret agreement with defendant Joseph Webb whereby he was to obtain $5,000.00 secret provit from the sale of these bonds to defendant Ridge Lutheran Home.

X.

That Defendant Gronseth was also engaged in similar activities with other non-profit Lutheran groups.

XI.

That the defendant Douglas Seltz, attorney for Lutheran Church, Missori Synod, South District brought suit on behalf of Providence Church Plan and secretly for the Missouri Synod, south district all acting in collusion and garnished approximately $45,000.00 of monies belonging to defendant Ridge Lutheran Homes, which monies were rightfully owing to plaintiff for work being performed and for the payment of property being purchased from plaintiff and built by plaintiff.

common design and intent, their several unlawful acts concurred in obtaining to produce one resulting event -- the imposition of depotism, tyranny and theft upon Plaintiff and its property. Defendants are at all times acting in unlawful collusion and common design to conspire to damage plaintiff and its Board of Directors; or the Defendants and each of them ratified said wrongful acts after they were perpetrated and joined in along the way for their own personal profit and gain and to satisfy their own malicious motives at the expense of Plaintiff's rights, all to plaintiff's damage.

VII.

That the defendant, Joseph Webb is the local Minnesota agent for the defendant Providence Church Plan Inc. of Atlanta, Georgia. That defendant Providence Church Plan, Inc. was in the business of providing bonds and plans for bonding for the financing of church projects for the Lutheran Churches named as defendants herein. That the defendant Rev. Joseph Webb is also a minister.

VIII.

That the defendant Luther Gronseth is on the original managing board of directors of Ridge Lutheran Home and is also at all times herein material employed by the defendant Providence Church Plan Inc. and Joseph Webb. That unbeknown to and without authority of the board of directors of Ridge Lutheran Home, defendant Luther Gronseth secretly contracted with defendants Joseph Webb and

XII

That the defendants, Luther Gronseth and Joseph Webb conspired to get defendant, Ridge Lutheran Home into the bonding program before proper board action was taken by Ridge Lutheran Home.

XIII

That as a result this lawsuit had to be settled for the sum of approximately Thirteen Thousand dollars ($13,000.00) plus attorneys fees for defendant Dirk Amerman in about the sum of Three Thousand Dollars ($3,000.00)

That upon information and belief, plaintiff alleges, defendant Luther Gronseth obtained a part of this settlement.

XIV

That the defendant Luther Gronseth was a board member, and treasurer of Ridge Lutheran Homes. That defendant Luther C. Gronseth was a defrock minister of the Lutheran Church having been unfrocked for immoral conduct.

XV

That the Defendant Lutheran Churches

herein negligency held out the defendant Gronseth as being a proper person to deal within all respects and maintained him as such.

That the defendant Luther Gronseth was a teacher at Concordia High School in St. Paul and other Lutheran high schools in Minneapolis and is associated with defendant Eugene Linse each of whom are engaged in the same general fraudulent conduct.

That the defendant Luther Gronseth stole the monies, misappropriated interest payments checks of Ridge Lutheran Homes and misappropriated other monies in combination with Linse against the best interest of Ridge.

That the defendant Luther Gronseth was fired from the Ridge Lutheran Homes for refusing to carry out his duties and obligations toward Ridge Lutheran Homes, for failure to keep the books up to date, for failure to keep the accounts of records of what he was doing and spending and for misappropriating monies to his own use. That after he was fired the defendant Luther Gronseth misappropriated and concealed the books of Ridge Lutheran Home. That the combined activity of Gronseth and Linse made the operation of Ridge Lutheran Home impossible causing in effect the breech of the contract between plaintiff and defendant Ridge Lutheran Homes.

That at all times herein material the defendant Luther G. Gronseth was in collusion with defendant Linse and all other defendants in this activity.

XVII

That the defendant Luther Gronseth and defendant Eugene Linse entered into a common plan and design and conspired and colluded to interfere with the management and operation and business of Ridge Lutheran Homes, Inc., for purposes of interfering with the contract between Ridge Lutheran Church and plaintiff. This was all done at the knowledge direction, management and control, either expressed or implied of the rest of the defendants herein or was joined into and ratified by them after it was accomplished.

That up until the time the suit was started by Hyman Edelman as will be hereinafter referred to the defendant Linse and Gronseth entered into a collusive agreement among themselves to loot and pilfer defendants Ridge Lutheran Homes for their own personal gains.

XVIII

That at all times herein material the defendant Eugene Linse was employed as a professor of Concordia College. That defendant Gronseth borrowed from Ridge Lutheran Homes $4,500.00 for the purchase of his own personal home on one ocassion $1,500.00 for personal income tax, on an other ocassion at all times stating that he was a reverend in the ministry and that it was permissable for him to do this and that he had Linse's permission to do this. Linse also wanted to borrow $20,000.00 from Ridge Lutheran Home which was stopped by Carl Anderson.

XIX

While acting as agent and servant of the Defendant Concordia College, defendant Linse was in active conspiracy with defendant Gronseth and other defendants for the purposes of causing the breach of the contract with plaintiff all for the benefit of Missouri Synod, Lutheran Church and Minnesota South District of Lutheran Church-Missouri Synod.

That the defendant Concordia College is controlled, operated and managed by the defendant, Missouri Synod, Lutheran Church.

That the defendant Hyman Edelman is a lawyer in partnership with the defendants, Kaplan, Borman, Brand, McNulty, Kaplan, Strangis, Swartz, Kaplan, Druck, Vantine and Shors.

XXI

That defendant Dr. Eugene Linse while acting as agent and servant of defendant Concordia College entered into a collusive agreement with Caroline F. Siebert and defendant Emma Steffens, bond holders of defendant Ridge Lutheran Home to bring an unlawful suit against plaintiff.

That defendant Eugene Linse, without authority of Ridge Lutheran Homes, started an illegal lawsuit using defendant Hyman Edelman and his law partnership as attorneys against A & J Builders Inc. and Carl R. Anderson and Julian Vinge.

XXII

That said defendants Edelman and LInse caused a receiver to be appointed for Ridge Lutheran Home contrary to law, and without any statutory authority. That to this date defendant Ridge Lutheran Homes, Inc., has never been dissolved, or liquidated pursuant to the state law nor has any petition been filed therefore. That the defendant Oscar Husby unlawfully started and continued an action as receiver against plaintiff in furtherance of this conspiracy without authority of law or order of the Court.

XXIII

That defendants, Edelman, Linse and Husby while acting as agents servants and in collusion with the defendant, Minnesota South District of the Lutheran Church-Missouri Synod and the defendant Lutheran Church-Missouri Synod of St. Louis, Missouri for purposes of maintaining this lawsuit obtained a court order whereby plaintiff could not cancel its contract with defendant Ridge Lutheran Home and tied up the plaintiff completely from disposing or using any of its property, all the time stopping the defendant Ridge Lutheran Home from carrying out its contract with plaintiff. That the net effect of this was to bottle up plaintiff's activities completely and deprive plaintiff of the lawful use of its property.

That although Ridge Lutheran Homes, Inc. had an adequate remedy at law the defendants illegally caused defendant Husby to be appointed as receiver herein

contrary to Minnesota Statutes, Chapters 315 and 317.

XXIV

That since the hiring of Hyman Edelman and his activity in this matter all of the actions of the defendants Edelman, Linse and Gronseth and all other defendants has been contrary to law and without lawful authority.

That defendant Hyman Edelman, acting in his capacity as attorney and member of the partnership of defendants attorneys, conspired with the defendants to do this said several unlawful act and has acted dishonestly with a sinister view and improper purpose of his own and that of his principals acting maliciously toward plaintiff, maliciously interfered with the contract relationship between plaintiff and defendant Ridge Lutheran Home all without authority of law or otherwise.

XXV

That there is no lawful statutory authority for the appointment of a Receiver Husby in the circumstances as they now exist. That the defendant Edelman knows or should know what Article XV of the Articles of Incorporation provides, a copy of which is attached hereto. That also defendant Minnesota South District of the Lutheran Church, Missouri Synod knows that if the Ridge Lutheran Corporation is dissolved they have to accept its assets and also its liabilities including its contracts.

That the defendant Hyman Edelman and defendants Husby, Gronseth and Linse, Siebert, Steffeny more particularly and more generally all the defendants known Ridge Lutheran Home, Inc has not been dissolved or liquidated. That defendant Edelman is wrongfully acting under the management, direction and control and is actually the attorney in fact for the Minnesota South District of the Lutheran Church-Missouri Synod and the Lutheran Church -Missouri Synod, of St. Louis, Missouri, and are using all of this activity unlawfully for the purpose of not only stealing from and defrauding plaintiff but also the bond holders.

That the defendants and each of them has entered into unlawful combination and collusion and are on the boards of directors of various Lutheran religious organizations under the management, direction and control of the Lutheran Church Missouri Synod and the Minnesota South District of the Lutheran Church-Missouri Synod all with an interlocking and common directorate and under the common control of the head of the Lutheran Church, Missouri Synod, President Oliver Harms.

That the defendant Oliver Harms is the President of the Missouri Synod Lutheran Church of St. Louis, Missouri.

That the Defendant Harms called upon the Board of Directors of the Minnesota South District, Missouri Synod, Lutheran Church who in turn caused a meeting to be held between Carl Anderson of plaintiff and the Reverends Liske, Malinke, and Schweigert acting as and for the Board of Directors of the Minnesota

South District, Lutheran Church-Missouri Synod on or about the last part of January or the first part of February, 1968, at the Protestant center in Minneapolis.

That at this time the Board of Directors of the Minnesota South District attempted to get plaintiff to turn over all of its assets and make an accounting to the Minnesota South District of the Lutheran Church-Missouri Synod. That at this time the Minnesota South District admitted that Hyman Edelman was their agent and attorney.

XXVI

That after defendant Gronseth was fired, defendant Dirk Amerman maliciously made and filed the lien in the sum of $159,000.00 against the plaintiff's property for the defendant Luther Gronseth well knowing that it was without authority of law or based upon fact.

XXVII

That defendant Lutheran Witness Reporter breached its contract to run adds for defendant Ridge Lutheran Home at the insistance of the Defendant Lutheran Churches named.

XXVIII

That the defendant Lutheran Churches, their ministers, and agents, servants named herein, conspired to use accepted religious rights and modes of worship as a fear and threat upon plaintiff's agent and servant Carl Anderson and stated that he would be excommunicated

from their church if he did not go along with their wishes and turn over all assets, using threats of fear , extortion, oppression and attempting to make a thrall out of plaintiff and its Director Carl Anderson causing a further unlawful interference with the business affairs of plaintiff.

XXIX

That President Oliver Harms of the Lutheran Church, Missouri Synod if the person who has the management, direction and control of the several unlawful acts as is hereinbefore alleged.

XXX

That defendant Missouri Synod Lutheran Church and Defendant Minnesota South District of Missouri Synod Lutheran Church is liable to Plaintiff under its contract with Defendant Ridge Lutheran Home, Inc. pursuant to the Articles of Incorporation of Ridge and by their ratification of said contract and by their own conduct and acquiesence in said contract and by their unlawfully disabling Ridge Lutheran Home, Inc. from performing said contract. That plaintiff has always stood ready to perform its contract with Ridge Lutheran Home, Inc. That in truth and in fact and in law the Minnesota South District of Lutheran Church-Missouri Synod and Lutheran Church Missouri Synod have effected a dissolution of Ridge Lutheran Home, Inc. and have assumed its assets and liabilities through the acts of its agents and servants and are by their own conduct as hereinbefore alleged estopped from

claiming otherwise.

XXXI

That the defendant The First National Bank of Hudson Wisconsin, joined in this unlawful activity by refusing to honor valid checks from Ridge Lutheran Home to Carl Anderson for purposes of completing the building and project all of which was at the insistance of Gronseth, Linse and Edelman who were acting as Agents of the Lutheran organizations named as defendant herein.

XXXII

That the Defendant United States Fidelity and Guarantee Co. wrote and issued a $1,000.00 bond for Defendant Linse and later wrote and issued a $10,000.00 bond for defendant Oscar Husby in Dakota County, District Court File 65865 in the action of Husby vs. Carl Anderson.

WHEREFORE, Plaintiff demands judgment against defendants and each of them in the sum of $6,000,000.00.and costs.

Jerome Daly
Plaintiff's Attorney
28 E. Minnesota Street
Savage, Minnesota

Plaintiff demands a trial by a Jury of 12

APPENDIX II
EXHIBIT "II"

AGREEMENT

Agreement, dated the 26th day of April 1966, between A & J. Builders, Inc., a corporation organized and existing under and by virtue of the laws of the state of Minnesota, hereinafter called the party of the first part, and Ridge Lutheran Home, Inc. Corporation, a corporation organized and existing under and by virtueof the laws of the state of Minnesota, hereinafter called the party of the second part, witnesseth

1. The party of the first part promises and agrees to sell real property known as the "Ridges-Concept," a planned unit development, "A Lutheran Center" at 138th Street and Nicollet Avenue, South, Burnsville, Dakota County, Minnesota. Property will be transferred in fee simple on or before December 30, 1967.

2. The party of the second part promises and agrees to purchase property so described under No. (1) one of this agreement for the sale price of $7,000 (Seven Thousand Dollars) per acre in The Ridges Concept. Also payment of $500,000 (Five Hundred Thousand Dollars) shall be paid and in hand in cash on or before December 30, 1967, to the party of first part. Also on or before passing title in fee, a mortgage or promissary note shall be entered into between parties, for the unpaid balance of purchased property,and party of second part shall pay 4% (four per cent) interest per year on the first day of

each new year. Payment of unpaid principle balance shall be on a long term 20 (twenty) year basis. Party of second part also agrees to pay taxes, insurance, and assessments, from the date of this Agreement. Further agree to accept agreement with the Village of Burnsville, Burnsville, Minnesota, made by party of first part. Further they agree party of first part has right to sell and remove gravel, sand, black dirt, and material that has been processed as Class 5 (Five) and B. A. 2 (B. A. Two). Further they have no interest or monies interest in land under condemnation by Village of Burnsville, County of Dakota, or property to be condemned for Inter-State Minnesota 35E, or any problem that would arise out of property line that runs through the center of 138th Street, or sewer problem, which joins Ridges Concept. Further, party of first part of this agreement has the right or contract to develop, construct, maintain, improve, remodel, promote, any part of this planned unit development known as The Ridges Concept. Further agrees to pay $500,000 (Five Hundred Thousand Dollars) retroactive to beginning of party of second part and development of The Ridges, and all through development, construction, promotion, maintenance, improve, and remodel, and party of first part shall have on hand contingency fund of at least $200,000 (Two Hundred Thousand Dollars). Party of second part also agrees that the party of first part shall receive ten per cent (10%) of the cost of labor, material, superintendance, and expenses by party of first

part, and he shall receive seven per cent (7%) of the cost of all, and any work done by party of first part, or other contractors, sub-contractor, or general contractor. Also any legal rpoblem that might arise on this agreement will be paid by party of second part. Further, contractor has right to use buildings and land for storage of materials and equipment. Further, the party of second part will raise funds, through any lawful manner or mortgage, to keep this Lutheran Center, or Ridges Concept, progressing, and to meet its obligations under this agreement, and that this Ridges Concept, a planned unit development and Lutheran Center, on file with the Village of Burnsville, Burnsville, Minnesota, shall be for all people, regardless of race, creed, or color.

3. It is further mutually agreed between the parties that the Ridges Concept, a Lutheran Center, shall be developed in such a way to serve The Kingdom of God.

This agreement shall bind the parties hereto and their respective successors and assigns.

In witness whereof, A. & J. Builders, Inc., party hereto of the first part, after due corporate and other proceedings, has caused this agreement to be signed, and acknowledged or proved by its chairman, and its corporate seal hereunto to be affixed, and to be attested by the signature of its secretary and treasurer; and Ridge Lutheran

Home, Inc. Corporation, party of the second part, has caused this agreement to be signed or acknowledged or approved by its president, and its corporate Seal to be here unto affixed and to be attested by the signature of its Executive Secretary.

A & J. Builders,Inc.
By Carl R. Anderson, Pres.

Corporate Seal
Attest
Mary B. Anderson
Secretary, Treasurer

Ridge Lutheran Home Inc.
Corporation

By Carl R. Anderson, Pres.
By Luther C. Gronseth, Tres.

CORPORATE SEAL

Attest: Carl R. Anderson
Executive Secretary

APPENDIX III

AFFIDAVIT IN OPPOSITION TO MOTION OF HAROLD SCHWEIGERT

Carl Anderson, being first duly sworn deposes and states that he is at all times herein material Pres. of A&J Builders Inc., that I have read the Complaint filed herein, am familiar with its contents, and the same is true.

That in reference to the subject matter of the above entitled action the Defendant Harold Schweigert has been working for the Defendants Minnesota South District, Lutheran Church Missouri Synod and also has been working for The Defendant Lutheran Church-Missouri Synod.

That Defendant Schweigert and Defendants Mahnke of MSDLCMS and Liske of MSDLCMS in January or February of 1968 held a meeting in which I was requested to attend by Schweigert. Schweigert, Liske and Mahnke presided at this meeting which was held at the Protestant Center in Minneapolis. The three of them said they had gotten pressure from Oliver Harms about the bondholders. They said they did not want any more adverse publicity because of the Way of the Cross Incident. They held themselves out as representing Oliver Harms. of Lutheran Church Missouri Synod and the Synod. The three of them as a group told me that I was to turn all of my assets over to them or that I would in effect "go down the tube" meaning go broke.

Rev. Mahnke questioned my right to take further Communion with other members of the St. Peters Lutheran Church, of which Schweigert is the pastor. The three of them left me with the impression that if I did not turn over all of my assets and property to them to settle this case that then I could not take Communion in Schweigert's Church.

Three days later Schweigert called me and stated that Mahnke was out of line that I could again take Communion.

Reverend Liske stated that he had authority to talk for Oliver Harms. Schweigert and Mahnke joined in with Liske, further, at that time they were acting as Harms' agents and Schweigert continued in the same course fo conduct each and every time after that with me.

Schweigert continued to represent and hold himself out as representing Harms and Liske after that and after that and continued to put the pressure on me.

They also left me with the impression that Hyman Edelman was acting for Oliver Harms and the Lutheran Church-Missouri Synod and that they were also acting under the counsel of Hyman Edelman.

/s/ Carl R. Anderson
Carl R. Anderson

Subscribed and sworn to
before me this April 23, 1968
/s/ Jerome Daly
Notary Public, Dakota County, Minn.
Comm. Exp. 1-15-73

APPENDIX IV
NOTICE OF MOTION AND MOTION

TO: A & J BUILDER INC. AND JEROME DALY, ITS ATTORNEY:

YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that at 9 o'clock A.M. on the 9th day of May, 1968, defendant will move the above court at a special hearing at the Court House in Hastings, Minnesota for the following relief:

The following defendants, Oliver Harmes, President of the Lutheran Church Missouri Synod, Concordia Publishing House of St. Louis, Mo., The Lutheran Church-Missouri Synod, and Douglas Seltz, move the Court as follows:

1. To appear specially to request the Court:

To dismiss the action, or in lieu thereof, to quash the return of service on the grounds that:

(a) Defendants are groups organized under the Laws of the State of Missouri, od not transact business or have agents within the State of Minnesota and are not subject to service of process within the State of Minnesota.

(b) Defendants have not been properly served with process in this action by service on an agent within the State of Minnesota.

2. To dismiss the action on the grounds that the Court lacks jurisdiction because of improper service as will more fully appear by plaintiff's affidavit of service herein, and failure to

state a cause of action upon which relief can be granted.

3. These defendants move the Court to strike the Complaint on the grounds that it is sham and frivolous and contains scandalous allegations, and further move the Court to take appropriate disciplinary action against plaintiff's attorney pursuant to provisions of Rule 11, Minnesota Rules of Civil Procedure for the District Court.

Defendants, Edward J. Mahnke, Martin W. Lieske, Rev. August Hauptmann, Concordia College of St. Paul, Minnesota, Howard E. Pleuss, Howard A. Bergdorf, and R.K.B. Studios, move the Court as follows:

1. To dismiss the action because the Complaint fails to state a claim against these defendants upon which relief can be granted.

2. That there is no genuine issue as to any fact as the Complaint pertains to these defendants.

3. That these defendants are entitled to judgment as a matter of law.

4. That these defendants move the Court to strike the Complaint on the grounds that it is sham and frivolous and contains scandalous allegations, and, further move the Court to take appropriate disciplinary action against plaintiff's attorney pursuant to provisions of Rule 11 Minnesota Rules of Civil Procedure for the District Court.

Defendants, Minnesota South District of Missouri Synod Lutheran Church Providence Church Plan, Inc. of Atlanta, Georgia, Joseph Webb, and Douglas Seltz move the Court as follows:

1. To dismiss the action because the Complaint fails to state a claim against defendants upon which relief can be granted.

2. These defendants move the Court to strike the Complaint on the grounds that it is sham and frivolous and contains scandalous allegations, and further move the Court to take appropriate disciplinary action against plaintiff's attorney pursuant to provisions of Rule 11 Minnesota Rules of Civil Procedure for the District Court.

All of the above named defendants move the Court for permission of the Court to appear specially, and

1. For a continuance and extension of time to Answer until the Court renders a decision on defendants' Motion or for continuance and extension of time in which to Answer until plaintiff has amended its Complaint and until the Court determines the issues involved in the Motions herein.

SELTZ AND TOLAAS

by /s/ Douglas R. Seltz
Attorneys for Defendants above named,
518 Commerce Building
St. Paul, Minn 55101

ANSWER

Defendants Hyman Edelman and the law office partnership of Samuel B. Maslon, Hyman Edelman, Sheldon Kaplan, Marvin Borman, Irving R. Brand, John C. McNulty, Samel L. Kaplan, Ralph Strangis, Stephen B. Swartz, Harvey F. Kaplan, James B. Druck, Ronald C. Vantine and Richard A. Shore for their joint and separate answer to the complaint of the plaintiff:

I.

Deny each and every allegation in the plaintiff's complaint.

II.

State that it fails to state a cause of action against anyone including these answering defendants.

III.

Except as hereinbefore qualified, answered or otherwise admitted, deny each and every allegation contained in the plaintiff's complaint.

WHEREFORE, these answering defendants pray that the plaintiff's pretended cause of action be dismissed and that they have judgment against the plaintiff for their costs and disbursements herein.

MEAGHER, GEER, MARKHAM & ANDERSON

/s/ W. D. Flaskamp

APPENDIX V

MOTION FOR DISMISSAL AND FOR SUMMARY JUDGMENT and NOTICE OF MOTION

Defendants Samuel H. Maslon, Sheldon Kaplan, Marvin Borman, Irving R. Brand, John C. McNulty, Samuel L. Kaplan, Ralph G. Vantine, and Richard A. Shors, appearing specially and not otherwise, move the above court for an order quashing purported service of summons and complaint on them and for dismissal of the above entitled action on the ground of insufficiency of service of process and lack of jurisdiction over their persons. Alternatively, and without waiving the foregoing special appearance, said defendants move the above court for judgment in their favor and against plaintiff dismissing the above entitled action as to them with prejudice.

Said motion will be made pursuant to Rules 12 and 56 of the Rules of Civil Procedure for the District Courts of Minnesota and on the ground that service of process attempted to be made on them was insufficient, that this court lacks jurisdiction over their persons, that the complaint fails to state a claim upon which relief can be granted as to them, there is no genuine issue as to any material fact herein and that said defendants are entitled to summary judgment in their favor and against plaintiff as a matter of law.

Said motion will be made upon all the files and proceedings herein and upon all the files and proceedings, depositions and affidavits heretofore

filed in that certain action now pending in this court entitled:

Oscar J. Husby, Receiver of Ridge Lutheran Home, Inc., Ridge Lutheran Home, Inc., Caroline F. Siebert and Emma Steffen,

Plaintiffs,

vs.

Carl R. Anderson and Julian Vinge, individually and as co-partners doing business as A. & J. Builders and as A. & J. Builders and Contractors, and A & J Builders, Inc., a corporation,

Defendants,

and

Burnsville Plumbing & Heating, Inc.,

Additional Defendant,

and upon the affidavit of Evelyn Hamilton attached hereto.

/s/ Hyman Edelman
1200 Builders Exchange Bldg.
Minneapolis, Minn. 55402

MEACHER, GEER, MARKHAM & ANDERSON

By /s/ W. D. Flaskamp
400 Second Avenue South
Minneapolis, Minn. 55401

Attorneys for Moving Defendants

APPENDIX VI

ARTICLES OF INCORPORATION OF
RIDGE LUTHERAN HOME, INC.

We, the undersigned, for the purpose of forming a corporation under, and pursuant to, the provisions of the Minnesota Non-Profit Corporation Act, do hereby associate ourselves together as a body corporate and adopt the following Articles of Incorporation.

ARTICLE I.

The name of this corporation shall be:

"Ridge Lutheran Home, Inc."

The purpose for which this corporation is formed, and the business and objects to be carried on and promoted by it, are as follows:

a. To extablish, own, operate, and maintain one or more Christian homes for men and women who are incapable of properly maintaining themselves, and to supply them with the necessities of life, including medical, nursing and spiritual care.

b. To acquire by gift, devise, bequest or purchase, and to own, hold, sell, convey, assign, mortgage, lease, pledge, or otherwise dispose of, any real estate and any personal property, for whatever purpose or purposes the Directors deem advisable, necessary or incidental to the accomplishment of the purposes of this corporation.

c. To borrow or raise money without limits as to the amounts and to issue

evidences of indebtedness; to secure the same by mortgage, pledge or other lien.

e. This corporation shall not in any manner aid or assist any institution, corporation, or association which is organized for pecuniary gain.

ARTICLE III

The registered office of this corporation shall be 20 Arthur Terrace, Burnsville, Savage, Route 2, Dakota County, Minnesota.

ARTICLE V

Since the purpose of this corporation is purely benevolent and charitable, none of its property, either real, personal, or mixed, shall be used or expended except in carrying into effect the program and purposes expressed herein.

ARTICLE VI

The names and addresses of the incorporators are as follows, to-wit:

1. Mr. Carl R. Anderson, 20 Arthur Terrace, Route 2, Savage, Minn.

2. Mr. Luther C. Gronseth, 6511 Bloomington Ave., Minneapolis, Minn.

3. Mr. Eugene W. Linse, Jr. 4396 Hodgson Road, St. Paul, Minn.'

ARTICLE VII.

The general management of the affairs of this corporation shall be vested in a Board of Directors, consisting of not less than five (5) nor more than nine (9) persons, who shall be elected by the directors at their annual meeting, to serve without compensation for the term to which they are elected, or until their successors are duly elected and qualified. The Directors of this corporation shall constitute its membership.

Vacancies in the membership of the Board shall be filled by the remaining members, and each Director shall serve as such until the close of the annual meeting at the expiation of his term.

Annual meetings shall be held on the first Thursday in May of each year, with the first annual meeting to be held on the 6th day of May, 1965, at the registered office of this corporation, at 8:00 o'clock P. M. on the said day. Annual meetings may be held at such other times and places, during the month of May as a majority of the members of the Board shall previously determine. Ten days written notice of the annual meetings must be given to each member os the Board.

ARTICLE VIII.

The names, addresses and tenure of office of the first Directors are as follows:

Mr. Carl R. Anderson, 20 Arthur Terrace, Route 2, Savage, Minnesota -- 1967

Mr. Julian Vinge, 6328 16th Ave., So., Minneapolis, Minn. -- 1967

Mr. Luther C. Gronseth, 6511 Bloomington Ave., Minneapolis, Minn -- 1967

Mr. Eugene W. Linse, Jr., 4396 Hodgson Rd., St. Paul, Minn. 1966

Mr. Howard E. Pleuss, 4702 Phlox Lane, Minneapolis, Minn. 1966

Mr. Howard A. Burgdorf, 2815 Overlook Drive, Minneapolis, Minn. 1965

Rev. August L. Hauptmann, 3320 43rd Avenue South, Minneapolis, Minn 1965

ARTICLE IX.

The following officers shall serve until the close of the annual meeting on May 6, 1965:

President - Mr. Carl R. Anderson
Vice President - Mr. Arnold A. Schaefer
Secretary - Mr. Eugene W. Linse, Jr.
Treasurer - Mr. Howard E. Pleuss

The Board of Directors shall elect officers at each annual meeting. No two offices may be held by the same person.

ARTICLE X.

None of the members of this corporation shall be personally liable for corporate obligations.

ARTICLE XI.

By-Laws of this corporation may be

adopted by the Board of Directors, which may change them at its pleasure so long as they do not conflict with the provisions of these Articles.

ARTICLE XII.

These Articles may be amended by a two-thirds vote of the Directors at any annual meeting, or a special meeting called for that purpose.

ARTICLE XIII.

This corporation shall have no capital stock.

ARTICLE XIV.

No part of the net earnings of this corporation shall be distributed to, or inure to the benefit of, any member or officer of this corporation, contributor, private individual, or any corporation organized for profit.

ARTICLE XV.

In the event of dissolution or liquidation of this corporation, its assets shall be distributed to The Minnesota South District of the Lutheran Church-Missouri Synod, a Minnesota religious corporation, to be used for purposes similar to those of this corporation.

IN WITNESS WHEREOF, the undersigned have set their hands and seals this 22nd day of January, 1965.

/s/ Carl R. Anderson
/s/ Eugene W. Linse, Jr.
/s/ Luther C. Gronseth

STATE OF MINNESOTA
COUNTY OF HENNEPIN

On this 22nd day of January, 1965, before me, a notary public in and for said county, personally appeared Carl R. Anderson, Luther C. Gronseth, and Eugene W. Linse, Jr., to me known to be the persons named as Incorporators in and who executed the foregoing Articles of Incorporation, and each acknowledged that he executed the same as his free act and deed for the uses and purposes therein expressed.

/s/ Walter A. Schweppe
Notary Public, Hennepin
County, Minnesota
My commission expires
October 8, 1968

APPENDIX VII

JUDGMENT

(Filed July 17, 1968)

The above entitled action came on for hearing before the Honorable Robert J. Bruenig, one of the judges of this Court, on the 2nd day of May, 1968, and was re-argued on the 9th day of May, 1968, pursuant to defendant Schweigert's Notice of Motion and Motion for Summary Judgment. Daniel A. Utter appeared as attorney for Defendant Schweigert in support of the motion; Jerome Daly appeared in opposition thereto. Having heard the arguments of the counsel, the Court made its order for summary judgment as to Defendant Schweigert on the 5th day of July, 1968.

Now, therefore, pursuant to the order for judgment;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED: That the Plaintiff have and recover nothing from Defendant Schweigert and that this action be dismissed with prejudice as to said Defendant without costs to either party.

Dated at Hastings, Minnesota, this 17th day of July, 1968.

BY ORDER OF THE COURT:

(SEAL)

EUGENE CASSERLY

Eugene Casserly
Clerk of District Court

APPENDIX VIII

SUMMARY JUDGMENT

(Filed July 24, 1968)

Pursuant to an Order for Summary Judgment filed in the above entitled matter on the 5th day of July, 1968, in the office of the Clerk of District Court of Dakota County, Minnesota dated the 5th day of July, 1968, signed by the Hon. Robert J. Breunig, District Judge, Summary Judgment in the above entitled action is hereby granted pursuant to said Order as to the following defendants:

Oliver Harms, President of the Lutheran Church, Missouri-Synod, Concordia Publishing House of St. Louis, Missouri, The Lutheran Church-Missouri Synod, and Douglas Seitz

Furthermore, the above entitled action filed against the afore-mentioned defendants in the above entitled action is hereby dismissed with prejudice as to said defendants.

Dated this 24th day of July, 1968.

/s/ Eugene Casserly
Eugene Casserly
Clerk of District Court
Dakota County, Minnesota

(Seal)

By: Dorothy Kobierowski
Chief Deputy

APPENDIX IX

JUDGMENT

(Filed July 31, 1968)

The above-entitled action came on for hearing before the Honorable Robert J. Burenig, one of the judges of this court, on the 9th day of May, 1968, pursuant to Notice of Motion and Motion of Defendants Oscar J. Husby, individually and as receiver of Ridge Lutheran Home, Inc., Hyman Edelman, Samuel H. Maslon, Sheldon Kaplan, Marvin Borman , Irving R. Brand, John C. McNulty, Samuel L. Kaplan, Ralph Strangis, Stephen B. Swartz, Harvey F. Kaplan, James B. Druck, Ronald G. Vantine, Richard A. Shors, Emma Steffens, Dr. Eugene Linse, and United States Fidelty and Guarantee Co. for Summary Judgment.

Hyman Edelman and Meagher, Gear, Markham & Anderson and John A. Cairns appeared on behalf of defendants Hyman Edelman, Samuel H. Maslon, Sheldon Kaplan, Marvin Borman, Irving R. Brand, John C. McNulty, Samuel L. Kaplan, Ralph Strangis, Stephen B. Swartz, Harvey F. Kaplan, James B. Druck, Ronald G. Vantine and Richard A. Shors; Maslon, Kaplan, Edelman, Borman, Brand & McNulty by Hyman Edelman appeared on behalf of Oscar J. Husby, individually and as receiver of Ridge Lutheran Home, Inc. and Hyman Edelman, individually, appeared on behalf od Dr. Eugene Linse, Emma Steffens, and United States Fidelity and Guarantee Co. all in support of said motion; Jerome Daly appeared in opposition thereto.

Having heard the arguments of counsel, the Court made its order for summary judgment as to the aforesaid defendants on the 6th day of July, 1968.

Now, therefore, pursuant to said order for summary judgment,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED: That the plaintiff have and recover nothing from defendants Oscar J. Husby, individually and as receiver of Ridge Lutheran Home, Inc., Hyman Edelman, Samuel H. Maslon, Sheldon Kaplan, Marvin Borman, Irving R. Brand, John C. McNulty, Samuel L. Kaplan, Ralph Strangis, Stephen B. Swartz, Harvey F. Kaplan, James B. Druck, Ronald C. Vantine, Richard A. Shors, Emma Steffens, Dr. Eugene Linse, and United States Fidelity and Guarantee Co. and that this action be dismissed with prejudice as to each and all of the foregoing named defendants.

Dated at Hastings, Minnesota, this 31st day of July, 1968.

BY ORDER OF THE COURT:

EUGENE CASSERLY

Eugene Casserly
Clerk of District Court

(SEAL)

APPENDIX X

SUMMARY JUDGMENT

(Filed August 6, 1968)

Pursuant to an Order for Summary Judgment filed in the above entitled matter on the 6th day of August, 1968, in the Office of the Clerk of the District Court, Dakota County, Minnesota, dated the 6th day of August, 1968, signed by the Honorable Robert J. Bruenig, District Judge, Summary Judgment is hereby granted in the above entitled action pursuant to said Order as to the following defendants:

The Lutheran Church-Missouri Synod
Concordia College of St. Paul, Minnesota
RXP Studios
The Minnesota South District of Missouri Synod Lutheran Church
Providence Church Plan Inc. of Atlanta, Georgia
Edward J. Mahnke
Martin W. Lieske
Rev. August Hauptmann
Howard E. Pleuss
Howard A. Bergdorf
Joseph Wobb;

FURTHERMORE, the above entitled action filed against the aforementioned defendants is hereby dismissed with prejudice as to said defendants.

Dated this 6th day of August, 1968

Eugene Casserly, Clerk of
District Court, Dakota
County, Hastings, Minn.

BY Dorothy Kobierowski
Chief Deputy

APPENDIX XI

NOTICE OF APPEAL

File No. 66686

To the Defendants above named and to their Attorneys Douglas R. Seltz, Heagher, Geer, Markham & Anderson by John A. Cairns; Hyman Edelman, Daniel A. Utter and to John R. Delambert of the firm of Murnane and Murnane for Defendant First National Bank of Hudson, Wisconsin.

Sirs:

YOU WILL PLEASE TAKE NOTICE, that Plaintiff hereby appeals from the Judgment entered in favor of Harold Schweigert on July 17, 1968and also from all other Summary Judgments entered on July 24, 1968, July 31, 1968 and August 6th, 1968 and from the whole and each and every part thereof of each of them.

/s/ Jerome Daly
Jerome Daly, Plaintiff's Attorney
28 East Minnesota Street
Savage, Minnesota

October 17, 1968

Petitioner Exhs

11 thru 16

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF HENNEPIN — FOURTH JUDICIAL DISTRICT

File No. 63729/

Bernard E. Koll, — Plaintiff,

vs. — COMPLAINT

Wayzata State Bank, Wayzata, Minnesota
and its Directors and Agents in control,
Wayne Blakmarr, Blackmarr
Robert Frich,
Jan Boswinkel,
Ronald Engel,
Lyle Carisch,
Fred Herfurth,
[illegible] Brandon,
John Hollern,
W. W. Reike, Reiche
Federal Reserve Bank of Minneapolis, Joseph Swan, Federal Reserve Agent,
First National Bank of Minneapolis,
Northwestern National Bank of Minneapolis,
Eileen Cronk,
John Doe and Richard Roe, — Defendants.

PLAINTIFF FOR HIS CAUSE OF ACTION HEREIN STATES AND ALLEGES:

I.

That this is an action at law for damages resulting from a well organized conspiracy perpetrated by the Defendants and others acting as principals with them to recover damages for injuries to Plaintiff's person and property and to redress the deprivation of rights, privileges and immunities secured by the Declaration of Independence, Constitution of the United States and the State of Minnesota and all laws passed pursuant thereto, and the Common Law, excepting therefrom all clerical and monarchial nonsense.

II.

That on July 4, 1776, the people of the United States of America in general Congress assembled, appealing to the Supreme Judge of the World for the resuscitute of their intentions, did in the name of and by the authority of the good people of the colonies as then existing, then and there solemnly publish and declare that those colonies are and of right ought to be free and independent

42174

Petitioner's Ex 11
2/9/70 ems

states; that they did then and there absolutely dissolve all allegiance and political connections, financial or otherwise, to the British Crown then existing between the people of the United States and the State of Great Britain and it's Crown. That thereafter, the people of the United States by virtue of a Compact between themselves, did ordain and establish a Constitution for the United States and pursuant thereto, a government based upon the premise that all men are created equal. That they are endowed by their Creator with certain unalienable rights, among which are life, liberty and the pursuit of happiness. That in dissolving the said political bands which connected them with the State of Great Britain and the King of England, the people of these United States assumed among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitled them. That in order to secure their natural and inherent rights to life, liberty, property and the pursuit of happiness, the people had previously instituted State Governments and ordained and established a Constitution for the Confederate States of America deriving their just powers from the consent of the Governed. The Constitution of the United States and the Government set up pursuant thereto is based upon the same premises. That after the adoption of the Declaration of Independence on July 4, 1776, the Supreme sovereign authority in these United States became and still is the people of the United States. All governmental powers derived from the people as sovereigns is absolute. In all forms, whether under guise of law or otherwise, slavery, involuntary servitude, bondage, serfdom, thralldom, villenage, and peonage are all absolutely, strictly and catagorically prohibited by the Declaration of Independence and the Constitution of the United States. That as such all financial connection between the government of the United States and the government of the States of the United States and its people and any other foreign country or the people thereof, or any person thereof, is absolutely severed and abolished. That the people have agreed among themselves to grant certain legislative powers to the Congress of the United States

which the United States Congress has no right to delegate or surrender. The people have vested the power of executing the laws in the executive only, who has no power to legislate or to act in the judicial capacity. The people have vested the judicial power in the Supreme Court of the United States, which members have no power to make a law as such but can only interpret and declare the law when a justiciable dispute comes within this jurisdiction. The people have granted to the Congress of the United States, the whole legislative power of coining and creating the Nation's credit and currency and the regulation of its value. The Congress of the United States have treasonably surrendered and abdicated the control over this power of coining and creating the Nation's credit and currency by an unlawful delegation of these powers to the Federal Reserve Corporation, National Banks and State Banks, and their managing directors and agents, including the Defendants listed herein, who are dominated and controlled by a small oligarchy of foreign and domestic financiers. This has been accomplished by fraudulent and dishonest means, using Congress stuffed with time serving legislators who act in behalf of the defacto banker government which is in part the Council on Foreign Relations and its nucleus, the Business Advisory Council all to the detriment of the dejure government of the United States of America, for the purposes of robbing the American people, including the Plaintiff herein, for the Bankers and the Defendants selfish gains.

That the Defendant, Federal Reserve Bank, named herein, is a purported central banking system, is privately owned and controlled. That the Defendant, Federal Reserve Bank, named herein, is a private corporation, set up, maintained and used as an artifice, trick, and device for the purpose of swindle, fraud, forgery, usury, concealment of usury, and the issuing and obtaining of property and property rights by false tokens to-wit: their false and fraudulent bookkeeping entries and their worthless Federal Reserve Notes. That the Federal

Reserve Banks are maintained as a front for the purpose of perpetrating acts of aggravated forgery by creating money and credit upon their corporate books, which does not exist, by using bookkeeping entries as the method of creation, all without lawful authority, statutory or otherwise. That said Banks are not under the control of the people or their agents. For the cost of printing only, the said Federal Reserve Bank obtains Federal Reserve Notes which are not redeemable in either gold or silver coin and are passed out for use by the general public for purposes of swindle, fraud, theft and forgery by the said Defendants. That Defendant Jorge De Juan signs contracts as Medical Research Agent and as Director of the [illegible] Reserve Bank of Minneapolis.

III.

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

U.S. Constitution, Article 1, Section 8, Clause 5:

"The Congress shall have the power to coin money, regulate the value thereof and of foreign coin."

U.S.C.A. Article 1, Section 10. "No State shall coin money; emit Bills of Credit, make any thing but Gold and Silver Coin a Tender in Payment of Debts; pass any Law impairing the obligation of contracts, or grant any Title of Nobility."

Minnesota Constitution, Article 9, Section 13, "The Legislature may, by a two-thirds vote, pass a general banking law, with the following restrictions and requirements, viz." First - The legislature shall have no power to pass any law sanctioning in any manner, directly, or indirectly, the suspension of specie payments by any person, association or corporation issuing bank notes of any description."

Minnesota Constitution, Article 1, Section 8, - Redress of injuries or wrongs. "Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property or character; he ought to obtain justice freely and without purchase; completly and without denial; promptly and without delay, conformable to the laws."

Minnesota Statutes Annotated, 1 Constitution, Amendment XIII. "Section 1 - ,"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."
Section 2 - "Congress shall have power to enforce this article by appropriate legislation."

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

Minnesota Statutes Annotated, 1 Constitution, Article I, Bill of Rights, Section 1 - Object of Government -"Government is instituted for the security, benefit and protection of the people, in whom all political power is inherent, together with the right to alter, modify or reform such government, whenever the public good may require it."

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

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

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

IV.

That Bernard E. Koll, was engaged in a business under the name of General Spray Service for the past 15 years exclusively, in the business of chemical applicators in the field of insecticides, pesticides and herbicides and the application thereof, and the extermination of pests and rodents. He also has been engaged in the field of aquatic control of weeds and algae to lakes, rivers and streams and the treatment of trees. Plaintiff is licensed by the Department of Agriculture and registered with the Department of Conservation in the State of Minnesota. That this field required many years of thorough knowledge of chemicals and the proper use and application thereof. That Plaintiff has been affiliated with the Department of Agriculture since 1953.

In the past years, General Spray Service, under the direction and control of Plaintiff, has treated lakes for the control of aquatic

wea[illegible] and [illegible]ough Minnesota. [illegible]at [illegible] in this phase and [illegible]s, [illegible]tiff, has treated influent waters tributary to the [illegible]is[illegible] River to control bacteria caused in and to the Mississippi River by run-off from Rice Lake and others lakes, streams and tributaries. That these lakes were high in bacterial content and caused a foul taste of the public water consumed by the residents of Minneapolis and St. Paul.

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

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

V.

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

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

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

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

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

VI.

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

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

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

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

VII.

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

That the Defendant, Cronk, in the action for divorce against Plaintiff, was awarded a decision by the Findings of Fact and Conclusions of Law and Order for Judgment, dated June 22, 1966, in the sum of approximately $11,000 against the Plaintiff in a decision. That during the divorce proceedings, the Defendant, Eileen G. Cronk, attempted to get all of Plaintiffs property from him. That the

Defendant, Wayzata State Bank, its officers, agents and servants, and members of its Board of Directors, including Dr. Reike, entered into a scheme, plan and design and acted jointly in the premise with each other including all of the other Defendants for an unlawful purpose and they all entered into a conspiracy and unlawful combination in collusion, to take, steal, and carry away all right, title and interest in Plaintiffs real and personal property, located at Route 5, Wayzata, Minnesota. That the Defendants and each of them agreed, consented to in-acquest in the joint use an unlawful plan and design herein before and set up which culminated in an unlawful arrest and unlawful false imprisonment in the Hennepin County Workhouse for 42 days using the Hennepin District Court, its agents and servants, as the conduit of the false imprisonment, all acting wholly without jurisdiction in the premise and outside of the law, Constitutional, Statutory or otherwise. That Plaintiff was unlawfully sentenced to 180 days in the workhouse on January 5, 1967, without lawful basis, excuse or justification and with the Court acting wholly without jurisdiction. That on application of Plaintiff through his attorney, Jerome Daly, Hennepin District Judge, Donald Barbeau, ordered that the Plaintiff, Bernard E. Koll, be released from the custody of the Hennepin County Workhouse on February 16,1967. That Plaintiff was unlawfully imprisoned in the Hennepin County Workhouse for 42 days. That the Defendants and each of them actively participated in the commission of the unlawful imprisonment and the deprivation of Plaintiff's life, liberty, property rights, and pursuit of happiness and further procurred, commanded, and directed, advised and encouraged, aided and abetted it's commission or ratified it after it was done. That some of the Defendants acted independently but always with common design and intent, their several unlawful acts concurred in obtaining to produce one resulting event - the imposition of oppression, tyranny and theft upon Plaintiff and his property. Defendants were all acting in unlawful collusion with

a common design and all are equally liable. Further, that Defendant, Cronk, and Defendant, Wayzata State Bank, and its Board of Directors, agents and servants, entered into a plan and design to incarcerate Plaintiff in the workhouse for a term of 180 days, and unlawfully keep him there so that they could foreclose their respective liens upon Plaintiff's property free from any interference by Plaintiff, Bernard E. Koll.

VIII.

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

IX.

That deprivation of life, liberty and property; rights, privileges and immunities securred by the United States Constitution and laws in pursuance thereof providing for the equal rights of citizens or of all persons within the jurisdiction of the United States and the heaping of oppression upon Plaintiff is wrongfully, unlawfully and willfully turned upon Plaintiff as the result of the several acts of the Defendants and others in consort with them, all acting jointly in the premise for the purpose of swindel, fraud, forgery and theft.

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

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

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

X.

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

XI.

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

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

That the Defendant Federal Reserve Bank of Minneapolis, is a Private Corporation, set up, maintained and used as an artifice, trick, device and means for the purposes of swindle, fraud, forgery, usury, concealment of usury, and the issuing and obtaining of property and property rights by false tokens, to-wit: their worthless Federal Reserve Notes; and for the purpose of perpetrating their acts of Aggravated Forgery, by creating money and credit upon their corporate books, which does not exist, using bookkeeping entries as the method of creation, all without lawful authority statutory or otherwise. That said entries are falsely made with intent to defraud, whereas, if lawful and genuine, legal rights, privileges, or

obligations are created, terminated, transferred or evidenced. That these bookkeeping entries and the illegal utterance of said false tokens constitutes an aggravation of said forgery. That the same practice of creating money by bookkeeping entry is at all times material carried out by the defendant First National Bank and the Defendant Northwestern National Bank and the foregoing allegations in that respect apply to them completely. That Defendant banks, named herein, have been and are engaged in a conspiracy as defined by Common Law and Minnesota Criminal Statute 609.175 to cheat, swindle, defraud, steal and obtain property rights in the form of United States Securities and Bonds and obligations of the State of Minnesota and its subdivision, which are the obligations of the people generally and more specifically the plaintiffs herein, contrary to Common Law and Minnesota Criminal Statute 609.52, defining Theft and Related Crimes, all to Plaintiff's damage. That said activity is without lawful authority.

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

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

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

That the obtaining of said securities and bonds by Defendant banks from Governments of the United States and State of Minnesota

and their subdivisions constitutes a loan or forebearance either express or implied, of something of value circulating as money, to-wit: their worthless Federal Reserve Notes, which the Defendant Banks obtained for the cost of the printing. That there is an understanding between the Defendant Banks and the Government of the United States and State of Minnesota and their subdivisions that the principal shall be paid absolutely in lawful money of the United States, which is according to the Constitution, gold or silver coin. That said banks forge on their books the said money and credit by bookkeeping entry, by which they paid for said securities and bonds. That the most the said Defendant Banks pay for said securities and bonds are in Federal Reserve Notes, which said Federal Reserve Banks obtained for the cost of the printing, which is approximatly one cent per Ten Thousand Dollars Federal Reserve Notes. That said activity by Defendant Banks constitutes an extraction of a great profit, greater than is allowed by law. That said Defendant Banks, through their officers and agents, harbor an intention existing in their minds to defraud and violate the law, contrary to the usury laws of Minnesota contained in Chapter 34, Minnesota Statutes Annotated. This also applies to the attempted loan to Plaintiff.

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

XII.

That this activity is all unconstitutional.

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

with the Defendants design.

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

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

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

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

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

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

XIII.

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

XIV.

That Plaintiff is being discriminated against by the Government of the United States, by the 12 Federal Reserve Banks of the United States, by the National Banks of the United States, including the Defendants herein as follows: a) Plaintiffs is not able to obtain Federal Reserve Notes for the Cost of Printing the notes while the Banks, including Defendant Banks are. By law, Plaintiff is not permitted to redeem Federal Reserve Notes in either Gold or Silver, coin or otherwise. The Defendant Banks herein are in Conspiracy with the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of New York and the remaining other 10 Federal Reserve Banks. That aliens are permitted to redeem Federal Reserve Notes at the Federal Reserve Bank in New York in Gold. That the Federal Reserve Banks are stealing the Gold of the United States by Creating money on their books by which they purport to purchase it with. From the Fort Knox depository our Gold is being feloniously transferred to the Federal Reserve Bank of New York where it is surrendered to aliens and transported out of the jurisdiction of the United States. It is a continuing and mounting theft. That Plaintiff is being directly damaged by by this theft.

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

Plaintiff demands a trial by a Jury of 12.

Dated March 10, 1967

Jerome Daly
28 East Minnesota Street
Savage, Minnesota
Attorney for Plaintiff

Bernard E. Koll
Wayzata, Minnesota

STATE OF MINNESOTA)
SS
COUNTY OF HENNEPIN)

The undersigned Assistant United States Attorney for the District of Minnesota, pursuant to the provisions of Section 2679 of Title 28 United States Code, as amended by P.L. 87-258, 75 Stat. 539, and by virtue of the authority vested in him by the Attorney General by Order 254-61, 26 F.R. 11420, hereby certifies that he has read the foregoing Petition and the attachments thereto, and that upon the basis of the information now available to him with respect to the incidents referred to therein, he is of the opinion that the petitioner was acting within the scope of his office as a federal officer.

STANLEY H. GREEN
Assistant United States Attorney

Subscribed and sworn to before me
this 26th day of April, 1967.

JEAN R. COX
Notary Public, Ramsey County, Minn.
My Commission Expires Oct. 5, 1968.

Form No. USA-20
(Rev. 10-9-58)

CERTIFICATE OF SERVICE BY MAIL

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The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the _____ District of Minnesota and is a person of such age and discretion as to be competent to serve papers.

That on April 26, 1967, s he served a copy of the attached PETITION FOR REMOVAL

by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail at Minneapolis, Minnesota.

Addressee(s): Mr. Jerome Daly
Attorney at Law
28 East Minnesota St.
Savage, Minnesota

Eleanor Mollison

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 19,080

Bernard E. Koll, Appellant,
v.
Wayzata State Bank, et al., Appellees.

Appeal from the United States District Court for the District of Minnesota.

[July 5, 1968.]

Before MEHAFFY, GIBSON and LAY, Circuit Judges.

LAY, Circuit Judge.

Plaintiff brings this action against the Wayzata State Bank and its officers; the Federal Reserve Bank of Minneapolis, Joyce A. Swan, the "Federal Reserve Agent"; First National Bank of Minneapolis; Northwestern National Bank of Minneapolis; and Eileen Cronk, his former wife; for damages allegedly arising out of a conspiracy to deprive him of "rights, privileges and immunities" secured by the Declaration of Independence, Constitution of the United States and the Constitution of the State of Minnesota. The suit alleges it is for $4,250,000.00. Upon motion to dismiss the complaint for failure to state a claim

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or for lack of jurisdiction, the trial court without opinion dismissed plaintiff's suit.

Beyond the above description it is impossible from the brief or record to interpret further plaintiff's contentions. The complaint occupies 16 printed pages of disconnected, incoherent and rambling statements. We dismiss for lack of jurisdiction.

Plaintiff is represented by a lawyer, whose unreachable quest is a judicial decree of unconstitutionality of the federal income tax and the federal reserve and monetary system of the United States. See *Daly* v. *United States*, ... F.2d ..., No. 18,906 (8 Cir. filed April 11, 1968).[1] Cf. *Horne* v. *Federal Reserve Bank of Minneapolis*, 344 F.2d 725 (8 Cir. 1965). The present complaint could have been dismissed for failure to comply with Fed. R. Civ. P. 8(a) and 8(e)(1)[2] in that it is "confusing, ambiguous, redundant, vague" and a completely unintelligible statement of argumentative fact. See *Wallach* v. *City of Pagedale, Mo.*, 359 F.2d 57 (8 Cir. 1966) and *Wallach* v. *City of Pagedale, Mo.*, 376 F.2d 671 (8 Cir. 1967). At best the complaint represents a euphoric harassment of bank offi-

1 According to defendants' brief, three similar cases based upon the same contentions have been filed and dismissed on summary judgment motions of the defendants in the Minnesota District Court.

2 Fed. R. Civ. P. 8(a):

"Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded."

Fed. R. Civ. P. 8(e)(1):

"Pleading to be Concise and Direct; Consistency.

"(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required."

cials, lawyers and federal courts. It is difficult to accept that the complaint has been drafted by a person licensed to practice law. To demonstrate the muddled allegations we briefly summarize from the complaint in plaintiff's language:

> II. "Congress . . . have treasonably surrendered . . . control over this power of coining and creating the Nation's credit and currency by an unlawful delegation . . . to . . . the Defendants . . . who are dominated and controlled by a small oligarchy of foreign and domestic financiers. . . . Federal Reserve Notes which are not redeemable in either gold or silver coin and are passed out for use by the general public for purposes of swindle, fraud, theft and forgery by the said Defendants."

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

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

"U.S.C.A., Article 1, Section 10—'No state shall coin money. . . .'"

and several sections of the Minnesota Constitution and statutes relating to banking, slavery, due process, government, double jeopardy, self-incrimination, bail and habeas corpus.

IV. The plaintiff is in the insecticide business and has built up in 15 years valuable good will.

V. Plaintiff and defendant Cronk were married on May 4, 1956 and have three children; that the defendant Wayzata State Bank has a mortgage on personal property of plaintiff for $6,000.00. The mortgage is void; the bank has created money and credit by bookkeeping entry and passed Federal Reserve Notes.

VI. That defendant Cronk, plaintiff's wife, knows the bank directors and is in "an unlawful combination" with them. She obtained a divorce in December 1966.

VII. All defendants formed a conspiracy to deprive plaintiff of his rights, property and liberty. This was accomplished by two false imprisonments, the first resulting in an imprisonment for 42 days and the second for 180 days. Both sentences were issued by the Hennepin District Court. This imprisonment is in some way (unexplained) related to a $11,000.00 judgment obtained by plaintiff's wife in the divorce action.

VIII. The above conduct deprived plaintiff of the use of $70,000.00 of his property, because of conduct of defendants not ascertainable at this time.

IX. That defendants have agreed to use unlawful Federal Reserve Notes not redeemable in gold or silver coin to obtain false imprisonment and deprivation of plaintiff's rights and immunities under state law.

X. That all national and federal reserve banks are correspondent banks.

XI. The United States Government does not own any stock in any of the banks and therefore has abdicated its control to private individuals by allowing them to create bookkeeping entries to create money; that such constitutes a common law conspiracy under Minnesota Criminal Statute 609.175; that all monies and properties held by the banks equitably belong to the people since the banks are constructive trustees of the Government.

XII. That the defendant banks pay for Federal Reserve Notes only the cost of the printing. The attempted loan to the plaintiff violates the usury and forgery laws of Minnesota; that after income taxes plaintiff is flat broke; that the Federal Reserve Bank is exempt from taxation, 12 U.S.C. § 531.

XIII. Defendants hold a substantial sum of United States and state securities including their subdivisions.

XIV. Plaintiff is discriminated against because he cannot buy the Federal Reserve Notes for cost as the defendant banks do; he is not permitted to redeem Notes for gold or silver coins as aliens do. That the gold in Ft. Knox is being feloniously transferred to New York where aliens are transporting it out of the jurisdiction of the United States; that this is a continuing and mounting theft.

We have briefly detailed this summary to demonstrate the total obfuscation of the pleading. It is impossible for any party or court to understand plaintiff's alleged claim or damage. No responsive pleading could intelligently be filed by defendants. Cf. *Cole* v. *Riss & Co.*, 16 F.R.D. 116 (W.D.Mo. 1954); *Wallach* v. *City of Pagedale, Mo.*, 359 F.2d 57 (8 Cir. 1966). We, therefore, conclude the complaint should have been stricken for failure to comply with Fed. R. Civ. P. 8(a) and 8(e). See *Legg* v. *United States*, 353 F.2d 534 (9 Cir. 1965); *Car-Two, Inc.* v. *City of Dayton*, 357 F.2d 921 (6 Cir. 1966). However, if this were the sole basis of the lower court's dismissal, the court should have allowed plaintiff sufficient time to amend and plead in compliance with the rules. The lower court did not specify upon which ground or grounds of defendants' motion to dismiss it was relying. We do not assume, in absence of an order giving leave to amend, that the complaint was dismissed under Fed. R. Civ. P. 8(a). In any event, it would be improper for us to affirm dismissal under Fed. R. Civ. P. 8. Cf. *Klebanow* v. *New York Produce Exchange*, 344 F.2d 294 (2 Cir. 1965). And it is clear that a dismissal under Fed. R. Civ. P. 8 would not be an appealable order since it would be lacking finality. *Dann* v. *Studebaker-Packard Corporation*, 253 F.2d 28 (6 Cir. 1958).

We affirm dismissal since the complaint fails to establish any grounds for federal jurisdiction. The federal courts

are courts of limited jurisdiction. Essential to jurisdiction must be a stated "case or controversy." This must be disclosed by the plaintiff's complaint. The only complaint we can glean from the pleading filed is plaintiff's dissatisfaction with the monetary system of the United States of America. But a party cannot seek advisory opinions of the court on constitutional issues without some direct relation or damage involved. Cf. *Flast* v. *Cohen*, 36 U.S.L.W. 4601 (U.S. June 10, 1968).

Plaintiff does not assert, nor could he, federal jurisdiction under 28 U.S.C. § 1331 or § 1391. Plaintiff has not shown that his damage "arises under" federal law or the United States' Constitution. Cf. *Pan Am. Corp.* v. *Superior Court*, 366 U.S. 656 (1961). He relies upon Minnesota law as the basis of an alleged conspiracy. He premises that conspiracy only indirectly upon construction of the Constitution of the United States and totally avoids any allegation of fact tending to show the existence of a federal question. Cf. *Givens* v. *Moll*, 177 F.2d 765 (5 Cir. 1949); *Seelcy* v. *Brotherhood of Painters, Decorators and Paper Hangers of America*, 308 F.2d 52 (5 Cir. 1962). One might again struggle with the complaint to say that under *Bell* v. *Hood*, 327 U.S. 678 (1946), plaintiff has attempted to assert a federal question. But the complaint is so unintelligible to allow even this conclusion. Jurisdiction must affirmatively appear clearly and distinctly. *International Ass'n of Machinists* v. *Central Airlines, Inc.*, 295 F.2d 209 (5 Cir. 1961). A mere "suggestion" of a federal question is not sufficient. *Stanturf* v. *Sipes*, 335 F.2d 224 (8 Cir. 1964); *Martin* v. *Graybar Electric Co.*, 285 F.2d 619 (7 Cir. 1961). It must be real and substantial, not conjectural; *Gardner* v. *Schaffer*, 120 F.2d 840 (8 Cir. 1941); and must relate to substance not form; *Regents of New Mexico* v. *Albuquerque Broadcasting Co.*, 158 F.2d 900 (10 Cir. 1947).

Plaintiff does not plead diversity of citizenship of the parties to establish jurisdiction under 28 U.S.C. § 1331. At best plaintiff's case sounds in tort, and as such must fail for lack of diversity of citizenship. Even the defendant Federal Reserve Bank assumes the citizenship of the state in which it resides, which is plaintiff's citizenship, to-wit, Minnesota. See 28 U.S.C. § 1348.

The last possible jurisdictional basis that we can decipher is that plaintiff seeks some relief under 28 U.S.C. § 1342 or § 1391 for violation of his civil rights. However, there is no intelligible claim that plaintiff was damaged by any one acting "under color" of state law, and within the most liberal interpretation of the civil rights cases he does not allege a proper jurisdictional bases here. See *Screws* v. *United States*, 325 U.S. 91, 142 (1945); *Wallach* v. *Cannon*, 357 F.2d 557 (8 Cir. 1966); *McGuire* v. *Todd*, 198 F.2d 60 (5 Cir. 1952) cert. denied 344 U.S. 835 (1952); *Moffett* v. *Commerce Trust Co.*, 187 F.2d 242 (8 Cir. 1951).

Judgment affirmed.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

-vs-

ORDER

William E. Drexler,

Defendant.

Upon motion by the plaintiff, Gerald T. Laurie, Special Assistant Attorney General, appeared for the plaintiff and defendant William E. Drexler appeared pro se in the chambers of Judge Robert V. [illegible] at 2:00 P.M. on October 14, 1968.

After hearing the arguments of both parties, it is Hereby Ordered

1. That defendant's counterclaim be and hereby is dismissed with prejudice.

2. That the defendant's pro se answer be and hereby is dismissed.

3. That defendant's sole remaining defense is the general denial in paragraph I of the answer and counterclaim filed by defendant's attorney Jerome Daly.

10/17/68

Judge Robert V. Mensch
Ramsey County District Court

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STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF RAMSEY — SECOND JUDICIAL DISTRICT

- - - - - - - - - - - - - - - - - -

FILE NO. 360991

State of Minnesota,

Plaintiff,

-vs-

William E. Drexler,

Defendant.

- - - - - - - - - - - - - - - - - -

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO DISMISS DEFENDANT'S COUNTERCLAIM

NATURE OF CONTROVERSY

The State of Minnesota served a summons and complaint on the defendant, William E. Drexler, on September 9, 1968, alleging that he has not paid the penalty and interest on his 1965 and 1966 Minnesota individual income taxes. The plaintiff received, within twenty days after service of the summons and complaint, an answer and a counterclaim from Jerome Daly, attorney for defendant, and an answer from William E. Drexler, attorney pro se. The counterclaim alleged that the State of Minnesota is in conspiracy with the Federal Reserve and national banking system to defraud the defendant and the people generally by the illegal creation of money and bank credit. One million dollars is the relief requested in the counterclaim.

I. SOVEREIGN IMMUNITY

The State of Minnesota cannot be sued by any individual or in any court without its consent. Dunn v. Schmid, 239 Minn. 559, 60 N.W.2d 14 (1953). The legislature of the State of Minnesota has not consented to be sued in this matter. Minnesota Rules of Civil Procedure, Rule 13.04, states:

> "These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the State of Minnesota or an officer or agency thereof."

Thus, the defendant cannot bring the instant counterclaim against the State of Minnesota.

II. PRIOR DECISIONS

Defendant's attorney, Jerome Daly, has been permanently enjoined by Roy L. Stephenson, Chief Judge, United States District Court, Southern District of Iowa, from bringing any claims regarding unlawful creation of money and credit in any court, state or federal. (See attached photocopy of Permanent Injunction dated June 20, 1968.)

In Bernard E. Koll v. Wayzata State Bank, July 5, 1968, Eighth Circuit Court of Appeals (see attached photocopy of the decision), Jerome Daly represented the plaintiff and questioned, as he does in the counterclaim, the constitutionality of the federal reserve and monetary system of the United States. The Eighth Circuit Court of Appeals upheld the Minnesota federal district court's dismissal of the claim. The court said:

> "...The present complaint could have been dismissed for failure to comply with Fed.R.Civ.P. 8(a) and 8(e)(1) in that it is 'confusing, ambiguous, redundant, vague' and a completely unintelligible statement of argumentative fact... At best the complaint represents a euphoric harassment of bank officials, lawyers and federal courts. It is difficult to accept that the complaint has been drafted by a person licensed to practice law...
>
> "We affirm dismissal since the complaint fails to establish any grounds for federal jurisdiction. The federal courts are of limited jurisdiction. Essential to jurisdiction must be a stated 'case or controversy.' This must be disclosed by the plaintiff's complaint. The only complaint we can glean from the pleading filed is plaintiff's dissatisfaction with the monetary system of the United States of America. But a party cannot seek advisory opinions of the court on constitutional issues without some direct relation or damages involved..."

In Horne v. Federal Reserve Bank of Minneapolis, 344 F.2d 725 (1965) (8th Circuit), the plaintiffs were "residents, freeholders, voters, citizens and taxpayers of the United States" and brought suit "...on behalf of, in the interest of, and representing the people of the United States..." The plaintiffs primarily attacked the constitutionality of two federal statutes alleging that the defendants were creating illegal money and credit. The court held that the plaintiffs

did not have standing to sue. One prerequisite of standing is that the party must suffer a direct injury and the court said that the plaintiffs suffered no such injury. The defendant here has not suffered a direct injury as a result of the alleged conspiracy and hence he has no standing to sue.

The State of Minnesota has been a party defendant in at least two lawsuits where the plaintiffs were represented by Jerome Daly and raised the same claim that is raised in the counterclaim, i.e., the illegality of money and bank credit. In both lawsuits the defendants were granted summary judgment against the plaintiffs. See William Wildanger, Leo Zurn, Jo Ann Van Popperin, Richard Roe and John Doe vs. Federal Reserve Bank of Minneapolis, First National Bank of Minneapolis, Northwestern National Bank of Minneapolis, Lyndon B. Johnson, President of the United States of America, Henry H. Fowler, Secretary of the U.S. Treasury, The United States of America, State of Minnesota, Val Bjornson, Treasurer of Minnesota, Richard Roe and John Doe (United States District Court, District of Minnesota, Fourth Division, No. 4-66 Civ. 83); Leo Zurn, Jo Ann Van Popperin, William Wildanger, John Doe and Richard Roe vs. Federal Reserve Bank of Minneapolis, First National Bank of Minneapolis, Northwestern National Bank of Minneapolis, American National Bank of St. Paul, First National Bank of St. Paul, State of Minnesota, United States of America, Lyndon Johnson, President of the United States, Henry Fowler, Secretary of the Treasury of the United States, Val Bjornson, Treasurer of the State of Minnesota, Farmers and Mechanics Savings Bank of Minneapolis (United States District Court, District of Minnesota, Fourth Division, No. 4-66 Civ. 399).

In the Wildanger case the complaint alleged, inter alia, a conspiracy by the defendants under Minnesota Statutes, Sections 609.175 and 609.52 to unlawfully create money. In an order dated July 17, 1966, the federal district court granted defendants summary judgment because the plaintiffs did not have standing to sue. The court cited the Horne case.

The defendant's attorney, Jerome Daly, raises the claim of the illegality of money and bank credit at every instance. In Daly v. United States, 393 F.2d 873, 877 (1968), the court said:

> "The government urges that appellant's basic claim is not the fear of self-incrimination, but a quixotic contention that the Federal Reserve System is unconstitutional. Based upon appellant's arguments and his brief originally filed with the revenue agent, we are inclined to agree..."

For the sake of the courts, the lawyers, and the federal and state governments, it is time to enforce the permanent injunction prohibiting Mr. Daly from making any claim concerning the illegality of money and bank credit.

III. RES JUDICATA

The rules of res judicata apply to the state as well as to private persons. Restatement, Judgments, Section 78 Commentd. The Restatement, Judgments, §86 states:

> "A person who is one of a class of persons on whose account action is properly brought or defended in a representative action or defense is bound by and entitled to the benefits of the rules of res judicata with reference to the subject matter of the action."
>
> Comment i "...As to the parties, the judgment operates as a personal judgment for or against them...On the other hand, as to persons not parties, the judgment operates merely as a declaration of rights and liabilities with reference to the issue decided..."

It is settled in Minnesota that the determination in an action brought by one taxpayer binds other taxpayers the same as it binds plaintiffs. Driscoll v. Board of Commissioners of Ramsey County, 161 Minn. 494, 201 N.W. 495 (1925) The Zurn and Wildanger claims were class actions brought in the names of Richard Roe and John Doe, the named defendants, taxpayers and others. The summary judgments granted to the State of Minnesota and other defendants in those claims bars the instant taxpayer from counter-claiming as he does against the State of Minnesota. The judgments in those claims have already declared the rights and liabilities of the State of Minnesota and the instant taxpayer (and all other taxpayers) with regard to the issue raised in the instant counterclaim.

Prior decisions clearly holding that a taxpayer lacks standing to sue on claims identical to the instant counterclaim, the doctrines of res judicata and sovereign immunity, and other rules of law and procedure not herein discussed, are sufficient reasons to grant plaintiff's motion to dismiss with prejudice the counterclaim in this matter.

Respectfully submitted,

DOUGLAS M. HEAD
Attorney General

Gerald T. Laurie

GERALD T. LAURIE
Special Assistant Attorney General
Centennial Office Building
St. Paul, Minnesota 55101

ATTORNEYS FOR PLAINTIFF

STATE OF MINNESOTA — IN JUSTICE COURT

COUNTY OF SCOTT — TOWNSHIP OF EAGLE CREEK

First National Bank of Montgomery, Minnesota,

Plaintiff

-vs- _C_O_M_P_L_A_I_N_T_

Jerome Daly,

Defendant

* *

I.

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

II.

That on May 8, 1964, defendant made and delivered to plaintiff a mortgage of said premises to secure the payment of a promissory note for Fourteen Thousand and no/hundredths ($14,000.00) Dollars, then made and delivered by defendant to plaintiff; that on April 21, 1967, said mortgage was recorded in the office of the Register of Deeds for said County as document #113751.

III.

That thereafter, default having been made in the payment of the principal and interest of said note and mortgage, plaintiff duly foreclosed said mortgage by advertisement under a power therein, and duly caused the same to be sold by the Sheriff of said County at public auction on June 26, 1967, in conformity with the Statute in such case made and provided; that at said sale plaintiff was the purchaser of said premises and said Sheriff duly made and delivered his official certificate of said sale as provided by Minnesota Statutes 580.12; that on July 17, 1967, said certificate was

Petitioners Ex 1
2/10/70 Emf

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

IV.

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

V.

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

VI.

That defendant withholds possession thereof from plaintiff.

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

MCGUIRE & MELLBY

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

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STATE OF MINNESOTA
COUNTY OF SCOTT

Justice Court, Vernon Mabee, Justice
Township of Egale Creek

Frist National Bank of Montgomery, Minnesota, Plaintiff,

vs.

Jerome Daly

State of Minnesota
ss
County of Scott

Jerome Daly, being first duly sworn deposes and states that he was served with unlawful detainer action on August 28,1968 at 4:30 P.M. at Savage,Minnesota, returnable on Aug. 30,1968 at 10:00 A.M.. That I appezar speciall and not generally and object to the Jurisdiction of this Court over my person.

That I further appear Specially and not generally and state that the First National Bank of Montgomery has no interest in the premesés described in the Complaint. That thereis now pending in the Scott County District Court an action involving the title to the premises described in the Cojmplaint involving the same parties.

That in no event does the above justice Court have Jurisdiction over this Cause which involves the title to real Estate.

That Defendant appearing specially pleads not guilty.

Jerome Daly

Subscribed and sworn to before
me this 29th day of August,1968

Justice of the peace.

STATE OF MINNESOTA

COUNTY OF SCOTT

JUSTICE COURT

TOWNSHIP OF EAGLE CREEK
Verne Mabee, Justice

First National Bank
of Montgomery, Minnesota,

Plaintiff,

vs.

AFFIDAVIT

Jerome Daly,

Defendant.

STATE OF MINNESOTA
SS
COUNTY OF SCOTT

Jerome Daly, having been first duly sworn, deposes and states that he is the Defendant herein. That he has good reason to believe, does believe, and so states, that because of and from prejudice, bias, or other cause, I believe such Justice, Verne Mabee will not decide impartially in the above entitled action or matter and therefore, a fair trial or hearing of any kind cannot result or occur with said Justice presiding, and therefore this affidavit is made pursuant to law, M.S.A. 531.111, to disqualify said Judge for all purposes.

Pursuant to law demand is hereby made to Verne Mabee to transfer this above entitled action to the next nearest Justice of the Peace.

Jerome Daly
28 East Minnesota Street
Savage, Minnesota

Subscribed and sworn to
before me this 16 day of
October, 1968.

Notary Public
My Commission expires 1/17/73

STATE OF MINNESOTA

COUNTY OF SCOTT

IN JUSTICE COURT

BEN MORLOCK, JUSTICE

First National Bank of
Montgomery, Minnesota,

Plaintiff

-vs-

_A_F_F_I_D_A_V_I_T_

Jerome Daly,

Defendant

* *

STATE OF MINNESOTA)
) ss
COUNTY OF SCOTT)

Theodore R. Mellby, having been first duly sworn, deposes and states that he is the attorney for the plaintiff herein. That he has good reason to believe, does believe, and so states, that because of and from prejudice, bias, or other cause, I believe such Justice, Ben Morlock will not decide impartially in the above entitled action or matter and therefore, a fair trial or hearing of any kind cannct result or occur with said Justice presiding, and therefore this affidavit is made pursuant to law, M.S.A. 531.11, to disqualify said Judge for all purposes.

Pursuant to law demand is hereby made to Ben Morlock to transfer this above entitled action to the next nearest Justice of the Peace.

Subscribed and sworn to
before me this 14th day of
October, 1968.

Theodore R. Mellby
Attorney for Plaintiff
Montgomery, Minnesota

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

STATE OF MINNESOTA

COUNTY OF SCOTT

IN JUSTICE COURT

TOWNSHIP OF CREDIT RIVER
MARTIN V. MAHONEY, JUSTICE

First National Bank of Montgomery, Plaintiff,

vs.

ANSWER AND COUNTERCLAIM

Jerome Daly Defendant.

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

I.

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

II.

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

III.

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

IV.

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

V.

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

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

VI.

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

VII.

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

VIII.

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

Wherefore, Defendant demands Judgment as follows:

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

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

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

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

Jerome Daly

Jerome Daly
28 East Minnesota Street
Savage,Minnesota

November 30,1968

(12)

Rec'd 12-3-68

STATE OF MINNESOTA

COUNTY OF SCOTT

IN JUSTICE COURT

TOWNSHIP OF CREDIT RIVER
MARTIN V. MAHONEY, JUSTICE

First National Bank of Montgomery, Plaintiff,

vs.

AMENDED

ANSWER AND COUNTERCLAIM

Jerome Daly Defendant.

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

I.

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

II.

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

III.

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

IV.

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

V.

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

(13)

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

VI.

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

VII.

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

VIII.

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

Wherefore, Defendant demands Judgment as follows:

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

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

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

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

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

Jerome Daly
28 East Minnesota Street
Savage,Minnesota

November 30,1968

STATE OF MINNESOTA

COUNTY OF SCOTT

IN JUSTICE COURT

TOWNSHIP OF CREDIT RIVER
MARTIN V. MAHONEY, JUSTICE

First National Bank of Montgomery,

Plaintiff

-vs-

_R_E_P_L_Y_

Jerome Daly,

Defendant

* *

I.

Denies each and every allegation

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

MCGUIRE & MELLBY

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

(19)

State of Minnesota,
County of SCOTT

JUSTICE COURT.

~~TOWNSHIP OF CREDIT RIVER~~
MARTIN V. MAHONEY Justice.

First National Bank of Montgomery,

Plaintiff

vs.

Jerome Daly

Defendant

THE STATE OF MINNESOTA TO THE SHERIFF OR ANY CONSTABLE OF THE COUNTY AFORESAID: WHEREAS, Summons and Complaint was issued out of Justice Vern Mabee's Court in unlawful detainer on Sept. 26,1968, he being disqualified by affidavit of prejudice, and he referaing xxxxxxx the action to Justice Ben Morlock of Savage, he also being disqualified by affidavit of prejudice, he refereng the action to the undersigned as the next nearest Justice of the peace and also adjacent to Spring Lake Township, the site of the property in question, it also appearing that Theodore R. Mellby, Attorney for Plaintiff of Montgomery, Minnesota originally caused the Complaint to be filed with the Justice Courts of Scott County, Minnesota against Jerome Daly, possessor of the property described in xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx *complaint against* Jerome Daly

of Scott County

a copy of which is hereto attached: THEREFORE YOU ARE HEREBY COMMANDED to summon the said Jerome Daly

if found in said county, to appear before the undersigned on the 7th *day of* December*, 19*68*, at* 10 *o'clock* A. *M., at* the Village Hall, Credit River Township, Scott County,Minnesota

then and there to make answer to and defend against the complaint aforesaid, and further to be dealt with according to law; and make due return to me of this summons with your doings thereon.
The parties are Ordered to be present and ready for trial at that time.

Dated at Credit River Township

this 30th *day of* November*, 19*68

Martin V. Mahoney
Martin V. Mahoney *Justice of the Peace.*

State of Minnesota,
County of .... } ss.

I, the undersigned, hereby certify and return; that on the .... day of ...., 19......, I served the foregoing summons and the copy of complaint thereto attached upon the defendant...... therein named, to-wit:
Service of the foregoing Summons and Complaint is hereby admitted this 30th day of November,1968; formal service by the Sheriff is waived. Answer and Counterclaim is filed herewith and is served upon Plaintiff by mail.
at ....

Jerome Daly
Jerome Daly, Defendant
28 East Minnesota Street
Savage,Minnesota

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in said county by handing to and leaving with .....

.....

.....

personally true and correct copies thereof.

My fees for service $.....

Mileage $.....

Copy $.....

Total $.....

.....
Sheriff-Constable.

ORDER

The Defendant having appeared and answered herein and having filed his counterclaim herein,

IT IS HEREBY ORDERED, That Plaintiff shall have until Dec. 7,1968 in which to file a reply and that the parties be ready for trial on December 7,1968 at 10:00 A.M. the ~~xx~~ trial to be held at the Credit River Township Hall.

Nov. 30,1968

Martin V. Mahoney

Martin V. Mahoney
Justice of the Peace
Criedit River Township.

IN JUSTICE'S COURT,

County of .....

.....

.....

.....

.....

.....

SUMMONS IN UNLAWFUL DETAINER

Returned and filed this .....

day of ....., *A. D. 19*.....

.....
Justice of the Peace.

MILLER-DAVIS COMPANY, MINNEAPOLIS

STATE OF MINNESOTA

COUNTY OF SCOTT

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

First National Bank of Montgomery, Plaintiff,

vs.

DEFENDANT'S REQUESTED INSTRUCTIONS

Jerome Daly, Defendant.

Defendant requests the Court to instruct the Jury as follows:

1. Plaintiff, hereinafter refered to herein as BANK filed a Complaint herein for the recovery of the possession of Lot 19, Fairview Beach, according to the recorded Plat in the RNgister of Deed's Office in Scott County,Minn., which Plaintiff claims that Defendant was the owner of on May 8,1964 at which time Defendant Daly made, executed and delivered a promissory Note in the sum of $14,000.00 and a mortgage on the premises to secure the payment of the Note.

2. Bank claims that Daly defaulted in the payment of the principal and interest on the Note and Mortgage and that the Bank duly foreclosed the Note and mortgage by advertisement on June 26,1967 in conformance with the law and that the Sheriff delivered has certificate of Sale on that date, June 26,1967. Bank claims that more than one year has elapsed since the date of the sale by the Sheriff and that no redemption has been made therefrom and that the time for redemption has expired; that by reason thereof Bank Claims that it is the owner in fee and is entitled to the immediate possession of the premises.

3. Defendant Daly has answered therein ~~Plaintiff~~ and denies generally the allegations in the Complaint excent that he claims that he is on and Since May 8,1964 the fee owner of the premises in question. Daly admits that on or about May 8 he delivered a promisory Note and a mortgage to secure the payment of the Note to the Bank but alleges that the Note and Mortgage rest upon an illegal and unlawful consideration and that the Note is null and the Mortgage is void. Daly further contends that he made this known to the public by recording a Notice of these facts in the Register of Deeds office on June 14,1968 and advised the public at that time that the money or credit with which the Bank used as a attempted consideration for the note was created upon the books of the Bank by leger book entry. Daly claims that this creation of money by bookeeping entry is unlawful and does not provide a lawful and valuable consideration for the support of the Note and Mortgage in question.

(6)

Daly in short claims that the Note is without consideration and invalid; that therefore the mortgage is invalid and void and that the Sheriff's sale is likewise illegal and of no effect.

4. Daly further claims that the Federal Reserve Banking Act and the National Banking act are unconstitutional and that these private Banks, The Federal Reserve and the National Banks can acquire no rights in the law by their proactice of creating money and credit upon their books which he claims is the practice generally.

5. Plaintiff admits that the Federal Reserve and National Banks extinguish or create money and credit upon their books by which they expand or reduce the economy's supply or money.

6. Plaintiff admits that the money or credit by which they claim is the lawful consideration to support the Note here in question was created in whole or in part by bookeeping entry.

7. Members of the Jury, I CHARGE YOU, it is the law that the Federal Reserve Banks and the National Banks are private corporations organized and created and existing by virtue of United States Law. That these Banks and the Plaintiff Bank in this case are subject to the Constitution of the United States and all laws passed pursuant thereto and the Constitution and laws of the State of Minnesota not in conflict with the United States Constitution.

The specific provisions of the United States Constitution which are applicable here are as follows:

a) The Congress shall have the power to borrow money on the credit of the United States.

b) The Congress shall have the power to coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

c) No state shall coin money; emit bills of credit; make any thing but gold or silver Coin a Tender in Payment of Debts.

d) No person shall be deprived of life, liberty or property without due process of law

Section 13 of Article 9 of Minnesota Constitution is as follows:

The legislature may pass a general banking law with the following restrictions and requirements:

a) The legislature shall have no power to pass any law sanctioning in

any manner, directly or indirectly, the suspension of specie payments(payments in gold or silver coin) by any person, association or corporation issuing bank notes of any description.

You are further charged that the law will not recognize or enforce, or hesitate to condemn, contracts resting upon an illegal consideration. Illegal Consideration consists of any act or forbearing, or a promise to act or forbear with is contrary to law or public policy. The Consideration essential to a valid contract must not only be valuable, but it must be lawful, not repugnant to law or sound policy or good morals.

When, on May 8,1964 Daly delivered to Plaintiff First National Bank of Montgomery, Minnesota the Note for $14,000.00 and the Mortgage to secure the Note the Bank impliedly in law agreed to tender Daly $14,000.00 in legal tender. This was the Contract between the parties.

If you find that the First National Bank of Montgomery, in whole or in part created the money and credit or any part of the money and credit upon their books with which the Bank used as a consideration to support the Note in question, Then I charge you that this creation of money or credit by bookeeping entry, which money and credit came into existence at the time of the entry upon the Banks books, is unlawful and contrary to law and does not constitute a sufficient legal consideration with which to support the Note and Mortgage. If you so find then the Note and Mortgage is void and the Sheriff's sale is a nulity and of no effect and the Plaintiff Bank is not entitled to the possession of the Premises in question.

If, however you find that the Bank tendered to Daly $14,000.00 in legal tender, which was at that time gold dollars consisting of 25.8 grains, 9/10 fine of gold or silver Dollars containing 412.5 grains of Silver 9/10 fine, or had that amount on hand and set aside to tender to Daly as the consideration to support this loan, then you must find that there was a sufficient consideration for the Note and Mortgage and that the Sheriff's sale is valid and Plaintiff is entitled to the possession of the premises in question.

You are further charged that the creation of money and credit upon the Books of the Federal Reserve and National Banks is unlawful. Further, if the Note in question was in any way, directly or indirectly based upon or supported

with this ~~this~~ unlawfully created money or credit upon the books of the said Banks, either acting individually or in combination or jointly, and if you so find, then the activity of these Banks is premised outside the law and there is no lawful consideration for the said Note.

The law leaves wrongdoers where it finds them.

You may take into consideration the law I have given you, the evidence and all reasonable inference to be drawn from the evidence and matters of common knowledge. You are the sole and exclusive jusdges of the witnesses and their credibility and the evidence in this case.

I give you the form of verdict which is attached to these instructions.

The first form of verdict is " We the Jury find that Plaintiff, First National Bank of Montgomery on May 8,1964 tendered $14,000.00 in lawful money of the United States to Jerome Daly; that no part of the tender was money or credit created upon the books of the Bank or in Combination with the Federal Reserve Banks; that the Note is supported by a lawful and valuable consideration and is valid and legally binding; that the Mortgage given to secure the Note is valid and that the Sheriff's sale on foreclosure of the Note and Mortgage is valid; that the First National Bank of Montgomery has good title in fee to the premises in question and that/~~that~~ the Bank is entitled to possession.

The second form of verdict is " We the Jury find that the Plaintiff, First National Bank of Montgomery on or about May 8,1964, either by themselves or in combination and acting with the Federal Reserve Banks created, in whole

(19)

or in part, the $14,000.00 on the books of said Bank with which they used as consideration for the Note in question; That the Bank made or tendered no lawful consideration for the Note, that the Note is void and the Mortgage resting on the Note is void; that the Mortgage foreclosure is invalid; that the Sheriff passed no title to said Bank at the Sheriff's sale and that the First National Bank of Montgomerty is not entitled to recover the possession of the premises described in the Complaint known as Lot 19, Fairview Beach, Scott County,Minn. according to the plat on file with the register of Deeds.'

I give you a copy of these instructions and two forms of verdict which you take with you along with the evidence recieved in this trial to the Jury room during your deliberations. You are first to select a foreman. Your verdict must be unamious if reached within 6 hours. After 6 hours 10 out of 12 may return a verdict.

Martin V. Mahoney
Justice of the peace
Credit River Township
Scott County,minn.

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STATE OF MINNESOTA — IN JUSTICE COURT

COUNTY OF SCOTT — TOWNSHIP OF CREDIT RIVER
MARTIN V. MAHONEY, JUSTICE

First National Bank of Montgomery,
Plaintiff,

vs. — JUDGMENT AND DECREE

Jerome Daly, — Defendant.

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

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

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

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

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

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

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

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

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

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

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

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

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

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

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

7. A 10 day stay is granted.

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

BY THE COURT

Dated December 7,1968

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

MEMORANDUM

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

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

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

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

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

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

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

BY THE COURT

December 7,1968

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

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

STATE OF MINNESOTA
COUNTY OF SCOTT

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

First National Bank of Montgomery, Plaintiff,

vs.

NOTICE OF REFUSAL TO ALLOW APPEAL

Jerome Daly, Defendant

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

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

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

Two so-called "One Dollar" Federal REserve Notes issued by the Federal Reserve Bank of San Francisco L12782836 and Federal ~~Reserve~~ Bank of Minneapolis ~~serial~~ Serial No. I 80 4 10697 A ~~Numbers~~, were deposited with the Clerk of the District Court to be tendered to me.

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

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

Erk A.

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

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

TAKE NOTICE AND GOVERN YOURSELVES ACCORDINGLY

BY THE COURT

Dated January 6,1969

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

MEMO

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

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

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

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

January 6, 1969

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,Minnestoa

Sir: Re: First National Bank of Montgomery
vs.
Jerome Daly

As you are on my mailig 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 sustinance; 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 fraululent 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 phrophesy 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 attach 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 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 trembel, 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

Jerome Daly

h/

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

42174 J.D.

Petitioners Ex 15
2/10/70 lcm

Jerome Daly
28 East Minnesota Street
Savage, Minn. 55378
890-2274

HEAVEN ISN'T THAT SIMPLE

YOU CAN'T LEGISLATE EQUALITY; YOU HAVE TO DESERVE IT. YOU CAN'T DEMAND SUCCESS; YOU HAVE TO EARN IT. YOU CAN'T BE HANDED AN EDUCATION OR SKILL; YOU HAVE TO LEARN BY HARD WORK. YOU CAN'T VOTE YOURSELF SECURITY; YOU HAVE TO PRODUCE FOR IT AND SAVE FOR IT.

FOR HUNDREDS OF YEARS FALSE "LEADERS" HAVE PREACHED. "GIVE ME YOUR SUPPORT AND I WILL CARE FOR YOU. I WILL TAKE FROM OTHERS AND GIVE YOU A LIVING YOU DON'T HAVE TO WORK FOR".

AND FOR THOSE SAME HUNDREDS OF YEARS MEN HAVE BEEN DRUGGING THEMSELVES INTO THAT DREAM - AND WAKING UP NOT IN HEAVEN BUT IN HELL!!!

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

STATE OF MINNESOTA — IN JUSTICE COURT

COUNTY OF SCOTT — TOWNSHIP OF CREDIT RIVER
MARTIN V. MAHONEY, JUSTICE

First National Bank of Montgomery,
Plaintiff,

vs.

Jerome Daly,
Defendant.

JUDGMENT AND DECREE

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

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

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

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

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

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

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

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

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

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

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

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

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

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

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

7. A 10 day stay is granted.

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

BY THE COURT

Dated December 9,1968

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

MEMORANDUM

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

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

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

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

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

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

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

BY THE COURT

December 9,1968

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

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

STATE OF MINNESOTA

COUNTY OF SCOTT

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

First National Bank of Montgomery, Plaintiff,

vs.

NOTICE OF REFUSAL TO ALLOW APPEAL

Jerome Daly, Defendant

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

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

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

Two so-called "One Dollar" Federal REserve Notes issued by the Federal Reserve Bank of San Francisco L12782836 and Federal ~~Reserve~~ Reserve Bank of Minneapolis Serial No. I80410697A ~~numbers~~ were deposited with the Clerk of the District Court to be tendered to me.

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

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

Ed A.

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

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

TAKE NOTICE AND GOVERN YOURSELVES ACCORDINGLY

BY THE COURT

Dated January 6,1969

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

MEMO

I am bound by oath to support the Constitution of the United States and all Laws passed pursuant thereto and the Constitution and Laws of Minnesota not in conflict therewith. This is an important Case to both parties and involves issues, apparently, not previously decided before. It is also important to the public. The Clerk of the District Court is an officer of the Judicial Branch of theState of Minnesota. His act is the Act of the State. U.S.Constitution 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

THE DALY EAGLE

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FEBRUARY 7,1969

IN THIS ISSUE: "A LANDMARK DECISION"

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

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

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

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

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

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

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

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

HOUSE OF BURGESSES, VIRGINIA
MARCH, 1775

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

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

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

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

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

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

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

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

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

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

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

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

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

Jerome Daly October 13, 1968

Jerome Daly
28 East Minnesota Street
Savage, Minn. 55378

February 7, 1969

INTRODUCTION

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

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

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

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

JEROME DALY
SAVAGE, MINNESOTA

OVER

STATE OF MINNESOTA
COUNTY OF SCOTT

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

First National Bank of Montgomery,
Plaintiff,

vs.

JUDGMENT AND DECREE

Jerome Daly,
Defendant.

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

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

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

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

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

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

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

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

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

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

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

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

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

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

7. A 10 day stay is granted.

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

Dated December 9, 1968

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

MEMORANDUM

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

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

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

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

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

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

December 9, 1968

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

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

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

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

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,

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND JUDGMENT
Defendant.

- - - - -

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 I, 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

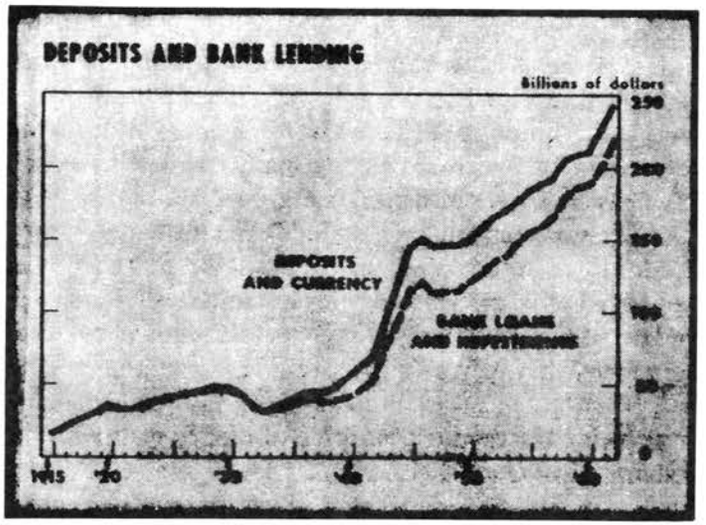
account in favor of various of his creditors who deposit them at their banks. Thus the lending bank is likely to retain or receive back as deposits only a small portion of the money that it lent, while a large portion of the money that is lent by other banks is likely to be brought to it by its customers.

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.

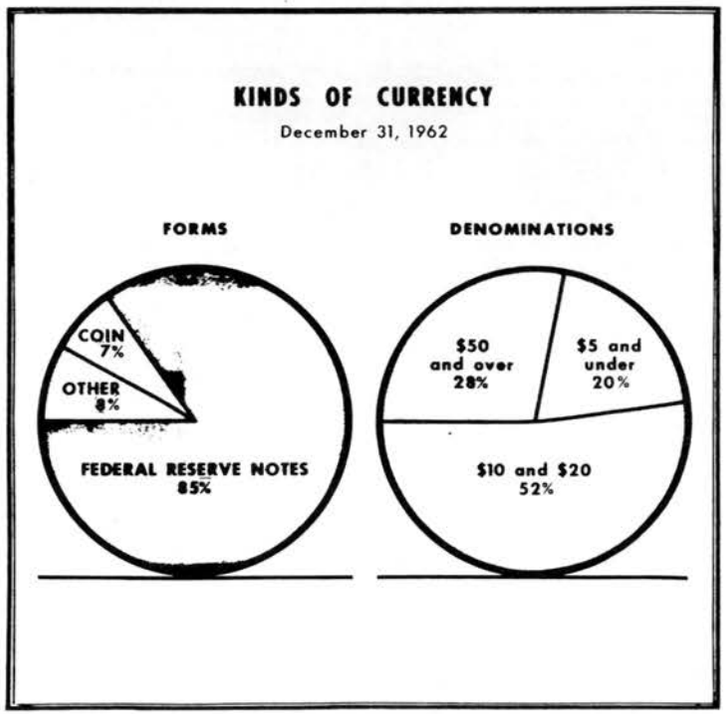
The currency mechanism provided under the Federal Reserve Act has worked satisfactorily: currency moves into and out of circulation automatically in response to an increase or decrease in the public demand. The Treasury, the Federal Reserve Banks, and the thousands of local banks throughout the country 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,[6] but is wholly void,[8] and ineffective for

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

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

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 835; 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, § 2.

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

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

Anno: 4 Ann Cas 630.

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

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

Anno: 4 Ann Cas 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

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

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

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

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

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

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

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

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

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

The expression "intended to circulate as money," as used in provisions of some state Constitutions to the effect that "the legislature shall, in no case, have power to issue treasury warrants, treasury notes, or paper of any description intended to circulate as money," implies that the paper in question must have a fitness for general circulation as a substitute for money in the common transactions of business; it does not apply to warrants made payable to an individual to whom the state is indebted, although the state may direct its officers to receive such warrants in payment of debts due the state. Houston & T. C. R. Co. v. Texas, 177 US 66, 44 L ed 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 986; Farmers Sav. Bank v Neel, 193 Iowa 685, 187 NW 555, 21 ALR 1116; Currie-McGraw Co. v Friedman, 135 Miss 701, 100 So 273; Bank of High Hill v Rockey (Mo App) 277 SW 573; Security State Bank v Brown, 110 Neb 237, 193 NW 336.

6. §§ 334 et seq. infra.

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

7. §§ 302 et seq., infra.

8. § 141, supra.

9. §§ 90, 145, 188, 189, supra.

10. §§ 452 et seq., infra.

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

B. What Constitutes

§ 216. Generally.

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

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

11. § 237, infra.

12. See Vol. 12.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 217. Adequacy.

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

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

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

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

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

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

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

4. Bromfield v Trinidad Nat. Invest. Co. (CA10) 36 F2d 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, 1869, for a debt due prior to that time. Two of these judgments were docketed, and became liens upon the premises in controversy on the 16th of December, 1868. The other one was docketed, and became such lien on the 18th of January, 1869. When the debts were contracted for which the judgments were rendered, the exemption laws in force were the Acts of January 1, 1854, and of February 16th, 1859. The first-named Act exempted certain enumerated articles of inconsiderable value, and "such other property as the freeholders appointed for that purpose might deem necessary for the comfort and support of the debtor's family, not exceeding in value $50, at cash valuation." By the Act of 1859, the exemption was extended to fifty acres of land in the country, or two acres in a town, of not greater value than $500.

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

The Act of August 22, 1868, was then in force. The Acts of 1854 and 1859 had been repealed. *Wilson* v. *Sparks*, 72 N. C., 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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P. 388

Reported in 122 N.W. 251

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

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

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

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

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

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

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

63 Minnesota Reports

P. 147

Reported in 65 N.W. 262

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

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

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

ABOLISHMENT OF HOME OWNERS' LOAN CORPORATION

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

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

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

TRANSFER OF FUNCTIONS

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

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

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

FEDERAL RESERVE NOTES

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

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

REFERENCES IN TEXT

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

CODIFICATION

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

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

AMENDMENTS

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

CHANGE OF NAME

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

CROSS REFERENCES

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

§ 412. Application for notes; collateral required.

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

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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

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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 ALR2d 599.

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 560, 21 A 207

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

§ 52. — Where parties are in pari delicto.

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

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

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

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

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

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

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

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

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

Annotation: 2 ALR 906.

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

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

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

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

A court will not extend aid to either of t parties to a criminal act or listen to the complaints against each other, but will lea them where their own act has placed 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 43 234 P 35, 40 ALR 1005; Berka v Woodwar 125 Cal 119, 57 P 777; Western U. Tel. C v Yopst, 118 Ind 248, 20 NE 222; Grapi Bottling Co. v Ennis, 140 Miss 502, 106 97, 44 ALR 124; Short v Bullion-Beck C. Min. Co. 20 Utah 20, 57 P 720; Rolle Murray, 112 Va 780, 72 SE 665.

Major v Canadian P. R. Co. 51 Ont L R 370, 67 DLR 341, 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 388, 40 ALR 941; Wilson v Philadelphia School Dist. 328 Pa 225, 195 A 90, 113 ALR 1401; State ex rel. Richards v Whisman, 36 SD 260, 154 NW 707, error dismd 241 US 643, 60 L ed 1218, 36 S Ct 449; Langever v Miller, 124 Tex 80, 76 SW2d 1025, 96 ALR 836; Trimmier v Carlton, 116 Tex 572, 296 SW 1070; Peterson v Grayce Oil Co. (Tex Civ App) 37 SW2d 367, affd 128 Tex 550, 98 SW2d 781; Kimball v Grantsville City, 19 Utah 368, 57 P 1; Sabre v Rutland R. Co. 86 Vt 347, 85 A 693; State v Huber, 129 W Va 198, 40 SE2d 11, 168 ALR 808; State v Thompson, 149 Wis 488, 137 NW 20.

Annotation: 3 ALR 451; 69 ALR 266.

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

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

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

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

Annotation: 69 ALR 266.

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

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

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

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

constitutional distribution of the powers of government was made on the assumption by the people that the several departments would be equally careful to use the powers granted for the public good alone, the doctrine is generally accepted that none of the several departments is subordinate, but that all are co-ordinate,[9] independent,[10] 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

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

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

10. § 213, infra.

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

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

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

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

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

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

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

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

17. Porter v Investors' Syndicate, 287 US 346, 77 L ed 354, 53 S Ct 132 (Montana Constitution); Abbott v McNutt, 218 Cal 225, 22 P2d 510, 89 ALR 1109; Re Battelle, 207 Cal 227, 277 P 725, 65 ALR 1497; Denver v Lynch, 92 Colo 102, 18 P2d 907, 86 ALR 907; Stockman v Leddy, 55 Colo 24, 129 P 220; Burnett v Greene, 97 Fla 1007, 122 So 570, 69 ALR 244; State v Atlantic Coast Line R. Co. 56 Fla 617, 47 So 969; Re Speer, 53 Idaho 293, 23 P2d 239, 88 ALR 1086; Winter v Barrett, 352 Ill 441, 186 NE 113, 89 ALR 1398; People v Kelly, 347 Ill 221, 179 NE 898, 80 ALR 890; People ex rel. Rusch v White, 334 Ill 465, 166 NE 100, 64 ALR 1006; State v Shumaker, 200 Ind 716, 164 NE 408, 63 ALR 218; State v Barker, 116 Iowa 96, 89 NW 204; Rouse v Johnson, 234 Ky 473, 28 SW2d 745, 70 ALR 1077; State ex rel. Young v Butler, 105 Me 91, 73 A 560; Harris v Allegany County, 130 Md 488, 100 A 733; Re Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059; American State Bank v Jones, 184 Minn 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 1394; Hawkins v Governor, 1 Ark 570; Abbott v McNutt, 218 Cal 225, 22 P2d 510, 89 ALR 1109; Re Battelle, 207 Cal 227, 277 P 725, 65 ALR 1497; Denver v Lynch, 92 Colo 102, 18 P2d 907, 86 ALR 907; Stockman v Leddy, 55 Colo 24, 129 P 220; Florida Nat. Bank of Jacksonville v Simpson (Fla) 59 So 2d 751, 33 ALR2d 581; Burnett v Greene, 97 Fla 1007, 122 So 570, 69 ALR 244; Singleton v State, 38 Fla 297, 21 So 21; Re Speer, 53 Idaho 293, 23 P 2d 239, 88 ALR 1086; Winter v Barrett, 352 Ill 441, 186 NE 113, 89 ALR 1398; People v Kelly, 347 Ill 221, 179 NE 898, 80 ALR 890; Fergus v Marks, 321 Ill 510, 152 NE 557, 46 ALR 960; State v Shumaker, 200 Ind 716, 164 NE 408, 63 ALR 218; State v Noble, 118 Ind 350, 21 NE 244; Rouse v Johnson, 234 Ky 473, 28 SW2d 745, 70 ALR 1077; Re Dennett, 32 Me 508; Harris v Allegany County, 130 Md 488, 100 A 733; Re Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059; American State Bank v Jones, 184 Minn 498, 239 NW 144, 78 ALR 770; State ex rel. Hadley v Washburn, 167 Mo 680, 67 SW 592; Searle v Yensen, 118 Neb 835, 226 NW 464, 69 ALR 257; Follmer v State, 94 Neb 217, 142 NW 908; State v Roy, 40 NM 397, 60 P2d 646, 110 ALR 1; Riley v Carter, 165 Okla 262, 25 P2d 666, 88 ALR 1016; Simpson v Hill, 128 Okla 269, 263 P 635, 56 ALR 706; Hopper v Oklahoma County, 43 Okla 288, 143 P 4; Union Cent. L. Ins. Co. v Chowning, 86 Tex 654, 26 SW 982; Kimball v Grantsville City, 19 Utah 368, 57 P 1; Public Serv. Com. v Grimshaw, 49 Wyo 158, 53 P2d 1, 109 ALR 534.

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

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

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

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

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

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

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

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

§ 212. — Importance of principle.

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

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

Annotation: 67 ALR 740.

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

Annotation: 79 L ed 476.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. § 214, infra.

16. McCray v United States, 195 [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 1030, 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

Marlon V. Mahoney

MARTIN V. MAHONEY
Justice of the Peace
Credit River Twp.
Scott County, Minn.

Lightning Over the Treasury Building

CHAPTER I

The Goldsmiths

Once upon a time, gold—being the most useless of all metals—was held in low esteem. Things which possessed intrinsic value were labored for—fought for—accumulated—and prized. These things became the standards of value and the mediums of exchange in the respective localities producing them.

One of the most urgent requirements of man is a wife, and it used to be that one of the most prized possessions of a father was a strong, hard working daughter; and she was considered his property. In those days he didn't give a dowry with her to get rid of her—but if a young blade desired her he had to recompense the Dad before he could lead her away to his cave. Good milch cows were as scarce as good girls—so a wooer hit upon the happy idea, one day, of offering a cow to the "Old Man" for his daughter. The deal was made and cows became, probably, the first money in history.

Since that ancient date most everything that you can think of has been used for money. Carpets, cloth, ornaments, beads, shells, feathers, teeth, hides, tobacco, gophers' tails, woodpeckers' heads, salt, fish hooks, nails, beans, spears,

bronze, silver and gold—and later, receipts for gold which did not exist—have all been used for money.

The latter article was the invention of the goldsmith and has yielded greater profits than all other inventions combined. It all came about like this:

Women have always had a fondness for beautiful ornaments. The plainer women—the ones who needed decorating with trinkets—were the ones who received the fewest ornaments. This was because men were the ones who supplied them, and—as contradictory as it may seem—the more beautiful the lady was, the more ornaments she usually received. Rings for her fingers—rings for her toes—rings for her ears—and rings for her nose—bracelets, anklets, tiaras, throatlets, pendants and foibles of yellow gold were hung on her like decorations on a Christmas tree.

Gold was also used to beautify the palaces of the kings, and of the near kings, shrines and temples. It was held in such high esteem that the people actually began to worship it—making gods and goddesses of it. It became the most desired of all substances. Because of the high esteem in which it was held it superseded all of its competitors in the civilized world as a medium of exchange. The value of other goods was measured by the amount of gold for which those goods could be exchanged.

The yellow metal, for convenience sake, and because the gold itself—and not the ornaments which could be made from it—was in demand, was shaped into rings, bars, discs and cubes, usually bearing an imprint of the kingly or princely owner.

Every community, or city, had its king or ruler. These rulers were all eager to increase their hoard of gold. Raiding expeditions were promoted and the weaker tribes, or kingdoms, were looted of the gold which they had accumulated. At times they would become so prosaic and unromantic as to carry on legitimate trade with other communi-

ties and obtain the gold in that way—but that was usually too slow and unexciting.

When the king arrived home with the precious stuff, his worries were not over. There were thieves in those days. There were also goldsmiths. The goldsmiths were the manufacturers of the ornaments which the ladies wore, and they always had a considerable amount of the coveted metal on hand. To safeguard their treasures they built strong-rooms on their premises in which to store the gold entrusted to their care.

It was not surprising, then, that the custom grew for the leader, upon his return from his thieving expedition, to leave the hoard of gold which he had obtained, with the goldsmith for safe-keeping. The merchants, too, who had traded profitably with other nations, communities or tribes, as well as other merchants and raiders passing through the city where the goldsmith lived, found it convenient—and usually safe—to leave their gold in the strong-room of the goldsmith.

When the gold was weighed and safely deposited in the strong-room, the goldsmith would give the owner a warehouse receipt for his deposit. These receipts were of various sizes, or for various amounts; some large, others smaller and others still more small. The owner of the gold, when wishing to transact business, would not as a rule take the actual gold out of the strong-room but would merely hand over a receipt for gold which he had in storage.

The goldsmith soon noticed that it was quite unusual for anyone to call for his gold. The receipts, in various amounts, passed from hand to hand instead of the gold itself being transferred. He thought to himself: "Here I am in possession of all this gold and I am still a hard working artisan. It doesn't make sense. Why there are scores of my neighbors who would be glad to pay me interest for the use of this gold which is lying here and never called for.

It is true, the gold is not mine—but it is in my possession, which is all that matters."

The birth of this new idea was promptly followed by action. At first he was very cautious, only loaning a little at a time—and that, on tremendous security. But gradually he became bolder and larger amounts of the gold were loaned.

One day the amount of loan requested was so large that the borrower didn't want to carry the gold away. The goldsmith solved the problem, pronto, by merely suggesting that the borrower be given a receipt for the amount of gold borrowed—or several receipts for various amounts totalling the amount of gold figuring in the transaction. To this the borrower agreed, and off he walked with the receipts, leaving the gold in the strong-room of the goldsmith.

After his client left, the goldsmith smiled broadly. He could have a cake and eat it too. He could lend gold and still have it. The possibilities were well nigh limitless. Others, and still more neighbors, friends, strangers and enemies expressed their desire for additional funds to carry on their businesses—and so long as they could produce sufficient collateral they could borrow as much as they needed—the goldsmith issuing receipts for ten times the amount of gold in his strong-room, *and he not even the owner of that.*

Everything was hunky-dory so long as the real owners of the gold didn't call for it—or so long as the confidence of the people was maintained—or a whispering campaign was not begun; in which case, upon the discovery of the facts, the goldsmith was usually taken out and shot.

In this manner, through the example of the goldsmiths, bank credit entered upon the scene. The practice of issuing receipts—entries in bank ledgers and figures in bank pass books—balancing the borrower's debt against the bank's obligation to pay, and multiplying the obligations to pay by thirty or forty times the amount of money which they (the

banks) hold, is a hangover of the goldsmith's racket and is the cause of most of the distress in America and the civilized world today.

As a result of the enormous profits being made by the bankers, the United Nations scheme has been formed to protect them in their franchise and to enable them to exploit the world.

The Bank of Amsterdam, established in 1609 in the City of Amsterdam, was, it seems, the first institution which followed the practice of the goldsmiths under the title of banking. It accepted deposits and gave separate receipts for each deposit of its many depositors, each deposit comprising a new account. The procedure greatly multiplied the number of receipts outstanding. The receipts constituted the medium of exchange in the country.

At first these bankers did not think of or did not intend to follow the practice of the goldsmiths in issuing more receipts than they had in gold, but their avarice soon gained control and that practice was introduced and pursued. The receipts were not covered by gold but by mortgages and property which they believed could be converted into gold on short notice, if necessary.

All went well for a time, but in 1795 the truth leaked out. It was found that the outstanding receipts called for several times the amount of gold which was held by the bank. This discovery caused a panic and a run on the bank resulting in its destruction—because the demand for its gold far exceeded its supply.

The collapse of the Bank of Amsterdam should have been an object lesson to all posterity, but alas, avaricious men again took advantage of the forgetfulness and gullibility of the people and the fraud was revived and perpetuated.

CHAPTER II

The Bank of England

For centuries, in England, the Christians were taught, and believed, that it was contrary to Christian ethics to loan money at usury, or interest. During those centuries the Church and the State saw eye to eye, for they were practically one and the same. It was, therefore, not only un-Christian, but also illegal to loan money at interest.

The laws of King Alfred, in the Tenth Century, provided that the effects and lands of those who loaned money upon interest should be forfeited to the Crown and the lender should not be buried in consecrated ground. Under Edward the Confessor, in the next Century, it was provided that the usurer should forfeit all his property, be declared an outlaw and banished from England.

During the reign of Henry II, in the Twelfth Century, the estates of usurers were forfeited at their death and their children disinherited. In the Thirteenth Century, King John confiscated and gathered in the wealth of all known usurers. In the Fourteenth Century, the crime of loaning money at interest was made a capital offense, and during the reign of James I, it was held that the taking of usury was no better than taking a man's life.

In view of these facts it is quite understandable how the Jews became, for the most part, the money lenders and the goldsmiths of England. They for some reason had no compunction of conscience on the matter. They lived outside the pale of the teachings of the New Testament and ignored the unmistakable commands of the Old regarding usury. It is true that they had to carry on their business secretly, but carry it on they did.

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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 necssary 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 specially prohibited such issues by the Constitution.

The proposition which was made in the convention to give to Congress the power to issue bills of credit may have been rejected because that power had been already given in the power to coin money, and regulate its value. Congress has this power, as an incident, like the power to issue debentures; which is exercised as an incident to the power to regulate commerce.

*Mr. *Chief Justice* MARSHALL 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 Constitution which this act is supposed to violate is in these words: "No State shall" "emit bills of credit."

What is a bill of credit? What did the Constitution mean to forbid?

In its enlarged, and perhaps its literal sense, the term "bill of credit" may comprehend any instrument by which a State engages to pay money at a future day; thus including a certificate given for money borrowed. But the lan-
432*] guage *of the Constitution itself, and the mischief to be prevented, which we know from the history of our country, equally limit the interpretation of the terms. The word "emit" is never employed in describing those contracts by which a State binds itself to pay money at a future day for services actually received, or for money borrowed for present use; nor are instruments executed for such purposes, in common language, denominated "bills of credit." To "emit bills of credit," conveys to the mind the idea of issuing paper intended to circulate through the community for its ordinary purposes, as money, which paper is redeemable at a future day. This is the sense in which the terms have been always understood.

At a very early period of our colonial history the attempt to supply the want of the precious metals by a paper medium was made to a considerable extent, and the bills emited for this purpose have been frequently denominated bills of credit. During the war of our revolution we were driven to this expedient, and necessity compelled us to use it to a most fearful extent. The term has acquired an appropriate meaning; and "bills of credit" signify a paper medium, intended to circulate between individuals and between government and individuals, for the ordinary purposes of society. Such a medium has been always liable to considerable fluctuation. Its value is continually changing; and these changes, often great and sudden, expose individuals to immense loss, are the sources of ruinous speculations, and destroy all confidence between man and man. To cut up this mischief by the roots, a mischief which was felt through the United States, and which deeply affected the interest and prosperity of all, the people declared in their Constitution that no State should emit bills of credit. If the prohibition means anything, if the words are not empty sounds, it must comprehend the emission of any paper medium by a State government for the purpose of common circulation.

What is the character of the certificates issued by authority of the act under consideration? What office are they to perform? Certificates signed by the auditor and treasurer of the State are to be issued by those officers to
433*] the *amount of two hundred thousand dollars, of denominations not exceeding ten dollars, nor less than fifty cents. The paper purports on its face to be receivable at the treasury, or at any loan-office of the State of Missouri, in discharge of taxes or debts due to the State.

The law makes them receivable in discharge of all taxes or debts due to the State, or any county or town therein; and of all salaries and fees of office to all officers, civil and military, within the State, and for salt sold by the lessees of the public salt-works. It also pledges the faith and funds of the State for their redemption.

It seems impossible to doubt the intention of the Legislature in passing this act, or to mistake the character of these certificates, or the office they were to perform. The denominations of the bills—from ten dollars to fifty cents—fitted them for the purpose of ordinary circulation and their reception in payment of taxes, and debts to the government and to corporations, and of salaries and fees, would give them currency. They were to be put into circulation; that is, emitted, by the government. In addition to all these evidences of an intention to make these certificates the ordinary circulating medium of the country, the law speaks of them in this character, and directs the auditor and treasurer to withdraw annually one-tenth of them from circulation. Had they been termed "bills of credit," instead of "certificates," nothing would have been wanting to bring them within the prohibitory words of the Constitution.

And can this make any real difference? Is the proposition to be maintained that the Constitution meant to prohibit names and not things? That a very important act, big with great and ruinous mischief, which is expresly 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

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

Petitioner Exhs

25 thru 35

COPY

(2)

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF SCOTT — FIRST JUDICIAL DISTRICT

Northwestern National Bank of Minneapolis,

Plaintiff,

vs.

Leo Zurn, Jerome Daly and John Doe, and Roger D. Derrick,

Defendants.

DEPOSITION OF:

JEROME DALY

Daniel M. Larkin
Court Reporter

Petitioners Ex 25 42174
2/10/78 lsm

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF SCOTT — FIRST JUDICIAL DISTRICT

North-western National Bank of Minneapolis,

Plaintiff,

vs.

Leo Zurn, Jerome Daly and John Doe, and Roger D. Derrick,

Defendants.

DISCOVERY DEPOSITION of JEROME DALY, taken pursuant to Order and stipulation, at the First National Bank Building, Shakopee, Minnesota, beginning at the hour of 2:20 o'clock p.m., on Tuesday, September 9, 1969, before Daniel M. Larkin, Notary Public, County of Hennepin, State of Minnesota, to be used in the above-entitled cause, to be heard in the District Court, First Judicial District, County of Scott, State of Minnesota.

* * * * * *

APPEARANCES:

PETER R. KITCHAK, ESQ., Attorney at Law, of the law firm Faegre and Benson, 1300 Northwestern Bank Building, Minneapolis, Minnesota 55402, appeared for the Plaintiff.

JEROME DALY, ESQ., Attorney at Law, 28 East Minnesota Street, Shakopee, Minnesota 55378, appeared on behalf of himself and Defendant Leo Zurn.

* * * * *

JEROME DALY

having been first duly sworn upon his oath, was examined and testified as follows:

EXAMINATION

BY MR. KITCHAK:

Q For the record, this is a deposition that is convened pursuant to an order of the District Court, First Judicial District of the County of Scott by Judge Harold E. Flynn, signed September 5th, 1969, in which Jerome Daly was ordered to appear at the Court

House in Shakopee, Minnesota at 2:00 o'clock p.m. on September 9. This deposition is being convened here at the First National Bank of Shakopee pursuant to stipulation between the parties, is that agreed, Mr. Daly?

A That's right.

Q And for whatever purposes the Minnesota Rules of Civil Procedure permit.

A Well, I take the position those rules are unconstitutional and void. And I'm appearing here especially.

Q Would you state your name for the record, please?

A Jerome Daly.

Q Your address?

A Rosemount, Minnesota.

Q Mr. Daly, you are a practicing lawyer in the State of Minnesota, is that correct?

A To date, that's right.

Q When were you admitted to practice?

A May 13, 1953. Or May 14, 1953.

Q And in this particular action you are appearing as attorney for Leo Zurn and pro se on behalf of yourself, is that correct?

A That's right.

Q Mr. Daly, when did you first meet Leo Zurn, the defendant in this action whom you represent?

A 1962.

Q Did that meeting come about because of the virtue of the fact that your office is fairly close to his place of business?

A No. I was in St. Paul at the time. My office was in St. Paul.

Q What were the circumstances of your meeting Mr. Zurn?

A I met him at Hastings, Minnesota.

Q Representing him?

A No. He came up to me and introduced himself.

Q I see. Did you begin doing business as an attorney for Mr. Zurn at that time?

A No.

Q When did you first have contact with him in an attorney-client relationship?

A I would say -- let's see, I think it was in September or October of 1963.

Q Have you represented him since that time for most of his legal matters, or all of them?

A I represented him in one case at that time.

Q Are you aware of any other legal matters that he is involved in, or was involved in, that he did not use you as legal counsel?

A Am I aware of it? Well, I represented him in the case of -- I think he was a party in W. Frank Horn vs. the Federal Reserve. There were several others. I can't

remember if he was a party to them or not.

Q At any rate, you have been his legal counsel --

A A tax payer's suit.

Q You have been his legal counsel primarily since 1962?

A No, I wouldn't say that, no.

Q Has your relationship, Mr. Daly, with Mr. Zurn been strictly an attorney-client relationship, professional relationship?

A Well, you understand that at the termination of that case, well, then the attorney-client relationship terminated. And if I remember right, I didn't start representing him again until April or May or June of this year.

Q I see. Have you known him socially in the interim? Have you had dinner with him occasionally or had a drink with him occasionally or something of that nature? Is he a personal friend of yours?

A Well, I know him to see him, to speak to him. I think probably sat at the same restaurant and had coffee with him. I don't think I have had anything to drink with him. I don't socialize with him.

Q I see. Have you ever done any business with him in his business at Savage, purchased auto parts or had work done on your car by him?

A I purchased parts from the place he works at but not from him personally.

Q I see. So he is not the owner of the organization that he is now working at?
A No.
Q What is the name of that establishment?
A The Savage Auto Parts.
Q In this case, Mr. Daly, we are concerned with a 1967 Ford Mustang, serial number 7F02C212104 with a current Minnesota license place of 5DT676. On that automobile, Mr. Zurn, I take it, alleges he did a certain amount of work on that car, is that correct?
A Whatever the complaint shows, that's the allegation.
Q Now, was it Mr. Zurn that did the work on that car or was it Savage Auto Parts?
A Well, now, you see, you're getting into an area which is privileged. And I'm going to object on the grounds that you're asking for information that is privileged. And I refuse to answer on those grounds. Attorney-client privilege.
Q Are you familiar with the car in this action?
A I have seen it.
Q It is a 1967 Ford Mustang, to the best of your knowledge?
A As far as I know.
Q What color is it, Mr. Daly?
A Brown or green. I don't remember.
Q When did you first see the car?

A Well, you see, once more you're getting into an area that is privileged. I don't think I should disclose this information.

Q Mr. Daly, the Rules of Civil Procedure in the Minnesota statutes, I think, very specifically provide that we are not entitled to inquire into conversations between you and your client and the nature of those conversations.

Q But in this action I'm not asking you about relations between you and your client, I'm asking you of your

A personalknowledge of this automobile. I'm not trying to

Q inquire as to any conversations you have had with your client or any work that you have done in preparation of

A this law suit. I'm merely attempting to discover the nature

Q of the automobile involved and your personal knowledge.

A Well, I'm going to shorten this up. I don't have the car in my possession nor under my control. I claim no lien against the car. Now, I'm going to refuse to answer any further questions on the grounds that it invades the

A attorney-client privilege. And I'm not going to answer any

Q further questions on this basis: that it infringes on my rights as secured by the Constitution of the United States, and more particularly Article 6 of the original Constitution; the Declaration of Independence of July 4, 1776;

A The Declaration and Resolves of the First Continental

Q Congress of October 14, 1774; the Declaration of the Causes

and Necessities of Taking Up Arms of July 6, 1775; and the Northwest Ordinance of July 14, 1787; the Session of Louisiana Treaty between France and the United States of April 30, 1803; and the 1st, 4th, 5th, 6th and 9th, 10th and 13th and 14th Amendments of the Constitution of the United States. I'm refusing to answer based upon those grounds.

Q Mr. Daly, are you familiar with a Cyril W. Maxa, Sergeant in the Sheriff's department of Scott County?

A Same objection as previously noted.

Q Mr. Daly, were you served with a summons and complaint in this action?

A Same objection as previously noted.

Q At the time that you were served with a summons and complaint in this action, Mr. Daly, and the affidavit in replevin and appropriate bonds, were you served those papers by somebody from the Sheriff's department of Scott County?

A Same objection as previously noted.

Q At the time that you were served with the papers in this action, Mr. Daly, did the Sheriff of Scott County request that you turn the car over to him in question in this action?

A Same objection as previously noted.

Q At the time that you were served with the summons and

complaint, affidavit of replevin and bond in this action, did you tell the person from the Sheriff's department that there was an action pending as to this car in the Court of Justice Mahoney?

A Same objection as previously noted. I also want to let the record show that I'm relying on the Constitution of Minnesota as it now presently is and as it existed in 1947.

Q In what respect are you relying on the Minnesota Constitution, Mr. Daly?

A The whole thing. Article 9, Section 13 also.

Q Mr. Daly, prior to the commencement of this action, did an officer of the Northwestern National Bank of Minneapolis come to your office and discuss the automobile in question in this action with you?

A Same objection.

Q At the time a vice-president from the Northwestern National Bank of Minneapolis, who identified himself as such, and by the name of one Cornell Moore, appeared in your office, did he not offer to you, as attorney on behalf of Leo Zurn, a sum of money to pay off the lien that your client asserts in this action?

A What do you mean by money?

Q Did he make any tender of any type of currency, Mr. Daly?

A He did.

Q What type of tender did he make, Mr. Daly?
A Well, I don't remember exactly, but it appeared to be Federal Reserve notes to me.
Q Do you remember the amount? Did he not count out $680.00 in Federal Reserve notes?
A I think that's true. I think that's what he threw on the table.
Q At that point you picked up the money and handed it back to him and said it was not valid, is that right?
A Whatever he said in his affidavit is true.
Q Do you have any personal knowledge, Mr. Daly, of whether or not the same offer was made to your client, Leo Zurn?
A I assume that it was. I mean just from hearsay.
Q Mr. Daly, did you, at any time, challenge the bond that was served with the replevin papers as being inadequate?
A Formally in court?
Q In any formal manner as prescribed by the Constitution of the State of Minnesota and the Rules of Federal Procedure and the laws of Minnesota.
A You mean the Minnesota Rules of Civil Procedure enacted by the Supreme Court?
Q And the statutes of the State of Minnesota enacted by the Minnesota Legislature. Mr. Daly, did you object in any manner to the validity of that bond?
A Well, as I recall, I didn't say anything to the Sheriff.

I looked it over. I don't think I said anything to the Sheriff except the matter was in the hands of the courts of the State of Minnesota and I wouldn't discuss it with him. I had no authority to discuss it with him. I think that's all I said to him.

Q Mr. Daly, do you at this point in time know the whereabouts of this automobile under question in this action?

A I do not know.

Q Are you aware of who has possession or control over the vehicle?

A Well, you're asking questions that are touching on privileged information between myself and my client. And also the same previous objection.

Q Mr. Daly, according to the Sheriff of Scott County, or Sergeant Cyril W. Maxa, when the papers in this action were served on your client, Leo Zurn, he stated that his attorney, Jerome Daly, had possession of the car to the Sheriff. Was that correct?

A I don't know what he told the Sheriff.

Q Did you at that time have possession of the car on or about July 25th, 1969?

A No.

Q Have you ever had possession of the car in this action?

A I have driven it.

Q Were you ever given possession and control of the

automobile?

A Not as such, no. Except in so far as an agent for my client.

Q So your client then did give you possession and control of the automobile?

A Well, if you have got the keys to it and you drive it and you're behind the wheel and you're driving down the road, obviously you have got possession and control. I said I drove it.

Q That was the only degree of possession and control you have exerted over that vehicle?

A That's right. I said I claim no lien in the car. I claim no interest in it.

Q When did you drive the automobile, Mr. Daly?

A Oh, I can't remember now.

Q Approximately? You commenced the action in Mr. Mahoney's court on or about the 1st day of July of this year.

A It was sometime previous to that. I don't remember.

Q You have not driven the car since then?

A No, sir.

Q Have you seen the car since then?

A Well, now, once again, you're asking for privileged information. The same objection. To shorten this up, I'm going to have the same objection to any question you ask further.

Q Do you have the keys to the car, Mr. Daly?
A Same objection. Also you boys have no interest in it. Or your client hasn't.
Q Thank you for your analysis of the legal issues involved in it, Mr. Daly.
A You're very welcome. I just want to make my position clear. I will move it on for a jury trial. If you wish, why, it's yours.
Q Mr. Daly, subsequent to the court's issuing the order --
A How does that sound?
Q No comment, Mr. Daly.
A All right.
Q Subsequent to the court's issuing an order for you to appear at this deposition, Mr. Daly, have you conferred with your client on this matter?
A The same objection.
Q Has your degree of possession and control of this automobile changed in any respect since last Friday?
A No. I told you I didn't have the possession or control of it last Friday nor since then nor at the time the Sheriff was in to see me. I'm only a hired man, and a poor one at that.
Q Mr. Daly, rather than noticing a deposition of your client, Leo Zurn, in this matter, and going through a formal notice, are you willing to stipulate to a time

of taking his deposition?

A No, especially since this last business came out of the Supreme Court. I have no authority to do anything in writing signed by him.

Q Are you representing him at the present time?

A That's right.

Q And your representation of him has not in any manner changed?

A Except that my authority has been limited. If he has got to sign anything or any agreements. It's been revoked to that extent.

Q Mr. Daly, are you aware of any parties at this time that have any knowledge or whereabouts of this car?

A Same objection.

Q Has the car been sold, Mr. Daly?

A Well, now, if it has I wouldn't know about it.

Q To the best of your knowledge, the car has not been sold?

A That's right. And I believe it's my instructions it has not been sold. That damn thing probably still belongs to General Motors, or whoever made it. For all I know. Sure is a screwed up affair, isn't it?

Q Mr. Daly, to the best of your knowledge, has the condition of that automobile changed in any manner since July 1st of this year?

A I don't know. Could belong to the Indians. I think the

Northwest Territory and Louisiana Territory still belong to them. You know, the only way they could get actual legal rights to the territory was to buy it from the Indians or declaration of war. At least take them out and get them drunk and make a new treaty with them. It could belong to the Indians.

Q Excuse me, Mr. Daly, I think we have to proceed in a little more serious vein.

A I am being serious.

Q To the best of your knowledge, then, the condition of this automobile has not changed and has not been involved in an accident or anything of that nature?

A Well, if it has, I don't know about it.

Q Mr. Daly, do you know where the car was on July 25th, 1969, at the commencement of this action?

A Same objection.

Q That being privileged?

A Yes.

Q Mr. Daly, was Justice Mahoney paid any fees for the action that took place in his court respecting this car?

A He acted without fee.

Q He was given no gratuities of any form?

A No. Well, he had a lot of fun handling this case. I don't know whether you would call that a gratuity or not.

Q Mr. Daly, are you familiar with the defendant Roger D.

Derrick in this action?

A Same objection.

Q Have you ever met the man?

A Yes, I have.

Q Has he ever consulted you as to legal matters?

A Same objection.

Q Is Mr. Derrick familiar with your client?

A I don't know what you mean by that.

Q Has he dealt with him on matters other than this car and the matter under consideration in this action?

A Well, I'm going to shorten this up, I'm going to take the same objection all the way through.

Q Has Mr. Derrick received any payment of any form with respect to this automobile?

A Now, when I say same objection, I mean the ones that I -- the long objection I stated. Same objection. What is that Geneva Conference Rules of War, give my name, rank and serial number and that's it.

MR. KITCHAK: I have no further questions. Mr. Daly, would you like to, as attorney pro se for yourself, ask any questions or make any statements?

THE WITNESS: Not of myself, no.

MR. KITCHAK: Are you willing to waive reading and signing of the record?

THE WITNESS: And notice of filing, yes.

STATE OF MINNESOTA }
COUNTY OF HENNEPIN } ss.

Be it known that I, Daniel M. Larkin, the undersigned, a duly commissioned and qualified Notary Public within and for the County and State aforesaid, do hereby certify that before the giving of his deposition, the said JEROME DALY was by me first duly sworn upon his oath to depose the whole truth and nothing but the truth; that the foregoing is a true and correct copy of my original stenotype notes taken at said deposition; that the reading and signing and notice of filing of the deposition was duly waived; that I am neither a relative of, nor attorney for, any of the parties to the cause and have no interest whatever in the result of the same.

WITNESS MY HAND AND SEAL this ___ day of ____, 1969

Daniel M. Larkin
Notary Public, Hennepin County, Minn.
My Commission Expires Nov. 20, 1973

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF MINNESOTA - THIRD DIVISION

Civil Action File No. 3-66-340

- - - - - - - - -

Alfred M. Joyce, as Executor of the Last Will and Testament of Helen A. Patterson, Decedent,

Plaintiff,

Vs.

COMPLAINT

Supreme Court of the State of Minnesota, Oscar R. Knutson, Thomas Gallagher, Martin A. Nelson, William P. Murphy, James C. Otis, Walter F. Rogosheske, Robert J. Sheran, The District Court of the County of Dakota - First Judicial District - State of Minnesota, and The State of Minnesota

- - - - - - - - -

PLAINTIFF, FOR HIS COMPLAINT HEREIN, STATES AND ALLEGES:

I.

That Plaintiff is a citizen and resident of the State of Minnesota. That Plaintiff is the Executor of the Last Will and Testament of Helen A. Patterson, Decedent, she having died in the City of Hastings, County of Dakota, on the 31st day of January, 1965, and who was at the time of her death a resident of Hastings, in the County of Dakota, State of Minnesota, and left an estate consisting of real and personal property in the County of Dakota, State of Minnesota. That on the 24th day of June, 1965, the Probate Court of the State of Minnesota established and allowed the Last Will and Testament of the Decedent, Helen A. Patterson, and admitted it to probate, which named Plaintiff Alfred M. Joyce as one of the Executors of said Last Will and Testament.

A true copy in ten sheets
Certified January 30 1970
FRANK A. MASSEY, CLERK
BY: Judith O'Palmer Deputy

Filed NOV 28 1966 19
Frank A. Massey, Clerk
By Lawrence R. Tyson Deputy

Petitioners' Ex 26
2/10/70 cmf

42174

II.

That Plaintiff is a Legatee under said Last Will and Testament and also as Executor of said Will, is under obligation imposed by Law to preserve, defend and protect the estate of Helen A. Patterson and all its assets. That the Defendant District Court has jurisdiction of an action now pending therein involving the estate and its assets. That the Defendant, The Supreme Court of Minnesota is the Court of Last Resort in the State of Minnesota, and the Defendant Knutson is the Chief Justice of said Court. That Defendants Otis, Nelson, Rogesheske, Murphy Sheran, and Gallagher are associate justices of said Court. That the Defendant State of Minnesota is a necessary party to this proceeding because the administration of its Constitution is involved.

III.

That this Court has jurisdiction because this is a case or controversy in Law and in Equity, arising under and involving rights protected by the following:

(A) The Declaration of Independence and more specifically the following portions thereof:

Paragraphs One, Two, Three, Seven, Fifteen, Twenty, Twenty-two, Twenty-three and Twenty-nine, and the same is referred to as though set out in full.

(B) The Constitution of the United States and more specifically the following parts thereof which are referred to as though herein set out in full, which are, to-wit:

The Preamble, Article I, Article II, Article III, Article IV, Amendments I through X, inclusive and Amendment XIV, thereof.

(C) The Constitution of the State of Minnesota from 1947 to date, and the following parts thereto, including Amendments thereof, which are referred to as though herein set out in full, to-wit:

The Preamble, Article I - Bill of Rights; Article III - Distribution of The Powers of Government; Article IV - Legislative Department; Article VI - Judiciary; Article XIV - Amendments to the Constitution.

(D) That this Court has jurisdiction under the provisions of the Civil Rights Act, 42 U.S.C., Sections 1983 and 1988, and 28 U.S.C., Section 1343, Subdivision 3, and is brought to redress a deprivation of rights secured by said U. S. Statute.

IV.

That Volume 27, Minnesota Statutes Annotated contains what purports to be the Rules of Civil Procedure for the District Courts of Minnesota, found therein in page 74 through page 158, and which are referred to herein as though set out in full.

V.

That attached hereto and made a part hereof as Exhibit A, a true and correct copy of the Enabling Act, passed by the Minnesota Legislature Laws 1947, Chapter 498.

That attached hereto and made a part hereof as Exhibit B, is the Order of the Supreme Court of the State of Minnesota, which orders the said rules to be effective on January 1, 1952. That all other orders amendatory thereof are referred to as though set out in full.

VI.

That the Enabling Act referred to in Exhibit A is an attempted delegation of legislative power by the Legislature to the Judicial Branch of the State of Minnesota.

That the Order of the Supreme Court dated June 25, 1951, is an attempted exercise of legislative power by the Judicial Branch of the Government of the State of Minnesota. That the Supreme Court of the State of Minnesota never did have and does not now have the power and authority to abolish, render

ineffective, void, or negate any Statute of the State of Minnesota; nor can said Court or its members enact substansive laws for the courts or people of Minnesota in the form of court rules or otherwise.

That Chapters 540 through and including 550 of Minnesota Statutes Annotated have never been repealed, and are in full force and effect, notwithstanding the action of the Legislature and Supreme Court of the State of Minnesota, as is set out in Exhibits A and B herein to invalidate the same.

VII.

That in enacting said Rules, said Supreme Court of Minnesota, and the Judges thereof, including Defendants herein, acted and are continuing to act, wholly without Jurisdiction, contrary to the Constitution of the State of Minnesota. That the said rules of Civil Procedure is used for the purpose of circumventing and defeating Plaintiff's rights as protected by the Declaration of Independence, Constitution of the United States and Constitution of Minnesota.

That said activity as is hereinbefore alleged constitutes a transfer of legislative and political power to the Minnesota State Bar Association and the member lawyers thereof, to the Judges of the Supreme Court of Minnesota and to the District Courts Judges of Minnesota.

That the District Court of Dakota County, Minnesota is and has been following the procedure set up by the said New Rules of Civil Procedure pursuant to the Order of the Supreme Court.

VIII.

That during Helen A. Patterson's lifetime and up to her death on January 31, 1965, by reason of said rules, she was removed from her homestead valued in excess of $100,000.00, without jury trial and without Due Process of Law, nor any

trial whatsoever. That using the New Rules of Civil Procedure as a basis summary, Judgment was ordered against her. In addition thereto, she was deprived of her personal property without due process of law.

That the procedure set up by the Rules entailed substantial additional expense to the litigation Helen Patterson was involved in.

That between 1961 and 1964 Helen A. Patterson made through her Counsel, numerous applications, in appropriate proceedings, to the Supreme Court, to invalidate and set aside the said Rules and to avoid the effect thereof. All applications and petitions were premptorially denied. That further application or petition to said Court or the Justices of the Supreme Court is useless.

That Plaintiff is satisfied, to a moral certainty, that the Justices of said Supreme Court harbor a subsisting prejudice against the Declaration of Independence, Constitution of the United States and the State of Minnesota, and bias in favor of the annulment, avoidance and nullification thereof. That Chief Justice Knutson has refused to honor Affidavits of Prejudice made in good faith and upon substantial grounds in matters where Helen A. Patterson was involved and effectuated decisions against her. That he has openly come out for the unqualified abolition of the ancient and sacred right to trial by Jury in the United States. That there are other instances of denial of Constitutional Rights, too numerous to mention here. That therefore, it is apparent and clear that further application to said Court or the Justices thereof is useless.

IX.

That the Estate of Helen A. Patterson is still involved in litigation in the Dakota County District Court at the present time. That because of said Rules, Plaintiff is deprived of the benefit of Statuatory and legal procedure and has been subjected

to a procedure foreign to our Constitution and unacknowledged by our laws.

That actual additional expense for legal service is caused by the said Rules by reason of the provisions thereof. That said Rules constitute a violation of the unreasonable search and seizure provision of the U. S. Constitution, an invasion of privacy and a nuisance.

That the Discovery Provisions of said Rules cause additional expense, not contemplated for by the Constitution or Statutes of Minnesota to Plaintiff's actual damage. That said Discovery Rules are found in Volume 27 A, M.S.A, and are referred to herein as though set out in full.

Probate
That the/Court has made an Order allowing the Will of Helen A. Patterson which is now on appeal in the Dakota County District Court.

X.

That in the District Court it is impossible to obtain a Judgment that complies with the requirements of Due Process of Law with the Rules in apparent force and effect.

XI.

That there will be of necessity, further litigation in the District Court of Dakota County in the administration of the estate of Helen A. Patterson.

WHEREFORE, Plaintiff, as named Executor of the Last Will and Testament of Helen A. Patterson, demands relief and Judgment as follows:

1. Pursuant to Sections 2281 through 2284 28 USC Plaintiff hereby makes application that the above entitled action be heard and determined by a District Court of Three Judges under Section 2284, United States Code.

2. For declaratory Judgment that:

A. The Enabling Act set out in Exhibit A to the Complaint be declared unconstitutional.

B. The Order of the Supreme Court of Minnesota dated June 25, 1951 and all Orders amendatory thereof, is declared Unconstitutional.

3. That the Supreme Court of Minnesota and the Justices thereof be permanently enjoined from enacting rules of substantive law, whether Procedural or otherwise, for the District Courts of Minnesota, pursuant to the Enabling Act referred to herein or otherwise.

4. That the District Court of Dakota County be permanently enjoined from giving any force or effect to said Rules.

5. For costs and disbursements incurred herein.

Jerome Daly
Plaintiff's Attorney
28 E. Minnesota Street
Savage, Minnesota

Dated this 22nd day of November, 1966
at Savage, Minnesota

STATE OF MINNESOTA)
COUNTY OF SCOTT) ss

ALFRED M. JOYCE, being duly sworn, states he is the Plaintiff in the above entitled action, that he has read the foregoing Complaint and that the same is true.

Alfred M. Joyce

Subscribed and sworn to before me this 22nd day of November, 1966 at Savage, Minnesota.

Jerome Daly, Notary Public
SCOTT COUNTY, Minnesota
My Commission expires
January 17, 1973

Enabling Act

(Laws 1947, c. 498; M.S.A. § 480.051 et seq.)

An act authorizing the supreme court to regulate by rules the pleading, practice, and procedure in civil cases in all the courts of this state.

Be it enacted by the Legislature of the State of Minnesota:

[480.051] Section 1. **Regulate pleading, practice, and procedure.** The supreme court of this state shall have the power to regulate the pleadings, practice, procedure, and the forms thereof in civil actions in all courts of this state, other than the probate courts, by rules promulgated by it from time to time. Such rules shall not abridge, enlarge, or modify the substantive rights of any litigant.

[480.052] Sec. 2. **Advisory committee.** Before any rules are adopted the supreme court shall appoint an advisory committee consisting of eight members of the bar of the state and at least two judges of the district courts and one judge of a municipal court to assist the court in considering and preparing such rules as it may adopt.

[480.053] Sec. 3. **Recommendations by judicial council.** The judicial council, upon the request of the supreme court or upon its own initiative in accordance with the provisions of Minnesota Statutes 1945, Chapter 483, may at any time make recommendations to the court for its consideration concerning rules of pleading, practice, procedure and the forms thereof in civil actions.

[480.054] Sec. 4. **Distribution of proposed rules; hearing.** Before any rule for the district or municipal courts is adopted, the supreme court shall distribute copies of the proposed rule to the bench and bar of the state for their consideration and suggestions and give due consideration to such suggestions as they may submit to the court. The Minnesota State Bar Association, the District Court Judges Association or the Municipal Court Judges Association may file with the court a petition specifying their suggestions concerning any existing or

proposed rule and requesting a hearing thereon. The court shall thereupon grant a hearing thereon within six months after the filing of the petition.

[480.055] Sec. 5. **Rules not in conflict.** Subdivision 1. **Other courts.** Any court, other than the supreme court, may adopt rules of court governing its practice; the judges of district courts, pursuant to Minnesota Statutes 1945, Sections 484.52, 484.33, and the judges of municipal courts, pursuant to Minnesota Statutes 1945, Section 488.16, may adopt rules not in conflict with the rules promulgated by the supreme court.

Subd. 2. **Bureaus.** This act shall not affect the power of any other statutory body to make rules governing its practice.

[480.056] Sec. 6. **Present laws effective until modified.** All present laws relating to pleading, practice, and procedure, excepting those applying to the probate courts, shall be effective as rules of court until modified or superseded by subsequent court rule, and upon the adoption of any rule pursuant to this act such laws, in so far as they are in conflict therewith, shall thereafter be of no further force and effect.

[480.057] Sec. 7. **Promulgation.** Subdivision 1. **Effective date of rules; publication.** All rules promulgated under this chapter shall be effective at a time fixed by the court and shall be published in the appendix to the official reports of the supreme court and shall be bound therewith.

Subd. 2. **Index; printing, publishing and distributing.** The revisor of statutes shall index and the commissioner of administration shall print, publish, and distribute copies thereof to the bench and bar and as required by law.

Sec. 8. **Right reserved.** This act shall not abridge the right of the legislature to enact, modify, or repeal any statute or modify or repeal any rule of the supreme court adopted pursuant thereto.

Approved April 23, 1947.

EXHIBIT "A"

(1)

EXHIBIT "B"

State of Minnesota in Supreme Court

ORDER OF PROMULGATION OF THE RULES GOVERNING THE REGULATION OF PLEADINGS, PRACTICE, PROCEDURE, AND THE FORMS THEREOF IN THE DISTRICT COURTS OF THE STATE OF MINNESOTA.

Whereas, The Advisory Committee appointed by the Supreme Court under the provisions of L.1947, c. 498, Sec. 2, to assist the court in considering and preparing rules governing the regulation of pleadings, practice, procedure and the forms thereof in the District Courts, has reported and recommended to this court the hereto annexed 89 pages of rules numbered 1 to 86.02, together with 14 pages of appendices thereto, and whereas this court has considered all of the rules so reported and finds them in the furtherance of justice,

Now therefore, it is ordered That the hereto annexed rules be, and the same hereby are, promulgated and shall be effective on January 1, 1952, for the regulation of pleadings, practice, procedure, and the forms thereof in the District Courts of the State of Minnesota.

Dated June 25, 1951.

BY THE COURT

CHARLES LORING
Chief Justice

THOMAS GALLAGHER
CLARENCE R. MAGNEY
LEROY E. MATSON
FRANK T. GALLAGHER
OSCAR R. KNUTSON
THEODORE CHRISTIANSON
Associate Justices

Filed June 25, 1951
Grace Kaercher Davis, Clerk

NOTICE OF APPLICATION

TO: THE DEFENDANTS NAMED HEREIN AND TO EACH OF THEM:

You will Please take Notice, that Plaintiff herein will make application to the United States District Judge in charge to the Civil Special Term, to be designated by the Clerk of United States District Court, for the relief in paragraph one of the Werefore Clause to wit: the application that the above entitled action be heard by a District Court of Three Judges pursuant to United States Statutes.

That said Application will be made at the United States District Court House, 6th and St. Peter Streets, St.Paul, Minnesota, 3rd floor before said assigned Judge at 10:00 A.M. Nov 28, 1966 or as soon thereafter as Counsel can be heard.

The said Application will be based upon the verified Complaint herein .

November 22,1966
Savage,Minnesota

Jerome Daly
Plaintiff's Attorney
28 East Minnesota Street
Savage,Minnesota

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
FOURTH DIVISION

Jerome Daly, Plaintiff, 4-69 CIV. 311

vs. COMPLAINT

Minnesota State Bar Association,
George R. Ramier, Miles W. Lord,
Patrick Foley, William H. Eckley,
John Doe, Richard Roe and Tom Moe, Defendants.

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

I.

That this action is brought pursuant to the Declaration of Independence, The Constitution of the United States of America and more particularly Article 6 thereof and the Northwest Ordinance which is incorporated into the Constitution of the U.S. thereby, the Bill of Rights, the 13th and 14th Amendments and Title 28 Section 1343 USCA and Title 42 Sections 1981 thru Sections 1988 USCA for the recovery of damages to Plaintiff's person and property and charachter because of rights, priviledges and immunities secured to Plaintiff as a Citizen of the United States by acts done in furtherance of any conspiracy mentioned in section 1985 of Title 42, U.S.C.A. That this action is further to recover damages from Defendants and each of them who failed to prevent or to aid in preventing any worngs mentioned in Section 1985 to Title 42 which they had knowledge were about to occur and power to prevent; further this action is to redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States and for damages to Plaintiff's person, property and character directly caused by a

Filed SEPTEMBER 5 1969
Frank A. Massey, Clerk.
By ELEANOR T. MOLLNER
Deputy

A true copy in 9 sheets
Certified January 30 1970
FRANK A. MASSEY, CLERK
BY: Judith C Palmer
Deputy

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conspiracy to interfere with civil rights and from preventing Plaintiff as an Attorney at Law licensed to practice in the United States District Courts of Minnesota from freely, without intimidation, force and threat, from discharging his duties as defense counsel for Defendant Carl R. Anderson in the case of United States of America vs. Carl R. Anderson which case was brought by Indictment in the above Court of the United States on or about May 1,1968.

II.

That Plaintiff is a citizen of the United States of America, and a resident of the County of Dakota and a freeholder of the State of Minnesota. Further Plaintiff is licensed to practice Law in the State of Minnesota and before the United States District Courts in and for the State of Minnesota.

III.

That Defendant Minnesota State Bar Association is a private corporation organized under and by virtue of the Laws of the State of Minnesota, the member of which are certain select Lawyers and Judges of the State of Minnesota who are in conspiracy to control and channel litigation and the business of the Courts and by intimidation and threats to control the lawyers of the State of Minnesota and to condition them to submit to the control and whim of the dominant personality in said association, and also those Lawyers not members of the association. Plaintiff is not a member of the "Association". That said Association is at all times herein material and has been in the past been engaged in the deprivation, under color of Minnesota State Law, statute, ordinance, regulation, custom or usage, of rights, priviledges and immunities securred by the Constitution of the United States by proceeding against Lawyers and their clients directly and indirectly with force, threats, intimidation and unconstitutional procedures under the guize of disciplinary proceedings to effect the deprivation of life, liberty, property and the pursuit of happiness resulting in treason against the Constitution of the United States and the State of Minnesota and the Displacement of the Government based thereon.

IV.

That The Defendant Minnesota State Bar Association has a Practice of Law Committee composed of certain Lawyers who belong to the said Association. That Defendants Tom Roe, John Doe and Richard Roe are ficticious persons named so that additional defendants can be substitutéd and named as appear to have participated in the wrongful acts as are hereinafter set forth. That Defendant George R. Ramier is acting Attorney for the Practice of Law Committee of the Minnesota State Bar Association at all times herein material.

V.

That at allt times herein material Defendant Miles Lord is acting as a United States District Judge in and for the State of Minnesota and more particularly in the case of United States of America vs. Carl R. Anderson. In the same case Defendant Partick Foley is the United States Attorney and Defendant William H. Eckley is Assistant Clerk of United States District Court in and for the State of Minnesota, Fourth Division.

VI.

That after May 1,1968 and after Carl R. Anderson was Indicted by the Grand Jury in the United States District Court of Minnesota Defendant Lord entered into a devious, oblique course of conduct to defeat Anderson's right to choice of counsel of his own choice and actively entered into conspiracy with certain of his political cronies and members of the Minnesota State Bar Association to deprive Carl R. Anderson of his rights securred by the Constitution of the United States. That said Lord directed his intimidation against Plaintiff and against Plaintiff's friends and has repeatedly threatened Plaintiff with disbarment and has prostituted the "willing" Defendant Minnesota State Bar Association and its pretended authority to the attempted satisfaction of such base and vile ends.

As a result of Lord's prejudice Plaintiff prepared and filed an affidavit of prejudice against Defendant Lord who refused to disqualify himself and remove from the case.

That Carl R. Anderson executed a Power of Attorney to Alfred M. Joyce to appear and represent him as assistance of Counsel in the

action of United States of America vs. Carl R. Anderson in the above Court Criminal file No. 4-68 Criminal No. 47. That said Lord Ordered Defendant Willimm H. Eckley, Assistant Clerk of Court to not file certain papers, motions and affidavits and the power of Attorney Executed by Anderson to Joyce in the file at all and to deliver them to himself, Lord. Defendant Lord was placing these papers in his personal file which he kept on the case and which never has been made accessable to Anderson, Joyce or Plaintiff. That certain of the papers, including the power of Attorney in sriting to Joyce did not show up as having been filed on the Clerk's Docket record kept by Eckley, notwithstanding the fact that Alfred M. Joyce was and is admitted to practice in the United States District Courts since 1926, his anme and rights never having been removed or stricken from the Roll. Upon information and belief Plaintiff is satisfied that Lord and Eckley entered into a conspiracy not to record and file said Power of Attorney which was joined into and ratified later by Defendant Foley. That Joyce's name was removed and stricken from the Roll of Attorneys in Minnesota by the Minnesota Supreme Court in a proceeding which was unconstitutional in all respects all to the knowledge of Defendant Lord and possibly Foley. At one of the hearings Lord Ordered that Joyce Could not be in the Courtroom or the Court House to aid and assist Anderson and Plaintiff, as a result had to singelhandedly defend Defendant Carl R. Anderson against 23 counts of mail fraud and Securities Fraud Charges in a trial that lasted a month.

VII.

That the Defendants and each of them and others acting in consort with them actively entered into a conspiracy in violation of the express terms of the Constitution of the United States and Title 28, Section 1343 and Title 42 Sections 1981 thru Sections 1988 USCA to deprive Plaintiff of his Contractual relationship with his client Carl R. Anderson and his associated and friends. That Defendants deprived plaintiff of his freedom of association, freedom of intimidation and freedom of free access to the Courts of the United States without pppression.

That the Defendants and each of them and others acting in concert with them entered into a conspiracy to intimidate and oppress Defendant Carl R. Anderson and deprive him of his day in Court with aid, assistance and counsel of his choi before an unprejudiced tribunal/ That Plaintiff was directly damaged by the intimidation and oppression by Defendants and each of them. That the Defendants and each of them actively participated in the commission of the several unlawful acts or procurred, commanded, directed, advised, encouraged, aided or abbetted its commission or ratified it after it was done.

FIRST CAUSE OF ACTION

I.

Plaintiff re-alleges all the foregoing the same as if hereafter set out in full.

II.

That on October 1,1968 Plaintiff went to the United States Court House in the City of Minneapolis, Minnesota for the purppse of checking the Carl R. Anderson File to see if it was in order. That while Plaintiff was in the Clerk's office after coming from Judge Lord's office, and while Plaintiff was trying to ascertain there whereabouts of missing affidavits from the file and the Power of Attorney and the missing Docket entries in the Docket kept in the Clerks Office and after Clerk Eckley stated that he was proceeding under Orders from Judge Lord, Goerge R. Ramier, Attorney for the Practice of Law Commiatee of the Minnesota State Bar Association appeared in the Clerk's Office, invited me out of the Clerk's office and into the hallway, informed me, Plaintiff that he was there on behalf of the Bar Association and then and there unlawfully intinidated and threatened Plaintiff. That Ramier followed Plaintiff to the door of the U.S.Attorney's Office and waited there while Plaintiff finished his business with the Gov. Accountant and then followed Plaintiff into the basement where client Carl R. Anderson was having coffee. That Defendant Ramier, while acting as Attorney and Agent for the Defendant Minnesota State Bar Association then andf there continued to threaten

Plaintiff and his client Carl R. Anderson and volunteered unsolicited advice to Defendant Anderson and threatened him by saying that" in these Policical Fights it is better to "Cop" a plea of Guilty than go to Jail for 15 years to a Federal Penitentiary. Ramier further warned Plaintiff that any thing Plaintiff might say could be used against him although the only purpose of Plaintiff's going to the Court House that morning was to see that the Court's file and the Clerk's Docket entries were in order and complete. That said action was but a part and parcel of a long train of abuse, oppression and threats used against Plaintiff in an attempt to intimidate and deprive Plaintiff and Defendant Carl R. Anderson of his rights securred by the Constitution of the United States to Plaintiff's damage, general, special and punative in the sum of $250,000.00.

That in aggravation of said unlawful acts Defendants and each of them are engaged in an unlawful, treasonable conspiracy to overthrow Article I, Sections 9 and 10 of the Constitution of the United States and Amendements 1, 5 and 14th thereof.

That the foregoing intimidation, oppression and harrasement is directed specifically at Plaintiff because Plaintiff is attempting to support the Constitution of the United States in keeping with his oath and duty as an ordinary citizen.

SECOND CAUSE OF ACTION

I.

Plaintiff re-alleges all the foregoing with the same full force and effect as though hereafter set out in full.

II.

That on October 2,1968 Defendant Lord called Plaintiff into his chambers and in the presence of a Court Reporter and several others including the U.S.Marshalls personell along with Defendant Partick Foley further threatened, intimidated and harrassed Defendant Carl R. Anderson and Plaintiff stating that the Minnesota State Bar association already had disbarment proceedings under way against Plaintiff, that the case was Ordered continued over the term and that Defendant Carl R. Anderson would have to get a different Lawyer

as Plaintiff would not have a license to practice Law when the case would come up again. That the harrasement and intimidation by Lord and Foley continued at least for 30 minuets on October 2, 1968 resulting in a denial to Defendant Carl R. Anderson's right to a speedy trial and loss of time, work and material to Plaintiff.

That as a direct result of Plaintiff's loss of time, material and labor and deprivation of rights securred by the Constitution of the United States at the hands of the Defendants and each of them and because of the wilfull, malicious acts of the Defendants and each of them and others acting in consort with them Plaintiff is entitled to damages against the Defendants and each of them in the sum of $250,000.00, general, special and punative.

THIRD CAUSE OF ACTION

I.

Plaintiff re-alleges the foregoing with the same full force and effect as though herein set out in full.

II.

That Trial of the action of U.S. vs. Carl R. Anderson began on August 22,1969. The Jury was empanneled and sworn and the U.S. called its furst witness. On cross examination of the first witness who was a banker I inquired of him if he had any gold and silver coin in his vaults at the Marquette National Bank in keeping with Article 1 Section 10 of the Constitution of the United States, or questions to that effect, whereupon Plaintiff was immediately falsely imprisoned in the Hennepin County Jail without being informed of the nature and cause of the accusation and without bail in complete violation of the Constitution of the United States. That the false imprisonment continued until April 23,1969 when Plaintiff was led down the street handcuffed to other prisioners and delivered into Judge Lord's Courtroom where Plaintiff was Ordered by Judge Lord to resume the defense of Defendant Carl R. Anderson although Plaintiff did not even have the benefit of obtaining his files on the case that Plaintiff had prepared for Defendant Anderson.n All of the time Alfred M. Joyce was ordered to stay out of the Court house and not from within the Court house aid and assist Plaintiff or Anderson.

That the intimidation and harrasement continued thruought the trial.

That as a direct and proximate result of the unlawful acts of Defendant Lord in conspiracy with the other Defendants and others Plaintiff is entitled to damages, general, special and punative in the sum of $250,000.00.

FOURTH CAUSE OF ACTION

I.

Plaintiff re-alleges all of the foregoing with the same full force and effect as though herein set out in full.

II.

That thereafter and on or about April 23,1969 Defendant George R. Ramier sent Plaintiff another letter that an ethics committe hearing would be held by the ethics committee of the Minnesota State BAr Association on April 26,1969 which was only set for the purposes of further harrassment and intimidation of Plaintiff in his attempt to defend the life, liberty and property of Carl R. Anderson.

That by reason thereof plaintiff has been damaged and is entitled to damages, general, special and punative in the sum of $250,000.00 against the Defendants and each of them.

FIFTH CAUSE OF ACTION

I.

Plaintiff re-alleges all of the foregoing the same as though herein set out in full.

II.

In his continuing connivery with the Defendants and each of them and with others Defendant Lord entered an Order on September 2,1969 without Notice, basis, foundation and unjustified for any purpose in a so called action of The United States of America v. Jerome Daly No. 4-69 Cr. 35 dismissing a criminal contempt charge against Plaintiff that never existed at any time for any purpose for the express purpose of attempting to give the Minnesota State Bar Association some semblance for a disbarment proceeding in an attempt to injure Plaintiff's reputation. That meetings are presently being held to promote this despicable

project by Defendants and others actively engaged in conspiracy to overthrow the Constitution of the United States of America.

That Plaintiff is damaged by this intimidation to his person, property and charachter and is entitled to damages against the Defendants and each of them, general, special and punative in the sum of $250,000.00.

WHEREFORE Plaintiff demands Judgment against the Defendants and each of them and as for punative general and special damages in the sum of $250,000.00 and costs.

Plaintiff further demands declaratory Judgment that No Thing but gold and silver Coin shall be a satisfaction of theJudgment entered herein and that No Thing other than gold and silver Coin shall be tendered to Plaintiff.

Jerome Daly
Attorney for Himself
28 East Minnesota Street
Savage,Minnesota

September 4,1969

PLAINTIFF DEMANDS A JURY TRIAL BY 12 JURORS

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE

DISTRICT OF ALABAMA, NORTHERN DIVISION

FILED

NOV 17 1969

R. C. DOBSON, CLERK

By _____ Deputy Clerk

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES ROBERT MUNCASTER,

Defendant.

CR. NO. 12,252-N

O R D E R

Charles Robert Muncaster was indicted by a grand jury that reported to this Court September 12, 1969, for violating certain provisions of the criminal code of the United States relating to the wilful and knowing failure and refusal to register or to submit to registration as required by the Military Selective Service Act of 1967. The defendant appeared for arraignment upon these charges in open court on October 6, 1969. Upon this occasion, as the file in this case reflects through a transcription of the proceedings, this Court denied the father of the defendant the right to represent this defendant upon the trial of this case. The basis for this denial was and is that the defendant's father is not an attorney. Upon this arraignment proceeding, this defendant was specifically advised that if he did not have the funds to employ and pay counsel to represent him in this case this Court would, if he requested it, appoint a competent attorney to represent him without cost. Upon this offer, this Court was advised by the defendant that he and/or his father would employ counsel of his own choosing. The matter proceeded to arraignment and the defendant pleaded not guilty. The case was set for trial for the jury term commencing November 17, 1969.

On November 8, 1969, Jerome Daly of Savage, Minnesota, filed with the Clerk of this Court a power of attorney and an appearance to act as counsel for the defendant in this case. The Clerk of this Court by letter dated November 10, 1969, advised Jerome Daly that prior to the time he could appear and act as counsel for the defendant in this case it would be necessary that he file with the office of the Clerk of this Court a certificate evidencing his admission to practice in the United States courts of Minnesota and evidencing that he was a member of the Bar in good standing in the Minnesota federal courts. On November 12, 1969, this Court was advised by the Clerk of the Supreme Court of Minnesota

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that Jerome Daly's privilege to practice law in the courts of the State of Minnesota was suspended by formal opinion and order of the Supreme Court of Minnesota filed September 5, 1969, and that this suspension was effective October 1, 1969. On November 14, 1969, this Court was advised by a copy of a formal order entered by the United States District Court for the District of Minnesota that Jerome M. Daly was, effective October 1, 1969, suspended from further practice in the United States District Court for the District Court of Minnesota.

Upon consideration of the foregoing, it is the ORDER, JUDGMENT and DECREE of this Court that the said Jerome Daly be and he is hereby denied leave to appear as counsel for Charles Robert Muncaster or for any other defendant, or in any other proceeding in this court until the orders suspending his right and privilege to practice law as entered by the Supreme Court of Minnesota and the United States District Court for the District of Minnesota have been set aside.

Done, this the 17th day of November, 1969.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURRT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, Cr. No. 12,252 N

vs. MOTION AND NOTICE OF MOTION

CHARLES ROBERT MUNCASTER, Defendant.

TO: IRA DE MENT, ATTORNEY FOR PLAINTIFF

Sir:

You will please take Notice that on November 20,1969 at 9:00 A.M. or As soon there after as Defendant can be heard or at a later time set by the Court, Defendant will move the Court to dismiss and quash the Indictment herein upon the following grounds; after the following relief is granted:

1. Defendant hereby moves the Court to vacate the plea of Defendant heretofore entered upon the grounds that Defendant was not represented by Counsel pursuant to Amendment 6, US Constitution.

2. Defendant then moves to dismiss the Indictment herein upon the following grounds;

a. That the Indictment does not charge a public offense.

b. That the Defendant is indicted under an Ex Post Facto Law in that the so called Military Selective Service Act was passed June 30, 1967 and Defendant is charged with having committed a purported offense from January 17,1967 through January 22,1967.

c. That for the same reason and others contained in"b" above the said Military Selective Service Act constitutes a bill of attainder and a bill of pains and penalties in violation of the Constitution of the United States.

Service Admitted this November 19,1969

Copy of this document received in U. S. Attorney's Office 11-19-69 JS

d. That the Indictment does not state a public offense.

e. That the Indictment is not definite and certain in that it does not specifically set out the United States Statute that is claimed to be violated nor is Defendant informed of the nature and cause of the accusation.

f. That the so called Military Selective Service Act of 1967 is un constitutional and void in that it provides no Notice to the minor child it acts upon; it is in violation of the due process of law clause of the 5th amendment and the slavery provisions of the 13th amendment.That it is in violation of t he Declaration of Independence and the entire letter and dpirit of the Constitution of the United Statges of America.

g. That the Military Selective Service Act does not provide for Notice to prospective draftees and the Indictment does not allege that Defendant received any Notice to register for any Draft or Notice that Defendant's life, liberty and property were going to be condemned without just compensation or at all.

h. That the Military Selective Service Act is in no respectss sufficiently definite and certain nor does it set up any ascertainable standards so that any citicen may know what to do or what not to do all in violation of Due Process of Law. See 21 Am Jur 2d Criminal Law Sec. 16 and 17.

i. That the Rules ;and Regulations and Orders promulgated and put out by the President of the United States and his agents and servants and the Director of Selective Service constitutes an unlawful delegation of Legislative Power to the Executive Branch of the Government of t he United States to make up and set out the conditions for Crinimat Statutes and the Violations thereof and constitutes a deprivation of life, liberty and property without due process of Law. See 16 Am Jur 2d on Constitutional Law Sections 542 to 584.

j. That the Orders and Rules and Regulations of the Executive and his agents and delegates are unconstitutional and void upon the grounds that the constitute a suspension of the operation of statutes and the Constitution of The United States and an amendment or supplying of a legislative void or defect in the operation of Statutes at the whim of the Executive all of which is unconstitutional and void.

k. That the Indictment does not even set forth any of the so called Executive Orders or Orders of the Director of Selective Service which are claimed to be violated so that Defendant is not informed of the nature and cause of the accusation and it is not possible to prepare a Defense to the Indictment.

l. That the Military Selective Service Act is unconstitutional and void as constituting the infliction of punishment, involuntary servitude, peonage and slavery upon Defendant without due process of Law in a t ime of Peacd and by subversives at that.

m. That the Indictment does not allege that Defendanat was ever Ntoified of any Duty to Register in a Constitutional Manner or At all.

n. That the Indictment does not allege that Defendant was able to register or that he was not prevented from registering by circumstances beyond his control.

o. That the Military Selective Service Act and the Executive Orders, Rules and Regulations promulgated there under and issued thereunder constitute constitute a most vicious form of oppression(not even stooped to by King George the III against his own people or the people of the Colonies of the United States tratiorsously known as Loyalists at the time), to perpetuate the unconstitutional Federal Reserve and National Banking System which has established a a Dictatorship in the United States for the purpose of monopolizing the Nation's Money, Credit and Currency and the Armed Forces to enforce unconstitutional oppression upon

the people of the United States.

Defendant further moves the Court to vacate its Order dated November 17,1969 adjudging and Decreeing that Jerome Daly is denied leave to appear as Counsel for Defendant in this Case as being unconstitutional and void and completely contrary to Due Process of Law in all respects. Upon the further grounds that the Judge in the Case is my adversary, accepts his salary in unconstitutional money and is subserviant to people out to destroy the Constitution of the United States and is therefore my adversary in the Case and has no right to determine or limit my God given right to freedom of assotiation and freedom or right to peaceable assemble and petition the Gov. for a redress of grievances and freedom of right to choice of Counsel

Defendant further Moves the Court to Order the Clerk of this Court to File all papers herein and to record all papers and letters sent herein on the Clerk's Docket entries Sheet in his Office at once for the security of Defendant's rights upon t he grounds that the Clerk is not filing these papers but on the Contrary the Clerk's Docket shows that there is a Waiver of Counsel filed which is not and never has been the case so far.

Defendant further moves that the Court enter an Order and allow Jerome Daly, Lawyer of 28 East Minnesota Street Savage,Minnesota to appear and defend lt this Case for Defendant and that the Court continue all these Motions for the purpose of allowing Mr. Daly time to appear, argue and present Law in support thereof.

This Motion is based upon the Affidavit of Jerome Daly dated Nov. 14,1969 and previously filed herein, upon the Power of Attorney I have previously caused to be filed appointing Jerome Daly as my Attorney, upon Mr. Daly's publication "The Daly Eagle" of Feb. 7,1969 filed herein and upon the decision of U.S. Tarlowski of 7/22/69 attached hereto and upon all the letters forwarded to the U.S.Attorney to Judge Johnson and to

the Clerk of the Court and upon all the files, records and proceedings herein., including my affidavit and the affidavits of my Father and Mother and Jerome Daly of Nov. 19,1969 attached hereto.

November 19,1969
1158 South Perry Street
Montgomery, Alabama

Charles Robert Muncaster
Charles Robert Muncaster
1158 South Perry Street
Montgomery, Alabama

Jerome Daly
Attorney for Defendant
28 East Minnesota Street
Savage,Minnesota

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,

vs.

CHARLES ROBERT MUNCASTER, Defendant.

AFFIDAVIT OF:
CHARLES ROBERT MUNCASTER,
ROBERT MUNCASTER,
ESTHER MUNCASTER, AND
JEROME DALY

STATE OF ALABAMA
SS
COUNTY OF MONTGOMERY

Jerome Daly, being first duly sworn deposes and states that he is employed Counsel for Defendant herein, having been paid a retainer fee by Defendant's Father to protect Defendant in all of his Constitutional Rights.

That attached hereto is a Declaration of World Citizenship signed and subscribed to by Oscar R. Knutson, Chief Justice of the Supreme Court of Minnesota and Harold Levander, Governor of Minnesota. It was Knutson who fronted up the assault upon Jerome Daly's License to Practice Law in the Minnesota Supreme Court when it was illegally suspended. That I have practiced Law in Minnesota for 16 years, not before a bitterly antagonistic Court staffed by subversives and fronted up by Knutson who has openly come out for the complete abolition of the Jury System in the United States and who has denounced the Constitution of the United States and the Government based thereupon and who has pledged his allegiance to the foreign United Nations Government which is out to destroy our Government and enslave us, but inspite of this Court, and I have steadfastly supported the Constitution in keeping with my Oath. That the Federal Courts in Minnesota are fronted up by Judges Lord and Devitt who think nothing about flouting the Law and who have no hesitancy to act as accessories after the fact in covering up information

Copy of this document received in the U. S. Attorney's Office. Jr

6

about political assassinations.

It is characters like these (Knutson, Lord and Devitt) that this Court and its personnel urge that I obtain a "Certificate of Godd Standing" from, when, they are totally incompetant to issue a "Certificate of Good Standing" to any one this side of Hell. That I doubt very much whether any of these Judges ever qualified when they recited their Oath of Office. They did not conform to their Oath nor attempt to, either before or after taking up their positions of gain, when they qualified themselves by beginning with a Perjury. No rights can be acquired by fraud. Defendant herein could not possibly obtain protection under the Constitution of the United States by any one who is in good standing with these subversives.

That furthermore I accompanied Defendant's Father and Mother into the Clerk's Office on November 18, 1969, to inspect the File in this action. Clerk Gutherie shoed us the File which contained the papers filed so far but would not show us the file or Clerk's Docket Sheet containing a recording of the papers filed. Head Clerk Dobson finally showed it to us and it indicated that there was filed a "waiver of right to Counsel" which is false as none was ever filed. There was nothing indicated that any other papers or letters I had forwarded to the Clerk's Office were Docketed including the Power of Attorney, notwithstanding my warning and admonition to the Clerk of November 13, 1969, to keep his Docket in Order. Gutherie's attitude, manner and demeanor was very bad, he was very nervous and cranky, typical of other Clerks I have caught with incorrect Dockets and entries which were the product of misfeasance, nonfeasance and skullduggery in attempting to defeat individual Constitutional guarantees afforded Defendants subjected to the oppression of the Court's in their attempted enforcement of the Administrative Dictatorship now being heaped upon our People by subversive agents of the Government of the United State and the International Bankers.

This is by no means an isolated instance of this type of activity on the part of Clerks of Court that I have seen. When the Case goes to an Appellate Court the Clerk's Docket would show that Counsel had been waived and the Power of Attorney form and other substantiating papers of course would be conveniently lost and not available to an Appellate Court. From my experience some of these Clerk's will stoop to anything including rigging a Jury beforehand for a particular Defendant they and the Dominant Personality in and about our Government wants to get out of the way.

Robert Muncaster, being first duly sworn deposes and states that he is Father of Charles R. Muncaster and lives at 1158 South Perry Street, Montgomery, Alabama, with his wife and family and that the Defendant herein is a minor and lives at home.

That I accompanied Mr. Daly to the Clerk's Office and the facts related with reference to the activity of Clerk Gutherie is true. The Clerk's Docket Statement did not reflect a true statement of the papers filed, recorded and to be Docketed in the Clerk's Office. I was stunned and could not believe my eyes when the Clerk's Docket reflected that Defendant herein waived a Lawyer or his right to Counsel and that it did not reflect that Defendant had appointed Mr. Daly to defend him.

I was terrified when I was confronted with the fact that the Judicial Power of the United States Government was being used to forbid my Attorney and my Son's Attorney Mr. Daly from finding out things that were necessary for my Son's lawful defense.

Charged with the natural rights and obligations to look out for the best interest of my minor Son, Defendant herein, I have absolutely concluded that Mr. Daly is my sole choice for Counsel for the Defense of my Son, Defendant herein. I have forbidden my son to retain, confer or cooperate with any other Attorney or Counsel in this Case. With Mr. Daly defending my Son I have confidence that his liberties will be protected with the whole power

of the United States against him. I do not have any faith in any one that Judge Johnson would appoint or suggest and I would have a favor toward any one Judge Johnson would not want. I have publically accused him of violations of the U.S. Constitution in the past. I do not trust Judge Johnson for any purpose where the liverty of my Son is at stake.

Esther Muncaster, Defendant's mother, being sworn states that she is acquainted with the circumstances and facts set out above with reference to Clerk Gutherie's activity on November 18, 1969. That the foregoing statement is true with reference to Gutherie.

Gutherie is not a good and faithful and kind public servant so far as I am concerned.

Charles Robert Muncaster, being first duly sworn deposes that he is Defendant herein, a minor and resides with his Father at 1153 South Perry Street.

I am acquainted with the foregoing Affidavit and upon information and belief I believe the facts therein alleged to be true.

I am going to adhere to the orders and directions of my Father, Robert Muncaster, and I am not going to accept, confer or cooperate with any Lawyer but Jerome Daly of Savage, Minnesota. I have full confidence in him and am satisfied that he can and will protect my rights. I have no confidence in any one that the Court or that Judge Johnson would appoint.

Subscribed and sworn to before me
this 19th day of November, 1969.

Virginia L. Kennedy
Notary Public
Montgomery County, Ala.

Jerome Daly
Jerome Daly, Defendant's Council
Savage, Minnesota

Robert Muncaster
Robert Muncaster, Father

Esther Muncaster
Esther Muncaster, Mother

Charles Robert Muncaster
Charles Robert Muncaster, Defendant

A Joint Resolution of the Hennepin County Board of Commissioners, Mayor and City Council of Minneapolis

WHEREAS, in recognition of the greatly increased interdependence of the world in this nuclear age, and

WHEREAS, realizing that the common interests of man can only be met through world cooperation, and

WHEREAS, seeking to free mankind from the curse of war and to harness all available sources of energy and knowledge to the service of men's needs, and

WHEREAS, aware that we can best serve our city, county, state and nation when we also think and act as world citizens,

NOW, THEREFORE BE IT RESOLVED, that we, the Mayor, City Council of Minneapolis, and Hennepin County Board of Commissioners recognize the sovereign right of our citizens to declare that their citizenship responsibilities extend beyond our city and nation. We hereby join with other concerned people of the world in a declaration that we share in this world responsibility and that our citizens are in this sense citizens of the world. We pledge our efforts as world citizens to the establishment of permanent peace based on just world law, and to the use of world resources in the service of man and not for his destruction.

BE IT FURTHER RESOLVED, that as a symbol of our obligations as world citizens we request the Municipal Building Commission to proudly display the United Nations flag on suitable occasions at the main entrance to the City Hall and the main entrance to the new county building.

The question was on the adoption of the resolution and it was unanimously passed on March 5, 1968.

Chairman, Henn. Co. Board of Commissioners

Mayor, Minneapolis

President, City Council

We, the undersigned, commend the Hennepin County Board of Commissioners, the Mayor and City Council of Minneapolis, for the above splendid World Citizenship Resolution. This is the first American community that we know of to take such action. We hope that many other cities and counties will follow this example which is a valuable step in building a world community and world peace.

Governor, State of Minnesota

Chief Justice, Minnesota Supreme Court

President, Minnesota Republican Ass'n

Member of Congress

Chairman, Minnesota Republican Party

Asst. Bishop, Twin Cities Archdiocese

President, Minn. Council of Churches

Chairman, Minnesota D.F.L. Party

President, League of Women Voters of Minn.

President, Minn. United World Federalists

President, Minnesota State Bar Ass'n

President, United Nations Ass'n of Minn.

No. Sp. Supreme Court Per Curiam

In Re Jerome Daly

No. 42174

STATE OF MINNESOTA
SS
COUNTY OF RAMSEY

Jerome Daly, being first duly sworn deposes and states as follows:

1. That I am appearing specially and not generally herein and reserve my objections to the jurisdiction of this Court over the subject matter herein and over my person because of a total failure of due process of Law, procedural and substantive.

2. That because I have already conducted an investigation, have been retained, and was involved as Attorney for clients in the following litigation:

State of Minnesota vs. James H. Stafford Henn Co. Municipal
State of Minnesota vs. Wayne A..en Krul, Henn Co. Junevile
State of Minnesota vs. Richard Soderberg, Henn Co. Municipal
State of Minn. vs. Louis Evans, Dakota County Criminal
Charter Investment Co. Vs. Village of Burnsville, Dak. Co.
Marti Irmen vs. Thunderbird Motel and R. Wallace, Dak. Co.
Herbert Hauer vs. Cargill Inc. and Travelers Ins Co. Ind Comm.
State vs. Robert Leo Mahoney, Hastings Municipal Court
Carolyn A. Nelson vs. City of Bloomington, et al, Henn Co.649437
Calvert vs. Calvert, Dak. Co.
Donald Poupard vs. Robert Nagele Sr. and Robert Nagele Jr. and Lord Fletcher's
Robert O. Naegele Jr., vs. ~~Lord Fletcher~~ Donald Poupard. Hen Co.
Carl Lidberg vs. A & H Machinery et al, Henn Co. 637151
USA vs. Wilbur Milton, et al and Carl Lidberg,
Rose M. Green vs. Kenneth Hageback, et al, Henn Co.647064
Oscar Husby vs. Carl R. Anderson, A & J. Builders et al, Dak.Co.65865
A & J. Builders vs. Oliver Harms, Dak. Co. and Supreme Court of Minn.

That to avoid unnecessary expense to clients and to avoid any further delay and at the request of my clients I appear to and before the Court and petition the Court to make exception to the suspension Order of September 5,1969 and that I be granted permission to appear for my clients in the above entitled actions.

Subscribed and sworn to before
me this 13th day of October,1969

Jerome Daly
Jerome DAly

John McCarthy
Clerk of Supreme Court

Petitions 4 29
2/10/70 lnf

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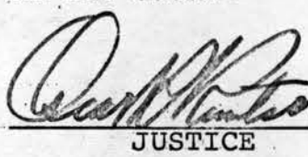
ORDER

Upon the foregoing petition and upon application of Jerome Dalym

IT IS HEREBY ORDERED, That Jerome Daly be, and hereby is authorized to appear and represent his clients as their Attorney at Law in the above refered to litigation now pending.

BY THE COURT



JUSTICE

Dated October 13th, 1969

Petitioners Ex 38
2/10/70 dmf

42174

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

United States of America and Raymond H. Ehlers, Revenue Agent, Internal Revenue Service,

Petitioners,

vs.

Jerome Daly,

Respondent.

ORDER

No. 3-66-349 Civ.

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

ORDER OF CONTEMPT

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

FINDINGS OF FACT

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

A true copy in four sheets 1
Certified January 30 1970
FRANK A. MASSEY, CLERK
BY: Judith C Palmer
Deputy

Filed May 3 1967
Frank A. Massey, Clerk.
By Lawrence R. Tapper
Deputy

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

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

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

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

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

7. Pursuant to a petition filed by the petitioners to enforce such summons and upon hearing thereof, this Court entered an order enforcing the summons requiring the testimony of Jerome Daly and the production of the documents called for by the summons.

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

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

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

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

CONCLUSIONS OF LAW

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

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

IT IS FURTHER ORDERED that the United States Marshal shall arrest and confine Jerome Daly until such time as he complies with the order of this Court entered December 29, 1966, by testifying and producing for examination the records called for by the summons.

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

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

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

Dated this 3rd day of May, 1967.

Miles W Lord
MILES W. LORD
United States District Judge

Let the within Mandate be filed and recorded
and judgment entered accordingly.

MILES W. LORD
Judge, U.S.District Court
Dated May 7, 1968

MANDATE

UNITED STATES OF AMERICA, ss:

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

TO THE HONORABLE THE JUDGES OF THE UNITED STATES
DISTRICT COURT FOR THE - - - - - - - -
DISTRICT OF Minnesota.

GREETING:

WHEREAS, lately in the United States District Court for the - - - - - - - - - - **District of** Minnesota - - - - - -, **before you, or some of you** in a cause between United States of America and Raymond H. Ehlers, Revenue Agent, Internal Revenue Service, Petitioners, and Jerome Daly, Respondent, Civil No. 3-66-349, Third Division, wherein Order of the District Court adjudging respondent in contempt of Court, etc., was entered on the 3rd day of May, A. D. 1967, which Order is set out in the record from the District Court, and is incorporated herein by Reference thereto, -

as by the inspection of the record of the said District Court, - - - - - - - - - - - - - - -
which was brought into the United States Court of Appeals for the Eighth Circuit by virtue of an appeal

agreeably to the act of Congress, - - - - - - - - - - - ---- - - - - - - - - - - - -
- - - - - - - - - - - - - - - **in such case made and provided, fully and at large appears;**

AND WHEREAS, at the September - - - - - - - **term, in the year of our Lord one thousand nine hundred and** sixty-seven - - **, the said cause came on to be heard before the said United States Court of Appeals,** on the record from the United States District Court for the District of Minnesota, and was argued by counsel.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court that the judgment of the said District Court, in this cause, be, and the same is hereby, vacated.

And it is further Ordered by this Court that this cause be, and it is hereby, remanded to the District Court for a plenary hearing.

Filed May 9, 1968
FRANK A. MASSEY, Clerk,
By Leona B. Stoddard, Deputy.

42174

April 11, 1968
MICROFILMED in One sheets
January 30 1970

Petitioners Ex 31
Dated 2/10/70

BY: Judith E. Palmer

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION
No. 3-66 Civil 349

UNITED STATES OF AMERICA, and RAYMOND H. EHLERS, Revenue Agent, Internal Revenue Service, Plaintiff, vs. JEROME DALY, Defendant.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT

The above matter came on for hearing before the Court pursuant to a remand of the United States Court of Appeals for the Eighth Circuit, Case No. 18,906, for a determination of whether Jerome Daly's objections to questions propounded to him by Raymond Ehlers, Revenue Agent, Internal Revenue Service, pursuant to his subpoena, were proper.

Jerome Daly, attorney-at-law, Savage, Minnesota, appeared personally and on his own behalf and Assistant United States Attorney J. Earl Cudd appeared in behalf of the plaintiff, United States of America and Raymond H. Ehlers, Revenue Agent, Internal Revenue Service.

FINDINGS OF FACT

I.

On July 21, 1966, Revenue Agent Ehlers issued and served on Jerome Daly a summons pursuant to Sections 7602 and 7603 of the Internal Revenue Code of 1954 requesting him to appear, to give testimony, and to produce various documents. Jerome Daly appeared but refused to give testimony or produce documents.

A true copy, four sheets
attest: January 30 1970
J. [illegible], Clerk,
By: Judith C. Palmer
Deputy

Filed OCT 14 1968 19
Frank A. Massey, Clerk
By Laurence K. Jones
Deputy

Petitioners Ex 32
2/10/70 emg

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II.

On December 1, 1966, the United States Attorney for the District of Minnesota filed a Petition to Enforce Internal Revenue Summons in the District Court of Minnesota together with a copy of the summons, affidavit of Raymond Ehlers, and Jerome Daly's tax return listing his name and occupation (lawyer and farmer). The tax return was otherwise blank but attached to it were a memorandum containing Jerome Daly's constitutional objections and a memorandum attacking the constitutionality of the Federal Reserve System.

III.

On December 2, 1966, this Court entered an order requiring Jerome Daly to appear before the Court on December 28, 1966, to show cause why he should not be compelled to obey the Internal Revenue summons served on July 21, 1966. On December 6, 1966, Jerome Daly admitted service of the order but recited that he was appearing specially and objected to the jurisdiction of the Court. On December 29, 1966, this Court entered an order directing Jerome Daly to appear before Agent Ehlers for examination on January 6, 1967, at St. Paul, Minnesota pursuant to Section 7602, 7603, and 7604(a), Internal Revenue Code of 1954. Jerome Daly did not appeal this order. On January 6, 1967, Daly appeared before Agent Ehlers, objected to the jurisdiction, was then sworn, and stated:

> "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."

IV.

Raymond Ehlers filed an affidavit on January 26, 1967, reciting the events on January 6, 1967. On March 20, 1967, this Court entered an order to show cause why Jerome Daly should not be adjudged in contempt for refusal to comply with the order entered December 28, 1966. Daly appeared before this Court on March 27, 1967, and was given 20 days to file a brief.

V.

On May 3, 1967, this Court entered Findings of Fact, Conclusions of Law and adjudged appellant in contempt with failure to comply with the Court's order on December 28, 1966. Jerome Daly appealed this order to the United States Court of Appeals for the Eighth Circuit who remanded the case for the above-recited hearing.

VI.

Pursuant to the remand of the Eighth Circuit, this Court on July 2, 1968, issued an order directing Jerome Daly to appear before it on July 8, 1968. At Mr. Daly's request, the matter was continued to July 17, 1968, and on that day Mr. Daly appeared and a hearing was held.

VII.

At the hearing, Jerome Daly reaffirmed that he declined to answer the questions read to him from Exhibit B (Transcript of the proceedings before Internal Revenue Service, January 6, 1967). Mr. Daly declined to answer the questions or to produce documents on the ground that to do so would tend to incriminate him.

VIII.

Jerome Daly asserted other grounds for declining to answer the questions propounded to him. These were Article 6 of the Constitution of the United States and the fourth, sixth and ninth amendments.

CONCLUSIONS OF LAW

As to each question asked, it is evident from the implications of the question in the setting in which asked that a responsive answer to the question may tend to incriminate Jerome Daly.

ORDER

IT IS HEREBY ORDERED that the order of this Court dated May 3, 1967, adjudging Jerome Daly in contempt of the Court's order of December 28, 1966, is hereby vacated.

Miles W Lord
UNITED STATES DISTRICT JUDGE

STATE OF MINNESOTA

COUNTY OF HENNEPIN

IN DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Faye V. Peterson, Plaintiff,

vs.

Marcia Bartels, et al., Defendants.

Case No. 632581
Cal. No. J. 61823

AFFIDAVIT OF PREJUDICE

STATE OF MINNESOTA
SS
COUNTY OF SCOTT

Jerome Daly, being first duly sworn, deposes and states that he is one of the Defendants herein. That he was at one time for a brief period, Attorney for Plaintiff's former husband Palmer A. Peterson, M.D. who has had a "Divorce Marathon Case" going on in the above Court since 1961, without a Constitutionally legal Judgment having been entered yet. That your affiant has charged certain Judges of the above Court with fraud in said Divorce case and with a well organized plan, design and attempt to flout, subvert and overthrow the Constitutions of the United States and the Constitution of the State of Minnesota. That your affiant has been informed by various lawyers, and your affiant believes that it is now common knowledge that I cannot personally get a fair trial before any Judge on the Hennepin County District Bench. Because of their attitude, manner and demeanor in the past I am satisfied beyond a reasonable doubt that I cannot get a fair trial before any one of the following Judges to- wit: Rolf Fosseen, Stanley Kane, Donald T. Barbeau, Crane Winton, William D. Gunn, John A. Weeks, Eugene Minenko, Edward J. Parker, Irving G. Iverson, Tomas Bergin, Elmer R. Anderson and Lindsay G. Arthur. Further that Eugene Minenko was a former Law Partner, so I am informed, of James Rorris, self styled Divorce Lawyer, and one of the principals to said divorce fraud. That because of said bias and prejudice said Judges would be not qualified to serve as jurors herein and as a result are disqualified to act as Judges according to law. ~~Further your affiant saith not except that this affidavit is made to disqualify said Judges for all purposes.~~

_____ _____

Notary Public.Dakota Co..Minn.. Comm Exp. 1-17-73

Petitioners Ex 33
2/10/80 lms

Further your affiant states that there is in and about said Court House a dominant personality, self appointed and self anointed who is determined that the clerk's office is to be run contrary to law. That your affiant has filed a proper demand for a changer of venue. That the Clerk has wholly refused to transfer this case to Dakota County where it belongs on the denmand for a changer of venue, which demand aggeges that I cannot recieve a fair trial before any Judge in Hennepin County.

Further your affiant saith not except that this affidavit is made to disqualify said Judges named herein for all purposes as a matter of Law.

Subscribed and sworn to before me
this 21st day of March,1968

Notary Public Dakota County,Minn.
My Commission Expires Jan. 17,1973

Jerome Daly

FILED

MAR 21 1968

GERALD R. NELSON
CLERK OF DIST. CT.

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 30 1970

GERALD R. NELSON, Clerk of District Court

By Deputy

STATE OF MINNESOTA

COUNTY OF DAKOTA

IN DISTRICT COURT

FIRST JUDICIAL DISTRICT

Oscar J. Husby, Reeeiver of
Ridge Lutheran Home Inc., et al., Plaintiffs,

vs.

AFFIDAVIT OF PREJUDICE

Carl R. Anderson and Julian Vinge,
individually and as co-partners
dba A & J. Builders and A & J.
Builders Inc., and Burnsville
Plumbing and Heating Inc., Defendants.

STATE OF MINNESOTA
SS
COUNTY OF SCOTT

Carl R. Anderson, being first duly sworn deposes and states that he is President of A & J. Builders Inc., That he makes this affidavit to disqualify District Judge Robert J. Breunig on behalf of A & J Builders Inc., That he has good reason to believe, does believe and so states that because of actual bias and prejudice on the part of Robert J. Breunig against the Constitutions of the United States and the State of Minnesota a fair trial or hearing of any kind cannot result with Judge Breunig presiding and therefore Defendant A & J. Builders makes this Affidavit to disqualify said Judge for all purposes.

Further that he is President of Burnsville Plumbing and Heating, Inc. one of the Defendants herein. That he has good reason to believe, does believe and so states that because of bias and prejudice on the part of John Fitzgerald, one of the Judges of the above named Court a fair trial cannt result with said John Fitzgerald presiding and therefore Burnsville Plumbing and Heating Inc. makes this affidavit to disqualify said Judge John Fitzgerald for all purposes.

That personally, on his own behalf as a Defendant herein, he has good reason to believe, does believe and so states that because of bias and prejudice on the part of John B. Friedrich a fair trial or hearing of any kind cannot result and therefore he makes this

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2/10/70 lmg

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affidavit to disqualify said Judge John B. Friedrich for all purposes.

The Clerk of this Court is requested to send and assign this action to some other Judge of the District for any further hearings.

Carl R. Anderson as President
of A & J. Builders Inc.and
as President of Burnsville
Plumbing and Heating Inc. and
Individually, on his own behalf

Subscribed and sworn to before
me this 12 day of August,1968

Jerome Daly, Notary Public
Dakmta County,Minnesota
My Commission Expires 1-15-73

STATE OF MINNESOTA — IN DISTRICT COURT

COUNTY OF DAKOTA — FIRST JUDICIAL DISTRICT

File No. 65865

Oscar J. Husby, Receiver of
Ridge Lutheran Home, Inc.,
Ridge Lutheran Home Inc.,
Caroline F. Siebert and Emma Steffen, — Plaintiffs,

vs. — AFFIDAVIT OF JEROME DALY

Carl R. Anderson and Julian
Vinge, et al., — Defendants

STATE OF MINNESOTA
SS
COUNTY OF SCOTT

Jerome Daly, being first duly sworn deposes and states that he is still Attorney for Carl R. Anderson, A & J. Builders Inc., and Burnsville, Plumbing and Heating Inc., and still a member of the Bar of Minnesota not-withstanding a vicious assault, slander and threat upon my License to practice Law by United States District Judge Miles Lord and U.S.Attorney Patrick Foley on Yom Kippur Day (October 2,1968) in the U.S.Court House, Minneapolis, Minnesota.

That he is informed on October 3,1968 that on October 4,1968 a hearing is to be held before Judge John B. Friedrich at Hastings, Minnesota. That I have good reason to believe, do believe and so state that because of bias and prejudice on the part of Judge Freidrick a fair trial of any kind or nature cannot result before Judge Friedrick and therefore this affidavit is made to disqualify said Judge for all purposes. Further I believe and so state that Judge Friedrick has a Prejudice against the Declaration of Independence and the Constitution of the United States and the Constitution of Minnesota and a bias in favor of that element advocating the nullification and overthrow of it. That this case involves a dispute with the Lutheran Church, Missouri-Synod which is composed of preachers arrogating attributes of Diety to themselves in association with Papal Jewish Hegemony, all of whom are in vortex with each other rotating and operating on a common axis sited in Hell. That Judge Friedrich is in sympathy with this combination and their activity all of which makes him incompetent

Petitioners Ex 35
2/10/70 lmj

to act in the above entitled action in any matter involving Carl. R. Anderson of A & J. Builders Inc. or Burnsville Plumbing and Harting Inc.,

That Judge Friedrich has in the past demonstrated an antagonism toward me in the past which I am sure stems from his prejudice against the Constitution and my insistance that it be upheld as written.

That the foregoing makes a fair trial before said Judge impossible.

To: Conrad Carr, Attorney for Defendant Vinge, Hyman Edelman, Attorney for Plaintiffs, and to Gerald W. Kalina, Attorney for Robert Laddusaw;

You will please take Notice that at each and every time that Judge Friedrich attempts to exercise his office as Judge in the above entitled action that Defendants Anderson, A & J. etc. will move the Court and Judge Friedrich that he disqualify himself.

Jerome Daly, Attorney for
Carl R. Anderson, A & J. Builder's
Inc., and Burnsville, Plumbing
and Heating.

Subscribed and sworn to before me
this 3rd day of October,1968

Janis Zilka Kasen
Notary Public

JANIS ZILKA
Notary Public, Dakota County, Minn.
My Commission Expires [illegible]

State of Minnesota,)
) SS.
County of Swift.)

Willard L. Rheingans, being first duly sworn, deposes and says that he is a person more than 21 years of age, that on the 25th day of July, 1966, at the Village of Appleton, Minnesota, he served the within and attached Order on Jerome Daly, by depositing a true and correct copy thereof in a sealed envelope with sufficient postage thereto affixed and addressed to Jerome Daly, 28th East Minnesota Street, Savage, Minnesota, in the United States Mails.

Willard L. Rheingans

Subscribed and sworn to before me
this 26th day of July, 1966.

Kenneth Kivley

KENNETH KIVLEY
MUNICIPAL JUDGE
APPLETON, MINN.

STATE OF MINNESOTA,)
) SS.
COUNTY OF SWIFT.)

Kenneth Kivley, being first duly sworn, deposes and says that he is a person more than 21 years of age; that on the 26th day of July, 1966, at the City of Montevideo, Minnesota, he served the within and attached Order on the law firm of Prindle, Maland and Ward, attorneys for the defendants oral Nelson and Nina Nelson, by handing to and leaving with Donald L. Maland, one of the members of said firm a true and correct copy thereof; and

that on the 26th day of July, at the Village of Appleton, Minnesota, he served the within and attached Order on the law firm of Bennett and Bodger, attorneys for the defendant Northwestern State Bank of Appleton, Minnesota, by handing to and leaving with James R. Bennett, one of the members of said firm, a true and correct copy thereof.

Kenneth Kivley

Subscribed and sworn to before me
this 26th day of July, 1966.

James R. Bennett

James R. Bennett
Norary Public Swift County, Minn.
My Commission expires Aug. 9th, 1971

No. 3309—Return of Personal Service Exhibiting Judge's Signature. Miller-Davis Co., Minneapolis

State of Minnesota, } ss.
County of Chippewa

I Hereby Certify and Return, That at the City of Montevideo County and State aforesaid, on the 25th day of July 19 66 I served the hitherto attached Order on the within named A. E. Kief, as Guardian of the Estate of Jeffery Allan Lincoln Compton personally by then and there handing to and leaving with A. E. Kief a true and correct copy thereof, and at the same time and place exhibiting to A. E. Kief so that he could see and read the same, the original signature of Honorable C. A. Rolloff Judge of District Court of Chippewa County, Minnesota, to said original.

Dated this 25th day of July 19 66

Sheriff Fees—Service, $ 2.00
Travel, $
Total, $ 2.00

Hans Strand
Sheriff Chippewa County, Minn.
By Hans H. Strand
Deputy Sheriff.

STATE OF MINNESOTA — IN DISTRICT COURT

COUNTY OF CHIPPEWA — EIGHTH JUDICIAL DISTRICT

A. M. Joyce, — Plaintiff

vs.

Northwestern State Bank of Appleton, Minnesota, Oral Nelson and Nina Nelson, husband and wife, Kenneth Kivley and Nettie B. Krebs, as co-executors under the Will of A. O. Krebs, deceased, Alfred M. Joyce, Jr. and Mary Compton,

Defendants

ORDER

The above entitled matter came on for hearing at the Court's Chamers in the Court House in the City of Montevideo, Minnesota, on the 22nd day of July, 1966, upon the motion of the defendants Kenneth Kivley and Nettie B. Krebs, co-executors under the Will of A. O. Krebs, deceased, to make A. E. Kief, as Guardian of the Estate of Jeffery Allan Lincoln Compton, a party to the action, and to have the Court's leave to serve a Summons and an answer with Counter-claim for interpleader upon him;

Kenneth Kivley, appeared for the said defendants and Donald L. Maland of the firm of Prindle, Maland and Ward, attorneys for Oral Nleson and Nina Nelson, husband and wife, two of the defendants in this action, appeared in support of the motion; ~~that~~ there was no appearance by or on behalf of the plaintiff, but a letter was received from Jerome Daly, the Plaintiff's attorney, requesting a continuance of the matter; and no cause being shown for a continuance;

The Court beinginformed in the matter and having considered the matter presented by said motion and the affidavit in support thereof;

IT IS ORDERED That leave be and hereby is granted to the defendants Kenneth Kivley and Nettie B. Krebs, as co-executors under the Will of A. O. Krebs, to serve a Summons and Answer with ~~Court~~ Counter-claim for Interpleader upon A. E. Kief, as Guardian of the Estate of Jeffery Allan Lincoln ~~Joyce~~ Compton; and

That hence forth the action be entitled as follows: A. M. Joyce, Plaintiff vs. Northwestern State Bank of Appleton, Minnesota, Oral Nelson and Nina Nelson, husband and wife, Kenneth

Kivley and Nettie B. Krebs, as co-executors under the Will of A. O. Krebs, deceased, Alfred M. Joyce, Jr. and Mary Compton, and A. E. Kief, as Guardian of the Estate of Jeffery, Allan Lincoln Compton, Defendants.

Let copies of the Order be served upon A. E. Kief, as Guardian of the Estate of Jeffery Allan Lincon Compton; Jerome Daly, Attorney for the Plantiff; James R. Bennett, Attorney for the Northwestern State Bank of Appleton, Minnesota, and Prindle, Maland and Ward, Attorneys for Oral Nelson and Nina Nelson, husband and wife.
Dated July 22nd, 1966.

C. G. Dallof

Judge

No. 3038½ (S) Certificate of Transcript. MILLER-DAVIS CO., MINNEAPOLIS

State of Minnesota, } ss.
County of Chippewa

DISTRICT COURT,
Eighth *Judicial District*

A. M. Joyce
Plaintiff
vs.
Northwestern State Bank of Appleton, Minnesota, Oral Nelson and Nina Nelson, husband and wife, Kenneth Kivley and Nettie B. Krebs, as co-executors under the Will of A. O. Krebs, deceased, Alfred M.Joyce,Jr. and Mary Compton *Defendant*

Clerk's Certificate

I, A. Milton Johnson *Clerk of the above named Court do hereby certify that I have compared the paper's writing, to which this certificate is attached, with the original* ORDER

as the same appears of record and on file in the said Clerk's office, at the Court House in said County, in the above entitled cause, and that the same is a true and correct copy of the same and the whole thereof

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Montevideo, Minnesota *this* 5th *day of* February *, A. D. 19*70.

A. Milton Johnson *Clerk*

Eileen T. Domroy *Deputy*

No. 11524

State of Minnesota

County of Chippewa

DISTRICT COURT,

Eighth *Judicial District*

Certificate of Transcript

A. M. Joyce

Plaintiff

vs.

Northwestern State Bank of Appleton, Minnesota, et al

Defendant

MILLER-DAVIS CO., MINNEAPOLIS

42174

Attorneys Exhibit 39
3/10/39

STATE OF MINNESOTA

COUNTY OF CHIPPEWA

IN DISTRICT COURT

EIGHTH JUDICIAL DISTRICT

A. M. Joyce,

Plaintiff,

vs.

A. O. Krebs, Northwestern State Bank of Appleton, Minnesota, Ernest Dalen, Tommy Thompson, Kragero Township, Derall La Grange, W. D. Prindle, Jr., Sam Gandrud, C. A. Rolloff, State of Minnesota, Minnesota Valley Light, Heat and Power Company,

Defendants.

NO. 11524.

ORDER ON PLAINTIFF'S PETITION.

This appears to be an action to determine adverse claims. While the Complaint is dated February 14, 1963 it was not filed until April 14, 1964. No Summons was served until May 18, 1965. Plaintiff noticed a motion for an order granting the petition attached thereto. The matter was heard at Montevideo on July 5, 1966. Alfred M. Joyce appeared as attorney pro se. James Bennett appeared as attorney for the defendant Northwestern State Bank of Appleton, and Mr. Kenneth Kivley appeared as one of the co-executors of the Estate of A. O. Krebs, deceased. Oral and Nina Nelson were served with Notice of the motion, but there was no appearance by either of them nor was there any appearance on their behalf.

The Petition states that the action is dismissed as of the date of the Notice of Motion as against the State of Minnesota, Ernest Dalen, Tommy Thompson, Kragero Township, Derall La Grange, W. D. Prindle, Jr., Sam Gandrud, C. A. Rolloff and Minnesota Valley Light, Heat and Power Company. The original Complaint also named Melvin Anderson as a defendant. No service appears to have been made as to said party, and his name is stricken as one of the defendants. It also having been made to appear that A. O. Krebs is now deceased, IT IS ORDERED that his name be stricken from the title. There has been no service of the Summons and no dismissal

as to Alfred M. Joyce, Jr. and Mary Compton.

At the time of the hearing on the Petition Mr. Bennett made a motion that the action be dismissed as to Northwestern State Bank on the ground that at the time the bank was served with the Summons the original Complaint did not name the bank as a party defendant. The files disclose that an Answer was interposed on behalf of said bank. Under Rule 12.08 the motion is denied.

From a consideration of all that was submitted at the time of the hearing

IT IS HEREBY ORDERED:

1.

That Nettie B. Krebs and Kenneth Kivley, as executors under the Last Will and Testament of A. O. Krebs, deceased, be substituted as parties defendant for A. O. Krebs, deceased.

2.

That Oral Nelson and Nina Nelson be made parties defendant.

3.

That leave is granted plaintiff to amend his Complaint in accordance with the proposed Amended Complaint attached to the Petition, except as to the title thereof.

4.

That all subsequent pleadings be entitled as follows: A. M. Joyce, Plaintiff, vs. Northwestern State Bank of Appleton, Minnesota, Oral Nelson & Nina Nelson, husband and wife, Kenneth Kivley and Nettie B. Krebs, as co-executors under the Will of A. O. Krebs, deceased, Alfred M. Joyce, Jr. and Mary Compton, defendants.

5.

IT IS ORDERED that the plaintiff forthwith procure service of the Summons to be made upon Alfred M. Joyce, Jr. and Mary Compton.

6.

That the co-executors and Oral Nelson and his wife, Nina Nelson, have twenty (20) days from the date of notice of this

Order from the Clerk within which to answer the Amended Complaint attached to the Petition.

7.

That the action be tried on the merits at Montevideo on August 22, 1966 at 9:30 a.m.

Dated July 7, 1966.

J U D G E.

M E M O R A N D U M.

The substitution of parties is granted under Rule 25.01.

On the face of the Complaint and the affidavits submitted by the executors there is an issue of fact as to whether the claim of the plaintiff is extinguished or barred.

These proceedings by the plaintiff have been dilatory, and the pleadings on the part of the plaintiff are in an utter state of confusion. The Court by the above order has attempted to bring some degree of order to the proceedings and to expedite the disposition thereof.

No. 3038½ (S) Certificate of Transcript. MILLER-DAVIS CO., MINNEAPOLIS

State of Minnesota, } ss.
County of Chippewa

DISTRICT COURT,
Eighth *Judicial District*

A. M. Joyce

Plaintiff

vs.

A. O. Krebs, Northwestern State Bank of Appleton, Minnesota, et al

Defendant

Clerk's Certificate

I, A. Milton Johnson *Clerk of the above named Court do hereby certify that I have compared the paper's writing, to which this certificate is attached, with the original* ORDER ON PLAINTIFF'S PETITION *as the same appears of record and on file in the said Clerk's office, at the Court House in said County, in the above entitled cause, and that the same is a true and correct copy of the same and the whole thereof*

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Montevideo, Minnesota *this* 5th *day of* February *, A. D. 19*70.

A. Milton Johnson *Clerk*

Eileen T. Pomroy *Deputy*

No. 11524

State of Minnesota

County of Chippewa

DISTRICT COURT,

Eighth *Judicial District*

Certificate of Transcript

A. M. Joyce

Plaintiff

vs.

A. O. Krebs, Northwestern State Bank of Appleton, Minnesota, et al

Defendant

MILLER-DAVIS CO., MINNEAPOLIS

No. 3114½—Affidavit of Service. S. F. Miller-Davis Co., Minneapolis

State of Minnesota, } ss.
County of Scott

A.M. Joyce, being duly sworn, on oath says: that on the 23 day of may, 1966, 19..., he served the attached Amended Summons and Complaint and Notice of Motion upon Nettie B. Krebs therein named, personally, at Appleton, Minnesota in the County of SWift, State of Minnesota, by depositing a true and correct copy thereof in a sealed envelope, addressed to Nettie B. Krebs Appleton, Minnesota and depositing the same in the U.S. mail, postage prepaid.

~~true and correct copy thereof.~~

A.M. Joyce

Subscribed and Sworn to Before Me this 23rd day of May, 1966

Notary Public, Dakota County, Minnesota. My commission expires 1-17-73

No. 3114½—Affidavit of Service. S. F. Miller-Davis Co., Minneapolis

State of Minnesota, } ss.
County of Scott

A.M. Joyce, being duly sworn, on oath says: that on the 23rd day of may 66 19, he served the attached Amended Summons and complaint and notice of Motion upon Kenneth Kivley therein named, personally, at Savage, Minnesota in the County of Scott, State of Minnesota, by placing a true and corfec copy thereof in a sealed envelope addressed to Kenneth Kivley, Appletom, Minnesota and depositing the same in the United States mail, postage prepaid.

~~true and correct cop- - - thereof.~~

A.M. Joyce

Subscribed and Sworn to Before Me this 23rd day of May, 1966

Jerome Dale

Notary Public, Dakota County, Minnesota. My commission expires 1 - 17 - 1973.

No. 3114½—Affidavit of Service. S. F. Miller-Davis Co., Minneapolis

State of Minnesota, } ss.

County of Scott A.M. Joyce, being duly sworn, on oath says: that on the 23rd day of May 1966, he served the attached Amended Summons and Complaint and Notice of Motion upon Northwestern State Bank therein named, personally, at Savage, Minnesota in the County of ~~Scott~~ SWIFT State of Minnesota, by depositing a true and correct copy thereof in a sealed envelope addressed to R.C. Krebs, Director Northwestern State Bank, Appleton, Minnesota and placing the ~~true and correct copy thereof.~~ same in the U.S. mail, postage prepaid.

A.M. Joyce

Subscribed and Sworn to Before Me this 23 day of May, 1966

Notary Public, Scott Dakota County, Minnesota. My commission expires 1-17-73.

No. 3114½—Affidavit of Service. S. F. Miller-Davis Co., Minneapolis

State of Minnesota, } ss.

County of Scott A.M. Joyce, being duly sworn, on oath says: that on the 23rd day of May, 1966, he served the attached Amended summons and complaint and notice of motion upon James D. Bennett Lawyer therein named, personally, at Savage in the County of Scott, State of Minnesota, by ~~handing to and leaving with~~ depositing a true a true and correct copy thereof in a sealed envelope addressed to James D. Bennett, Lawyer, Appleton, Minnesota and depositing thecsame in the U.S. ~~true and correct copy thereof~~ mail postage prepaid.

A. M. Joyce

Subscribed and Sworn to Before Me this 23 day of May, 1966.

Florence Daley

Notary Public, Dakota County, Minnesota. My commission expires 1 - 17 - 1973.

STATE OF MINNESOTA

COUNTY OF CHIPPEWA

DISTRICT COURT

EIGHTH JUDICIAL DISTRICT

Alfred M. Joyce,

Plaintiff,

vs.

AMENDED COMPLAINT

Nettie B. Krebs and Kenneth Kivley, as Executors of the Last Will and Testament and the Estate of Arthur O. Krebs, aka, A. O. Krebs, Decedent, Oral Nelson and Ninna Nelson, husband and wife, and Northwestern State Bank of Appleton, Appleton, Minnesota,

Defendants.

PLAINTIFF, FOR HIS AMENDED COMPLAINT HEREIN, STATES AND ALLEGES:

I.

Plaintiff is at all times herein material, the possessor and is now in possession and has never lawfully surrendered possession, in fact or otherwise, of the following described premises, to-wit:

> The South One-half (S 1/2) of the Northeast Quarter (NE 1/4) and all of the Southeast Quarter (SE 1/4) of Section 23, Township 119, Range 42 West of the Fifth Principal Meridian, according to the original U. S. Government Survey located in the County of Chippewa, and State of Minnesota.

II.

That the defendants, and each of them, claim some right, title, estate, interest, lien, or right of possession in and to said premises, whereas they have none.

III.

That the Defendants, Oral Nelson and Ninna Nelson, have attempted to trespass and intrude upon the South Eighty acres of said above described premises, against no trespasssing signs and with full knowledge of plaintiff's claim of possession and right.

That Defendants Nettie B. Krebs and Kenneth Kivley are co-executors of the last Will and Testament and the Estate of Arthur O. Krebs, having been apointed by the Swift County, Minnesota Probate Court on February 11,1966.

No. 3038½ (S) Certificate of Transcript. MILLER-DAVIS CO., MINNEAPOLIS

State of Minnesota, } ss.
County of Chippewa

DISTRICT COURT,
Eighth *Judicial District*

Alfred M. Joyce
Plaintiff
vs.
Nettie B. Krebs and Kenneth Kivley, et al
Defendant

Clerk's Certificate

I, A. Milton Johnson *Clerk of the above named Court do hereby certify that I have compared the paper's writing, to which this certificate is attached, with the original* AMENDED COMPLAINT *as the same appears of record and on file in the said Clerk's office, at the Court House in said County, in the above entitled cause, and that the same is a true and correct copy of the same and the whole thereof*

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Montevideo, Minnesota *this* 5th *day of* February *, A. D. 19*70.

A. Milton Johnson *Clerk*

Eileen T. Donroy *Deputy*

No. 11524

421274

State of Minnesota

County of Chippewa

DISTRICT COURT,

Eighth *Judicial District*

Certificate of Transcript

Alfred M. Joyce

Plaintiff

vs.

Nettie B. Krebs and Kenneth Kivley, et al

Defendant

MILLER-DAVIS CO., MINNEAPOLIS

A. M. JOYCE

STATE OF MINNESOTA

COUNTY OF CHIPPEWA

IN DISTRICT COURT

EIGHTH JUDICIAL DISTRICT

A. M. JOYCE,
Plaintiff

vs

A. C. Krebs, Northwestern State Bank of Appleton, Minnesota, Ernest Dalen, Tommy Thompson, Kragero Township, Derall La Grange, W.D. Prindle, Jr., San Grandrud, C.A. Rolloff, State of Minnesota, Minnesota Valley Light, Heat and Power Company,
Defendants.

S U M M O N S .

THE STATE OF MINNESOTA TO THE ABOVE NAMED DEFENDANTS, AND EACH OF THEM: .

YOU ARE HEREBY SUMMONED and required to answer the complaint of plaintiff in the above entitled matter, which has been filed in the* office of the Clerk of the above named court, within 20 days of the service of this Summons upon you; and if you fail to answe said complaint within the time aforesaid, by serving a copy of your Answer upon the undersigned plaintiff at his designated address, plaintiff will apply to the court for the relief demanded in said complaint.

A. M. Joyce

A. M. Joyce as attorney in his own behalf.
RFD
Milan, Minnesota.

Served by Harvey Fa G May 18, 1936

STATE OF MINNESOTA

COUNTY OF CHIPPEWA

IN DISTRICT COURT

EIGHTH JUDICIAL DISTRICT

A.M.JOYCE, PLAINTIFF

VS

A.C.KREBS, STATE OF MINNESOTA, MINNESOTA VALLEY CO-OP LIGHT AND POWER ASSN. ,MELVIN ANDERSON, ERNEST DALEN, TOMMY THOMPSON, , KRAGERO TOWNSHIP, DERAIL LA GRANGE, , WM. D.PRINDLE,JR,. SAM GRANDRUD, , C. A. ROLLOFF, ALFRED M. JOYCE, JR., AND MARK COMPTON, DEFENDANTS.

C O M P L A I N T .

For his complaimt herein, plaintiff alleges:

I.

That plaintiff is in possession of the premises hereinafter described.

ILL

That the premises above referred to are located in the State of.Minnesota, countynof Chippewa and are described as follows, to-wit: the south half of the NE and the southeast quarter all in Sec. 231,Township 119, Rangw 42west of the fifth principal meridian, according to the original U.S. Government survey.

III.

That the defendants, and each of them, claims some right, title, estate, interest or lien in and to said premises.

IV.

That defendants, and each of them, have no right, title, estate interest or lien upon said premises and are put to the proff as to their claim.

WHEREFORE, plaintiff prays judgment that defendants, and each of them have no right, title, estate, interest or lien in and to said premises.

A. M. Joyce.

A.M. JOYCE, IN HIS OWN BEHALF.
VAC, BILOXI DIV. BILOXI, MISSISSIPPI.

STATE OF MISSISSIPPI
SS
COUNTY OF HARRISON

A. M. JOYCE, being duly sworn, deposes and says that he is plaintiff and that the foregoing complaint is tnue.

A. M. Joyce

A. M. JOYCE

Subscribed and sworn to before me this 14th day February A.D. 1963.

Roy J. Jones

Notary public.

My Commission Expires Nov. 29, 1965

11234

Office of Clerk of District Court
CHIPPEWA COUNTY, MINN.
Filed
FEB 18 1963
CLARA V. RONNING
CLERK

Filing fee pd
Dpt. 14. 1964
4 pages Xerox
on Penn Ball
G.V.R.

No. 3038½ (S) Certificate of Transcript. MILLER-DAVIS CO., MINNEAPOLIS

State of Minnesota, } ss.
County of Chippewa

DISTRICT COURT,
Eighth *Judicial District*

A. M. Joyce
Plaintiff

vs.

A.O.Krebs, State of Minnesota, Minnesota Valley Co-op Light and Power Assn.,Melvin Anderson, Ernest Dalen, Tommy Thompson, Kragero Township, Derall La Grange, Wm.D. Prindle,Jr., Sam Grandrud, et al
Defendant

Clerk's Certificate

I, A. Milton Johnson *Clerk of the above named Court do hereby certify that I have compared the paper's writing, to which this certificate is attached, with the original* SUMMONS AND COMPLAINT

as the same appears of record and on file in the said Clerk's office, at the Court House in said County, in the above entitled cause, and that the same is a true and correct copy of the same and the whole thereof

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Montevideo, Minnesota *this* 5th *day of* February *, A. D. 19*70.

A. Milton Johnson *Clerk*

Eileen T. Pomroy *Deputy*

No. 11524

State of Minnesota

County of Chippewa

DISTRICT COURT,

Eighth *Judicial District*

Certificate of Transcript

A. M. Joyce

Plaintiff

vs.

A. O. Krebs, et al

Defendant

MILLER-DAVIS CO., MINNEAPOLIS

S302—Return of Service—Defendant Not Personally Served. OSWALD PUBLISHING CO., NEW ULM, MINN.

State of Minnesota, } ss.

County of Chippewa

I hereby certify and return, that at the Town of Kragero in said County on the 16th day of September 19 68 I served the annexed Summons and Complaint

upon the within named Defendant Oral Nelson by leaving a true and correct Copy thereof at his usual place of abode with one Nina Nelson (wife) a person of suitable age and discretion, then resident therein in said County, defendant not being found.

Dated this 16th day of September 1968

Sheriffs Fees, Service $ 2.00
Mileage, - - $ 2.25
4.25

Hans Strand
Sheriff Chippewa County, Minn.
By Hans N. Strand Deputy.

S304 Return of Service of Summons To Attach. OSWALD PUBLISHING CO., NEW ULM, MINN.

State of Minnesota, } ss.
County of Chippewa

I hereby certify and return, that on the 16th day of September 19 68, I served the within and attached summons upon the within named Defendant

Nia Nelson by then and there handing to and leaving with him a true Copy of the same in the Town of Kragero County of Chippewa State of Minnesota.

Dated this 16th day of September 19 68

Sheriff's Fees, Return, $ 2.00
Mileage $ 2.25
Copy $
Total $ 4.25

Hans Strand
Sheriff Chippewa County, Minn.
By Francis M. Aamot Deputy.

STATE OF MINNESOTA — COUNTY OF CHIPPEWA

DISTRICT COURT — EIGHTH JUDICIAL DISTRICT

Alfred M. Joyce — PLAINTIFF

vs. — SUMMONS

Oral Nelson and

Nina Nelson — DEFENDANTS

The State of Minnesota to the above-named Defendant:

You and each of you are hereby summoned and required to serve upon plaintiff's attorney an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment be default will be taken against you for the relief demanded in the complaint.

Signed Alfred M. Joyce

Alfred M. Joyce
Pro. se.
R. F. D. Milan, Minnesota

Dated: September 12, 1968

Signed Jerome Daly

Jerome Daly of Counsel
28 East Minnesota St.
Savage, Minnesota

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CHIPPEWA

EIGHTH JUDICIAL DISTRICT

Alfred M. Joyce

vs.

Oral Nelson and

Nina Nelson

PLAINTIFF

COMPLAINT

DEFENDANTS

Plaintiff for his complaint herein states and alleges:

I

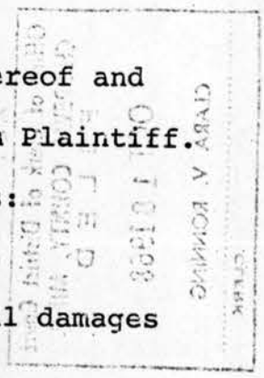
In the Spring of 1964, Defendants did then and there being, willfully, wrongfully and unlawfully and feloniously intrude upon Plaintiff's premises located in Chippewa County described as follows; the S ½ of the S E ¼ of Section 23, Township 119 Range 42 West of the 5th P. M. and have since continued in criminal trespass to Plaintiff's damage, special, general and punative in the sum of $25,000.00 payable in gold or silver coin as provided by law.

II

Defendants are still in unlawful possession thereof and unlawfully withholds the possession of the same from Plaintiff.

Wherefore Plaintiff demands Judgment as follows:

1. Recovery of the possession thereof.
2. Damages in the sum of $10,000.00 for general damages and $15,000.00 punative damages and costs.



Alfred M. Joyce.

Pro se.

R. F. D. Milan, Minnesota.

September 12, 1968

Jerome Daly of Counsel
28 East Minnesota St.
Savage, Minnesota

No. 3038½ (S) Certificate of Transcript. MILLER-DAVIS CO., MINNEAPOLIS

State of Minnesota, } ss.
County of Chippewa

DISTRICT COURT,
Eighth *Judicial District*

Alfred M. Joyce
Plaintiff
vs.
Oral Nelson and Nina Nelson
Defendant

Clerk's Certificate

I, A. Milton Johnson *Clerk of the above named Court do hereby certify that I have compared the paper's writing, to which this certificate is attached, with the original* SUMMONS AND COMPLAINT *as the same appears of record and on file in the said Clerk's office, at the Court House in said County, in the above entitled cause, and that the same is a true and correct copy of the same and the whole thereof*

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Montevideo, Minnesota *this* 5th *day of* February *, A. D. 19* 70.

A. Milton Johnson *Clerk*

Eileen T. Dorsey *Deputy*

Aug 04/01/E
Ethel Mae Bakke

42174

State of Minnesota

County of.....

DISTRICT COURT,

..... *Judicial District*

Certificate of Transcript

.....

.....

..... *Plaintiff*

vs.

.....

..... *Defendant*

MILLER-DAVIS CO., MINNEAPOLIS

STATED OF MINNESOTA

COUNTY OF CHIPPEWA

DISTRICT COURT

EIGHTH JUDICIAL DISTRICT

A.M.Joyce, Plaintiff,

vs.

ANSWER OF MARY COMPTON AND ALFRED M. JOYCE JR.

Northwestern State Bank of Appleton, et al Defendants.

I.

Mary Compton, for her answer herein states and alleges as follows:

A. As an answer to all cross claims, counterclaims and Plaintiff's Complaint Mary Compton alleges that this Court has not acquired Jurisdiction according to law over her person or over the subject matter herein.

B. That she is the Mother and Natural Guardian of the 3 year old minor child, Jeffery Allan Compton. That said Guradianship herein was started by A.O.Krebs, an interested party herein during his lifetime based upon a fraudulent petition by A.O.Krebs, not in the interest of said minor but in the interest of A.O.Krebs. That said petition did not allege the true nature and extent of the property owned and possible potential ownership of said minor child. That said guardianship was and is a fraud upon the rights of said minor That no guradianship was ever needed and that the present guardian is not protecting the interest of said minor. That said minor is the owner in fee of the South 80 acres of land of the Alfred Joyce Sr. farm which land is described in the complaint, which is the S1/2 of SE 1/4 Sec 23 Twp 119 R 42 W.

42174

Petitioners Exhibit
2/10/70 Dmg

C.

C. That Oral Nelson and A. O. Krebs or his estate has no right, title, interest in or lien upon any of the property described in the Complaint herein.

II.

A.M.Joyce Jr. adopts the answer of Mary Compton in full except that he is not one of the Natural Guardians of said minor.

WHEREFORE, these answering Defendants pray ~~xyhmk~~ That the Estate of A.O.Krebs has nothing herein and that Oral Nelson and Nina Nelson take nothing herein.

Jerome Daly
Attorney for Defendants Alfred M. Joyce Jr. and Mary Compton

Dated August 30,1966

EXHIBIT "A"

STATE OF MINNESOTA — IN DISTRICT COURT

COUNTY OF CHIPPEWA — EIGHTH JUDICIAL DISTRICT

Alfred M. Joyce,

Plaintiff,

vs.

Northwestern State Bank of Appleton, Minnesota, Oral Nelson and Nina Nelson, husband and wife, Kenneth Kivley and Nettie B. Krebs, as co-executors under the Will of A. O. Krebs, deceased, Alfred M. Joyce, Jr., Mary Compton, and A. E. Kief, as Guardian of the Estate of Jeffery Allan Lincoln Compton,

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT.

This is an action to determine adverse claims. It was on the June 1966 General Term Calendar. It was tried on August 22, 23, 24 and 30th. Mr. Jerome Daly appeared as attorney for the plaintiff. Bennett & Bodger appeared as attorneys for the Northwestern State Bank of Appleton. Prindle, Maland & Ward appeared as attorneys for the defendants Nelson. Mr. Kenneth Kivley appeared as attorney for himself and Nettie B. Krebs, as co-executors under the Will of A. O. Krebs, deceased. Mr. A. E. Kief appeared as attorney and guardian for Jeffery Allan Lincoln Compton. It was made to appear that an Affidavit for Publication of the Summons was made and filed as required by law, that the Summons and the Order of this Court dated July 7, 1966 were personally served upon Alfred M. Joyce, Jr. and Mary Compton on July 29, 1966 in the City of Huntsville, Alabama. Proof of said services is shown by the affidavit on file herein. The defendants Alfred M. Joyce, Jr. and Mary Compton are in default for want of an Answer.

The defendants Nelson asserted a crossclaim against Mary Compton and Alfred M. Joyce, Jr. This crossclaim was not served until August 9, 1966. The issues raised by the crossclaim were ordered tried separately.

Counsel for plaintiff was to file the first brief within 20 days. Since the trial the plaintiff has discharged Mr. Daly as his

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attorney, and no brief has been filed on his behalf. The last brief was received from other counsel on October 1, 1966. From a consideration of the evidence adduced the Court makes the following

FINDINGS OF FACT.

1.

A. O. Krebs died on January 20, 1965, and Kenneth Kivley and Nettie B. Krebs are the duly appointed, qualified and acting co-executors under the Will of A. O. Krebs, deceased. A. E. Kief was appointed on July 15, 1965 as guardian of the estate of Jeffery Allan Lincoln Compton. This appointment was with the approval and consent of the plaintiff herein. A. E. Kief is now, and since July 15, 1965, has been the duly qualified and acting guardian of the estate of said minor.

2.

The plaintiff is the owner and in possession of the S 1/2 of the NE 1/4 and the N 1/2 of the SE 1/4, Section 23, Township 119, Range 42, Chippewa County, Minnesota, subject, however, to the following mortgages:

A. Mortgage to A. O. Krebs dated May 20, 1957, recorded in the Office of the Register of Deeds of Chippewa County on May 20, 1957 in Book 67 of Mortgages, Page 460. This mortgage secured a note of the plaintiff of even date in the sum of $4,000.00. There is due on said note the sum of $4,000.00, with interest at 6% from March 1, 1961.

B. Mortgage to A. O. Krebs dated March 24, 1958 and recorded in the Office of the Register of Deeds of Chippewa County, Minnesota, on March 29, 1958 in Book 67, Mortgages, Page 507. This mortgage secures a note of the plaintiff of even date in the sum of $3,500.00. There is due on said note the sum of $3,500.00, with interest at 6% from March 1, 1961. A. O. Krebs was the owner and holder of both of said notes and mortgages at the time of his death.

3.

That the defendants other than Kenneth Kivley and Nettie B. Krebs, as co-executors of the estate of A. O. Krebs, deceased, have no right, title, estate, interest or lien in or upon said real estate.

4.

That the plaintiff is not in possession and is not the owner of the S 1/2 of the SE 1/4 of Section 23, Township 119, Range 42, Chippewa County, Minnesota, but that Oral Nelson and his wife Nina Nelson, now and ever since April 17, 1964 have been the owners as joint tenants and in possession of said premises. The warranty deed to Nelsons is dated April 17, 1964. It was recorded on November 8, 1965 in the Office of the Register of Deeds of Chippewa County, Minnesota, in Book 87 of Deeds, Page 391. The title of the Nelsons is subject, however, to a mortgage by the Nelsons to the Northwestern State Bank of Appleton, Minnesota, dated December 31, 1964 and recorded in the Office of the Register of Deeds of Chippewa County, Minnesota, on November 8, 1965 in Book 77 of Mortgages, Page 381. This mortgage secures a note of the Nelsons, dated December 31, 1964, in the sum of $12,000.00. This mortgage, together with the note secured thereby, was assigned by the Northwestern State Bank of Appleton to A. O. Krebs by an assignment dated November 18, 1965 and recorded in Book K of Assignments, Page 103, and that A. O. Krebs was the owner and holder of said note and mortgage at the time of his death.

5.

That the plaintiff and the defendants Northwestern State Bank of Appleton, Minnesota, Alfred M. Joyce, Jr., Mary Compton, and Jeffery Allan Lincoln Compton have no right, title, estate, interest or lien in or upon said S 1/2 of the SE 1/4 of Section 23, Township 119, Range 42, Chippewa County, Minnesota.

CONCLUSIONS OF LAW.

That the plaintiff is entitled to the judgment of this Court:

1.

A. Determining that he is in possession and is the owner in fee of the following described premises situate in Chippewa County, Minnesota, to-wit: the S 1/2 of the NE 1/4 and the N 1/2 of the SE 1/4 of Section 23, Township 119, Range 42, subject, however, to the following mortgages:

(1) Mortgage given by plaintiff to A. O. Krebs, dated May 20, 1957, and recorded in the Office of the Register of Deeds of Chippewa County in Book 67 of Mortgages, Page 460.

(2) Mortgage given by plaintiff to A. O. Krebs, dated March 24, 1958, and recorded in Book 67 of Mortgages, Page 507.

That none of the defendants except Kenneth Kivley and Nettie B. Krebs have any right, title, estate, interest or lien in or upon the premises described, and that A. O. Krebs was the owner and holder of said mortgages at the time of his death.

B. That the defendants Oral Nelson and Nina Nelson are the owners in fee as joint tenants and in possession of the following described property in Chippewa County, Minnesota, to-wit: S 1/2 of SE 1/4, Section 23, Township 119, Range 42, subject, however, to the mortgage given by Oral Nelson and Nina Nelson to the Northwestern State Bank of Appleton, Minnesota, dated December 31, 1964 and recorded in the Office of the Register of Deeds of Chippewa County in Book 77 of Mortgages, Page 381, which mortgage was assigned to A. O. Krebs who was the owner and holder thereof at the date of his death.

2.

That the plaintiff and the defendants Northwestern State Bank of Appleton, Minnesota, Alfred M. Joyce, Jr., Mary Compton and Jeffery Allan Lincoln Compton have no right, title, estate, interest, or lien in or upon the premises last above described.

Let Judgment be entered accordingly forthwith.

Dated November 21st, 1966.

C. A. ROLLOFF
JUDGE.

M E M O R A N D U M.

This Memorandum will deal only with the issues as to the S 1/2 of the SE 1/4 of Section 23, Township 119, Range 42. On April 16, 1964 plaintiff executed and delivered a quitclaim deed to said tract to A. O. Krebs. This deed was filed on August 4, 1964 in the Office of the Register of Deeds of Chippewa County and recorded in Book 83 of Deeds, Page 553. On December 29, 1964 plaintiff executed another quitclaim deed to A. O. Krebs covering said 80-acre tract. This deed was filed on November 8, 1965 in the Office of the Register of Deeds of Chippewa County and recorded in Book 87 of Deeds, Page 389. This second deed was given because of an objection raised by

a title examiner as to the validity of the first deed by reason of a statement on the deed "No consideration for this deed.". This statement was added to the deed after it was delivered by the plaintiff to Mr. Krebs. A. O. Krebs executed and delivered a warranty deed to the Nelsons on April 17, 1964. The plaintiff claims that the quitclaim deeds he executed were not intended to relinquish any title which he had. He has taken several inconsistent positions with reference to said deeds. His claim that the quitclaim deeds were not given to relinquish title is not sustained by the evidence. In fact, his own letters and conduct prove otherwise. His letter of April 15, 1964 (Bank Exhibit 12-9) directs how the proceeds of the sale of the 80 are to be disbursed. A statement of distribution was furnished to the plaintiff (Bank Exhibit 12-10). By letter dated April 1964 (Bank Exhibit 12-12) plaintiff approved of the transaction. On April 20, 1964 one-half of the proceeds were sent to the plaintiff's son as per instructions (Bank Exhibit 12-13). On May 11, 1964 plaintiff again acknowledged the sale of this tract. (Bank Exhibit 12-14). The fact that after some dispute between plaintiff and A. O. Krebs (Bank Exhibits 12-2 through 12-13) plaintiff gave a second quitclaim deed, dated December 29, 1964, is a further indication of an intention to convey and relinquish any right he had to this 80-acre tract.

After Nelson had purchased the 80-acre tract with which we are concerned and were in possession, plaintiff executed a warranty deed to the 80 acres and two other 80-acre tracts owned by him, with a notation "meaning to convey hereby all rights reserved in me, including the gas, oil and mineral rights in said land.". He also filed a second Lis Pendens at that time. This deed has no effect on the title held by the Nelsons. The Nelsons have paid the taxes on the South 80 acres since they acquired title. As further evidence of the plaintiff having divested himself of the South 80-acre tract, the fact is shown that a chattel mortgage given June 29, 1964 did not include the crop on this 80-acre tract. The preceding year a similar chattel mortgage to the same mortgagee covered the crops on all three 80's owned by the plaintiff.

It is also significant that on April 16, 1964, the same date as the original quitclaim deed was given by the plaintiff to Krebs, he discharged the Lis Pendens in this action as to the South 80 acres. This partial discharge was filed April 21, 1964 and recorded in Book 42 of Satisfactions, Page 117.

It is also to be noted that on February 20, 1964 plaintiff signed the A.S.C. application for intention to participate in the Feed Grain Program covering the three 80-acres tracts owned by him. On March 5, 1965 he signed the same kind of an application form, but this described only the two remaining 80's owned by him. In 1965 the Nelsons made separate application for A.S.C. participation as to the 80 acres purchased by them.

The plaintiff's testimony and some of his letters are so inconsistent and much of it incredible, that it has little or no weight.

Let this Memorandum be made a part of the Findings herein.

EXHIBHT "B"

STATE OF MINNESOTA

COUNTY OF CHIPPEWA

IN DISTRICT COURT

EIGHTH JUDICIAL DISTRICT

Alfred M. Joyce, Plaintiff

vs.

Northwestern State Bank of Appleton, Minnesota, Oral Nelson and Nina Nelson, husband and wife; Kenneth Kivley and Nettie B. Krebs, as co-executors under the Will of A. O. Krebs, deceased; Alfred M. Joyce, Jr., Mary Compton and A. E. Kief, as Guardian of the Estate of Jeffery Allan Lincoln Compton,

Defendants

JUDGMENT

- -

This is an action to determine adverse claims. It was on the June 1966 General Term calendar. It was tried on August 22nd, 23rd, 24th and 30th, 1966. Mr. Jerome Daly appeared as attorney for the plaintiff. Bennett & Bodger appeared as attorneys for the Northwestern State Bank of Appleton. Prindle, Maland & Ward appeared as attorneys for the defendants Nelson. Mr. Kenneth Kivley appeared as attorney for himself and Nettie B. Krebs, as co-executors under the Will of A. O. Krebs, deceased. Mr. A. E. Kief appeared as attorney and guardian for Jeffery Allan Lincoln Compton. An Affidavit for Publication of the Summons was made and filed, as required by law. Such Summons and the Order of this court, dated July 7th, 1966, were personally served upon Alfred M. Joyce, Jr. and Mary Compton on July 29th, 1966 in the City of Huntsville, Alabama. Proof of said personal services is shown by the Affidavit on file herein. The defendants Alfred M. Joyce, Jr. and Mary Compton are in default for want of an Answer.

The Court, having considered the evidence adduced, did make its Findings of Fact, Conclusions of Law and Order for Judgment, on file herein.

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That the plaintiff, Alfred M. Joyce, is in possession and is the owner in fee of the following described premises situate in Chippewa County, Minnesota, to-wit:

The South Half ($S\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$) and the North Half ($N\frac{1}{2}$) of the Southeast Quarter ($SE\frac{1}{4}$) of Section Twenty-three (23), Township One Hundred Nineteen (119), Range Forty-two (42), subject, however, to the following mortgages:

(A) Mortgage given by plaintiff to A. O. Krebs, dated May 20, 1957 and recorded in the office of the Register of Deeds of Chippewa County in Book 67 of Mortgages, page 460.

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(B) Mortgage given by plaintiff to A. O. Krebs, dated March 24, 1958, and recorded in the office of the Register of Deeds of Chippewa County in Book 67 of Mortgages, page 507.

That none of the defendants, except Kenneth Kivley and Nettie B. Krebs have any right, title, estate, interest or lien in or upon the premises described, and that A. O. Krebs was the owner and holder of said mortgages at the time of his death.

2. That the defendants Oral Nelson and Nina Nelson are the owners in fee as joint tenants and in possession of the following described property in Chippewa County, Minnesota, to-wit:

The South Half of the Southeast Quarter ($S\frac{1}{2}$ of $SE\frac{1}{4}$) of Section Twenty-three (23), Township One Hundred Nineteen (119), Range Forty-two (42,

subject, however, to the mortgage given by Oral Nelson and Nina Nelson to the Northwestern State Bank of Appleton, Minnesota, dated December 31, 1964 and recorded in the office of the Register of Deeds of Chippewa County in Book 77 of Mortgages, page 381, which mortgage was assigned to A. O. Krebs who was the owner and holder thereof at the date of his death.

3. That the plaintiff and the defendants Northwestern State Bank of Appleton, Minnesota, Alfred M. Joyce, Jr., Mary Compton and Jeffery Allan Lincoln Compton have no right, title, estate, interest or lien in or upon the premises as above described in paragraph 2.

Dated: December 14th, 1966.

Clara V. Downing

Clerk of the District Court

DISTRICT COURT SEAL CHIPPEWA CO., MINN.

D.C

COPY

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF SCOTT — FIRST JUDICIAL DISTRICT

- -

First National Bank of Minneapolis, a national banking association,

Plaintiff,

vs.

Leo Zurn, Jerome Daly, Roger D. Derrick, John Doe, and Mary Roe,

Defendants.

- -

DEPOSITION OF:

JEROME DALY

Daniel M. Larkin
Court Reporter

42174

PETITIONER"S EXHIBIT 4
2/11/70 L.M.F.

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF SCOTT — FIRST JUDICIAL DISTRICT

First National Bank of Minneapolis, a national banking association,

Plaintiff,

vs.

Leo Zurn, Jerome Daly, Roger D. Derrick, John Doe, and Mary Roe,

Defendants.

---

* * * * *

DISCOVERY DEPOSITION of JEROME DALY, taken pursuant to Order and stipulation, at the First National Bank Building, Shakopee, Minnesota, beginning at the hour of 3:00 o'clock p.m., on Tuesday, September 9, 1969, before Daniel M. Larkin, Notary Public, County of Hennepin, State of Minnesota, to be used in the above-entitled cause, to be heard in the District Court, First Judicial District, County of Scott, State of Minnesota.

* * * * *

APPEARANCES:

JAN D. STUURMANS, ESQ., Attorney at Law, of the law firm Dorsey, Marquart, Windhorst, West and Halladay, 2400 First National Bank Building, Minneapolis, Minnesota 55402, appeared for the Plaintiff.

JEROME DALY, ESQ., Attorney at Law, 28 East Minnesota Street, Shakopee, Minnesota 55378, appeared on behalf of himself and Defendant Leo Zurn.

* * * * *

JEROME DALY

having been first duly sworn upon his oath, was examined and testified as follows:

EXAMINATION

BY MR. STUURMANS:

Q Do you understand, Mr. Daly, this deposition is convened pursuant to an order of the court signed on September 5th, 1969 by Harold E. Flynn, setting it for 2:00 o'clock, September 9, 1969?

A Well, I agree to the time and the place can be changed.

Q We set the time here by stipulation?
A Yes.
Q And you understand that the title of this case is First National Bank of Minneapolis, a national banking association, plaintiff, against Leo Zurn, Jerome Daly, Roger D. Derrick, John Doe and Mary Roe, defendants?
A That's my understanding.
Q Did you received a summons and complaint in this action?
A Well, whatever the Sheriff's --
Q The Sheriff did serve you with something?
A Yes. They are reliable. If they made a return, then that's it.
Q At that time, did the Sheriff inquire as to whether or not you had possession of the automobile?
A It seems to me we had a conversation to that effect, yes.
Q You understand the automobile we are talking about here is a 1968 Cadillac De Ville, serial number E82870315388?
A Yes. Well, I didn't have possession of it at the time. I claim no right, title or interest in it or lien thereon. I didn't have any control of it. And I haven't had it since.
Q Do you recall at the time the Sheriff asked as to whether or not you had possession of the car you answered that you did not?
A I think I told him I wouldn't discuss the matter with him.

It was in the hands of the courts. As I recall, I told him I had no authority to discuss it with him.

Q Do you recall a meeting on Justice Mahoney's farm in Scott County where both you and I appeared?

A Yes, I do.

Q There were two such meetings, were there not?

A At least two.

Q The second one was on July 16, 1969, is that not correct?

A That could be. I don't know.

Q On or about?

A On or about. I think it was a Wednesday, wasn't it?

Q Wednesday evening, as I recall. At that time, did I not inquire as to the location then of the subject Cadillac automobile?

A Well, I don't remember. I think you did. I don't remember the exact inquiry.

Q Did I not inquire as to why you wouldn't turn possession over to us when we had provided an adequate bond protecting you from damages

A Well, I didn't have it. I can't give you something I haven't got.

Q Didn't you tell me at that time, Mr. Daly, that you had the car in your control for safe keeping, that Mr. Zurn had turned it over to you?

A At that time.

Q You did have the car at that time then in your possession and control?

A Well, let's put it this way, I didn't have it in my possession nor under my control. But he directed me to see that the car was -- to be accurate, I probably did tell you at that time. But to be accurate, he directed me to see that the car was not stolen from him. And he didn't think that it could be kept from being stolen from him. In other words, he solicited my advice to see it wasn't stolen from him. In other words, through the replevin action and using the Sheriff as a conduit. You see, I'm of the opinion that this bond is void also because of a lack of sufficient consideration.

Q That's why you didn't turn the car over at that time, is it?

A In other words, to keep the First National Bank from stealing it, using the law as a conduit for the purposes of theft.

Q That's why you didn't turn it over at that time, isn't it?

A I didn't have it to turn over. But I directed that it be--

Q Secreted or hidden so it couldn't be found?

A Indirectly.

Q Or stored?

A Be kept in a safe spot.

Q You directed Zurn to put it in a safe spot so it wouldn't

record. Did you previously state just a moment ago you
be found?
did have the car in your possession for safe keeping on
A So in other words, I think that's sufficient. As agent
July 16 when we met on Mr. Mahoney's farm?
and attorney for Zurn.
A Same objection.
Q Who did you direct to put it in a safe spot?
Q Do you know where the automobile is now?
A Well, I'm not going to answer that on the grounds -- I
A Same objection.
better restate that objection.
Q Where is the automobile now?
Q I think you better.
A Same objection. And the First National Bank has no right,
A I'm going to refuse to answer based upon the Declaration
title, interest or lien therein or thereon.
of Resolves of the First Continental Congress -- where the
Q I think previously you mentioned here you did have the car
hell is that? October 14, 1774; the Declaration of the
in possession at the time you met on Justice Mahoney's
Causes and Necessity of Taking Up Arms of July 6th, 1775;
farm. When did you dispose of possession and control?
the Declaration of Independence of July 4, 1776; the
A Same objection.
Northwest Ordinance of July 14th, 1787; the Constitution
Q Whom did you give the automobile to?
of the United States and the whole thereof, and more
A Same objection.
particularly Articles 6 of the original Constitution, and
Q Did you ever have the automobile?
Amendments 1, 4, 5, 6, 9, 10, 13 and 14; and the Minnesota
A Same objection.
Constitution; and the Session of Louisiana Treaty between
Q Where did you drive it, if ever?
France and the United States of April 30, 1803; and I
A Same objection.
further take the position that the Rules of Civil Procedure
Q Do you presently have the keys of the automobile?
are unconstitutional and void as enacted by the Supreme
A Same objection.
Court of the State of Minnesota. And that it violates the
Q Have you ever had the keys to the automobile?
privilege between an attorney and client.
A Same objection.
Q I'd like to inquire a little further, if I may.
Q Do you personally know Roger Derrick?
A And I refuse to answer on those grounds.
A Same objection.
Q I'd like to inquire further to get some objections on the

record. Did you previously state just a moment ago you did have the car in your possession for safe keeping on July 16 when we met on Mr. Mahoney's farm?

A Same objection.

Q Do you know where the automobile is now?

A Same objection.

Q Where is the automobile now?

A Same objection. And the First National Bank has no right, title, interest or lien therein or thereon.

Q I think previously you mentioned here you did have the car in possession at the time you met on Justice Mahoney's farm. When did you dispose of possession and control?

A Same objection.

Q Whom did you give the automobile to?

A Same objection.

Q Did you ever have the automobile?

A Same objection.

Q Where did you drive it, if ever?

A Same objection.

Q Do you presently have the keys of the automobile?

A Same objection.

Q Have you ever had the keys to the automobile?

A Same objection.

Q Do you personally know Roger Derrick?

A Same objection.

Q Do you know whether Zurn or Derrick know or knew the former Martin V. Mahoney?

A Same objection.

Q When were you retained by Mr. Zurn in conjunction with this law suit?

A Sometime in April or May or June of this year. I don't remember the exact dates.

Q There was some kind of an agreement that you would represent him?

A We entered into an attorney-client relationship.

Q That's the conclusion. I'd like to know your basis for concluding that. Has he paid you fees?

A We entered into an attorney-client relationship. He was the client and I was the attorney.

Q Thank you, Mr. Daly. Have you ever represented Mr. Derrick?

A Same objection.

MR. STUURMANS: I have no further questions.

THE WITNESS: I'll waive the reading and the signing and the notice of filing.

* * * * *

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) ss.

Be it known that I, Daniel M. Larkin, the undersigned, a duly commissioned and qualified Notary Public within and for the County and State aforesaid, do hereby certify that before the giving of his deposition, the said JEROME DALY was by me first duly sworn upon his oath to depose the whole truth and nothing but the truth; that the foregoing is a true and correct copy of my original stenotype notes taken at said deposition; that the reading and signing and notice of filing of the deposition was duly waived; that I am neither a relative of, nor attorney for, any of the parties to the cause and have no interest whatever in the result of the same.

WITNESS MY HAND AND SEAL this ___ day of ____, 1969.

Daniel M. Larkin
Notary Public, Hennepin County, Minn.
My Commission Expires Nov. 20, 1973

STATE OF MINNESOTA }
COUNTY OF HENNEPIN } ss.

Be it known that I, Daniel M. Larkin, the undersigned, a duly commissioned and qualified Notary Public within and for the County and State aforesaid, do hereby certify that before the giving of his deposition, the said DANIEL DAIX was by me first duly sworn upon his oath to depose the whole truth and nothing but the truth; that the foregoing is a true and correct copy of my original stenotype notes taken at said deposition; that the reading and signing and notice of filing of the deposition was duly waived; that I am neither a relative of, nor attorney for, any of the parties to the cause and have no interest whatever in the result of the same.

WITNESS MY HAND AND SEAL this ___ day of ____, 1969.

Daniel M. Larkin
Notary Public, Hennepin County, Minn.
My Commission Expires Nov. 20, 1973

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF DAKOTA — FIRST JUDICIAL DISTRICT

File No. 67255

Mary Agnes Dearing,

Plaintiff,

vs. — O R D E R

Colin F. Dearing,

Defendant.

Plaintiff and her counsel, Lawrence Lenertz, appeared pursuant to motion of Defendant, scheduled for August 15, 1969. Defendant failed to appear and the Court having considered the matters presented;

O R D E R S :

1. Motion to reduce child support denied.

2. Plaintiff has executed and delivered the quit claim deeds set forth in the decree and directed such documents to Jerome Daly, Counsel for Defendant.

3. Plaintiff's counsel has the stock certificates available for delivery to Defendant's counsel upon delivery of a receipt therefor.

4. Defendant shall pay to plaintiff at the office of her attorney the sum of $100.00 towards her attorneys' fees incurred herein.

By the Court

Robert J. Breunig.
District Judge

Dated this 20th day of August, 1969.

42174

Petitioner
4K 36
Ord 2/10/70

Petitioner's Exhibit [illegible]

MINNEAPOLIS MINN. AM 11 MAR 1965

William E. DREXLER

~~PALMER A. PETERSON M.D.~~

P.O. BOX 1503

ST. PAUL, MINN. 55111

PETITIONER'S EXHIBIT 28
2/12/70 L.M.F. 2174

SAINT PAUL, MINN. PM 6 MAR 1965

William E. Drexler

[redacted]

P.O. BOX 1503

ST. PAUL, MINN. 55111

PLAINTIFF'S
EXHIBIT 38
M. J. STASIK

RECEIVER'S
EXHIBIT No. 6

PLAINTIFF'S
EXHIBIT 37
M. J. STASIK

RECEIVER'S
EXHIBIT No. 5

PETITONER'S EXHIBIT 26
2/12/70 L.M.F.

42174

STATE OF MINNESOTA 566224

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

PLAINTIFF'S EXHIBIT 35
H. J. STASIK

Faye V. Peterson,

Plaintiff,

vs.

Palmer A. Peterson and Paul L. Halverson, individually and as Trustee,

Defendants.

FILE NO. 566224

ORDER APPOINTING RECEIVER AND REFEREE

On motion of plaintiff, and upon all the files, records and proceedings herein, IT IS HEREBY ORDERED as follows:

1. That this Court does hereby sequester all of the personal estate of the defendant, Palmer A. Peterson, and does hereby appoint Joe A. Walters, 845 Northwestern Bank Building, Minneapolis, Minnesota, Receiver thereof, pursuant to M.S.A. 518.24, and all other applicable statutes, with all the powers and authority of a Receiver under the statutes and common law of the State of Minnesota.

2. That said Joe A. Walters is also appointed a Referee of this Court pursuant to Rule 53 of the Minnesota Rules of Civil Procedure, with all the powers and authority granted by said rule or any other applicable rules or statutes of the State of Minnesota.

3. That without limiting the powers, duties and authorities above granted to said Receiver and Referee, he is specifically authorized and directed as follows:

(a) Said Receiver and Referee shall forthwith take into his possession all of the financial records of the defendant, Palmer A. Peterson, including, but not by way of limitation, all of said defendant's books of account, daily or other records of patients seen and services rendered, account receivable records, duplicate deposit records, bank and savings account records, and records of securities.

(b) Said Receiver and Referee shall proceed with all reasonable dispatch to collect all accounts receivable of defendant, Palmer A. Peterson, and to take whatever legal or other action may be deemed necessary or advisable to enforce collection thereof.

(c) Said Receiver and Referee shall take into his possession all securities held by defendant, Palmer A. Peterson, or in his name, and all bank or savings accounts in his name or under his control in any domestic or foreign banks, savings and loan associations or other financial institutions.

(d) Said Receiver and Referee shall make such investigation, including the issuing of subpoenas and the taking of testimony of any witnesses if deemed by him to be appropriate, as he may deem necessary and advisable to ascertain the nature and amount of the personal estate of the defendant, Palmer A. Peterson.

(e) Upon receiving any assets of value, said Receiver and Referee shall apply to this Court for its further Order fixing his bond. Until said Receiver and Referee receives any property of monetary value, no bond shall be required.

4. Within a reasonable time after receiving any of the records or personal estate of the defendant, Palmer A. Peterson, the Receiver and Referee shall apply to the Court for its further Order in reference to the disposition thereof.

5. The Receiver and Referee hereby appointed having filed with the Clerk of the above Court his oath in form which is hereby approved by the Court, said Receiver and Referee shall enter upon his duties forthwith.

BY THE COURT

Stanley D. Lane

District Judge

Dated: January 11, 1965

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 12 1965
PHILIP C. SCHMIDT, Clerk of District Court
By [illegible] Deputy

[illegible]

PHILIP C. SCHMIDT
Clerk of Dist. Ct., Hennepin Co.

E. L. Youngdale
Deputy