COUNTY OF SCOTT

TOWNSHIP OF CREDIT RIVER
MARTIN V. MAHONEY, JUSTICE

- - - - - - - - -

First National Bank of Montgomery,

Plaintiff,

Vs.

Jerome Daly,

Defendant.

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
JUDGMENT

- - - - - - - - -

The above-entitled action came on before the Court on January 22, 1969 at 7:00 P. M., pursuant to Motion and Notice of Motion and Order to Show Cause, a true and correct copy of which is attached hereto a page 13 "A".

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. A true and correct copy of the Judgment and Decree entered by this Court on December 9, 1968 is attached hereto, a pages 14 thru 17.

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 attached hereto, a pages 18, 19 & 20.

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.

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 and this Court was ordered to show cause before the District Court as to why the Appeal should not be allowed.

Therefore, 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 recieved the testimony of Defendant.

Now, Therefore, based upon all of 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.

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 because of the interlocking 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" 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. To illustrate the admission of their activity, pages 74 through 78 are attached hereto as pages 21, 22 & 23.

The creation of this money or credit constitutes the creation of fiat money upon the books of these banks.

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 bookkeeping 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.

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

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 the books by which they acquired the Bond.

The net effect of the entire transaction is that the Federal Reserve Bank obtains Federal Reserve Notes comparable to the ones they placed on file with the Clerk of the 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. From 1913 down to date, the Federal Reserve Banks and the National Banks are privately owned. As of March 18,

(See page 41)

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 providing 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

31 USC, Section 462, [illegible]

Reserve Notes and circulating Notes of Federal Reserve Banks and National Baning 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 or silver coin a tender, or impairing the obligation of contracts.

IN CONCLUSION, it is therefore the further judgment and determination of this Court:

1. That the original Judgment entered herein on December 9, 1968 is in all respects confirmed.

2. That the Federal Reserve Notes on deposit with the Clerk of the Court are not lawful money of the United States; are in violation of the Constitution of the United States and are not valid for any purpose.

3. That M.S.A. 532.38 requiring $2.00 to be deposited

with the Clerk of District Court within ten (10) days of the entry of Judgment was not complied with. That the conditions prerequisite to this Court allowing an appeal have not been complied with. That this Court's Notice of its Refusal to Allow Appeal dated January 6, 1969 is hereby made absolute.

4. That following memorandum is attached and made a part of this decision.

MEMORANDUM

Article 1, Section 10 of the United States Constitution provides that no State shall make anything but gold and silver coin a legal tender in payment of debts.

The act of the Clerk of the District Court is the act of the State. The Clerk of the District Court is the agent of the Judicial Branch of the Government of the State of Minnesota. See Birscoe 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."

The bank attempted to get the Clerk of District

Court to perform an act 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 24 and 25

See also 36 Amer. Jur. on Money, Section 9, attached hereto. Bank Notes are a good tender as money unless specifically objected to. Their consent and usage is based upon their 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. See pages 74 through 78 of "The Federal System; Its Purposes and Functions", a copy of which is attached pages 21 thru 23
hereto. / 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 Note. See 17 Amer. Jur. on Contracts, Section 85, page 30 and also Sections 215, 216 and 217 of 11 Amer. Jur. 2nd on Bills and Notes, page 31 & 32 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 for the benefit of an idle monopoly and is used to rob, blackmail and oppress the 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 dependance; is subversive to the rights and liberties of the people. It has defied the lawfully constituted Government of the United States. The two banking acts and Sec. 462 of Title 31, U.S.C. page 41 and 42 are therefore unconstitutional and void.

The law leaves wrongdoers where it finds them. See 1 Amer. Jur. 2nd on Actions, Sections 50, 51 and 52 which are attached hereto and made a part hereof, pages 35 and 36

This Court therefore is not allowing the appeal.

BY THE COURT

January 23, 1969

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

FURTHER MEMORANDUM

The jurisdiction of this Court is confered 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."

The pertinant parts of the United States Constitution are as follows, along with the Declaration of Independence:

DECLARATION OF INDEPENDENCE WE THEREFORE, the Representa-

SECTION 8. The Congress shall have

District Court, a probate court, and [illegible] judicial officers and commissioners with jurisdiction inferior to the District Court as the legislature may establish."

The pertinant parts of the United States Constitution are as follows, along with the Declaration of Independence:

DECLARATION OF INDEPENDENCE

(Unanimously Adopted in Congress, July 4, 1776, at Philadelphia)

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 entitles 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

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 Alliance, 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

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

Article I

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 8. The Congress shall have Power 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 coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

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 or 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.

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;

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.

Article I.

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

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

Article 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.

tive 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.

Article IX.

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

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. See 16 Am Jur 2d "Constitutional Law Sections 219 thru 221. Apendix Pages 26-28. When a Court is created the judicial power is confered by the Constitution, and not by the act creating the Court. See the Bill of Rights of the Minnesota Constitution. Furthermore, the First National Bank of Montgomery invoked the jurisdiction of this Court and never has questioned its jurisdiction to decide all issues presented to this Court.

As to the effect of an unconstitutional law se 16 Am Jur 2d Constitutional Law Sections 177 thru 179 attached hereto, Pages 33-35

The meaning of the Constitutional provision "No State Shall make any thing 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 pronpunce the legal result. From an examination of the case of Edwards v. Kearzey, 96 U.S. 595, 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 Page 37. This fraudulent Federal Reserve System and National Banking System has impaired the obligation of Contract, promoted disrespect for the Constitution 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 be based upon to sustain their validity. To aid the Court he presented the following: See Pages 38 & 40 containing Section 411,412, 417,418,420 or USC Title 12 and Title 31USC 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 thru Federal Reserve Agents and for no other purposes. Then Title 31 Section 462 states "All ---Federal

Notes are to be used for the purpose of making advances to Federal Reserve Banks thru 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 any thing but Gold and Silver Coin a legal tender in payment of debts." The above refered to enactments of Congress states 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 controling then Congress is above and has superior authority from the Constitution and the People who ordained and established it.

Title 31 USC Section 432 Pages 41-42 is in direct conflict with the Constitution in so far, 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 possible invalidity of these Federal Reserve Notes and that is that 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 PM Mr. Morgan, nor any one 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

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 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 bookeeping entry by which they acquire

United States and State Securities. The collateral required to obtain the Notes is, by section 412, USC, Title 12, is a deposit of a like amount of Bonds; Bonds which the Banks acquired by creating money and credit by bookeeping entry.

No rights can be acquired by fraud. The Federal Reserve Notes are acquired thru the use of unconsitutional 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 iineffectual for any purpose. This seems to be the principle objection to paper Fiat Money and the cause of its depreciation and failure down thru the ages. If allowed to continue Federal Reserve Notes will meet the same fate. It would have been helpful had Mr. Morgan appeared at the last hearing. It is this Court's understanding that as of March 18,1968 all Gold and Silver backing was taken from the Notes in question.

This Court determines that the Appeal requirement of the Statutes of the State of Minnesota have not been complied with. The Appeal therefore is not allowed and my Docket so shows.

BY THE COURT

Martin V. Mahoney

January 23,1969

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

MOTION AND NOTICE OF MOTION AND
ORDER TO SHOW CAUSE

vs.

Jerome Daly, Defendant.

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 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.

January 20,1969

Jerome Daly

Jerome Daly
Attorney for himself
Street

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 P.M. at the Credit River Town Hall, Scott County, Minnestoa, and Show Cause why this Court should not, at a hearing to be held at that 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

Martin V. Mahoney

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

January 20,1969

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 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.

held on June 20,1968, is hereby

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.

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.

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.

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 c
them at their banks. Thus the lend
retain or receive back as deposits on
the money that it lent, while a large
that is lent by other banks is likely t
its customers.

From the point of view of the indiv
the statement that the ability of a si
invest rests largely on the volume o
by depositors is correct. Taking the
whole, however, demand deposits ori
and investments in accordance with a
of bank reserves. The two inference
process are not in conflict; the first o
perspective of one bank among ma
has the perspective of banks as a gro

The commercial banks as a whole c
if additional reserves are made ava
Federal Reserve System is the only inst
by law with discretionary power to c
the money that serves as bank reserv
pocket cash. Thus, the ultimate capa
or reducing the economy's supply of
Federal Reserve.

New Federal Reserve money, when
the public for hand-to-hand circul
reserves of member banks. After it lea
first bank acquiring it, as explained ab
money continues to expand into d
passes from bank to bank until dep
established multiple of the additiona
Federal Reserve action has supplied.

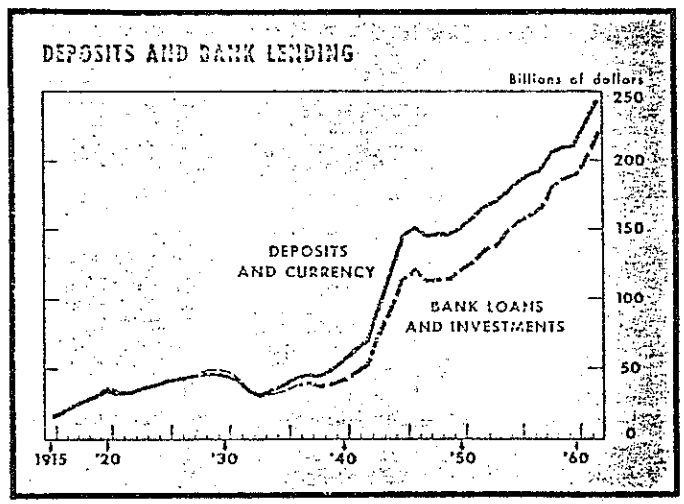
account in favor of various of his creditors who deposit them at their banks. Thus the lending bank is likely to retain or receive back as deposits only a small portion of the money that it lent, while a large portion of the money that is lent by other banks is likely to be brought to it by its customers.

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 credit-worthy 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 force another. At times this an abrupt impact on the sures working to expan reserves. At other time tend to bring about eit bank reserves than are public policy, especially to borrow is changing ra The relation between res bank initiative in changi credit was discussed in

These additional aspe significant because they expect bank credit and any simple multiple of ch or contraction takes pla and these have an influ or desires for money a loans and investments. in the course of credit reactions of the public the extent and nature of that are attained.

Management of Reserve

In managing its reserv cial bank constantly wa flows of deposits that r and borrowers. It estima its and its reserve posi

ION OF BANK RESERVES

ctions. Each transaction
ıal bank managers and,
g effect of new bank
he banking process thus
rotection against unduly
ıould a large additional
ly become available to

ansion of bank credit to
demand for it by credit-
e financial standing is
the loan will be repaid
ble supply of low-risk
ıuld be appropriate for
ıese conditions prevail,
for bank credit is slack,
ı short supply, and the
has fallen with the result
reference for cash. Such
ık credit expansion. In
ankable paper and atti-
the market exert an im-
ı a given addition to the
ɔn of bank credit will be

nd that reserve banking
high-powered money is
echanism. The Federal
in creating or extinguish-
er banks may take the
epayment of borrowing

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

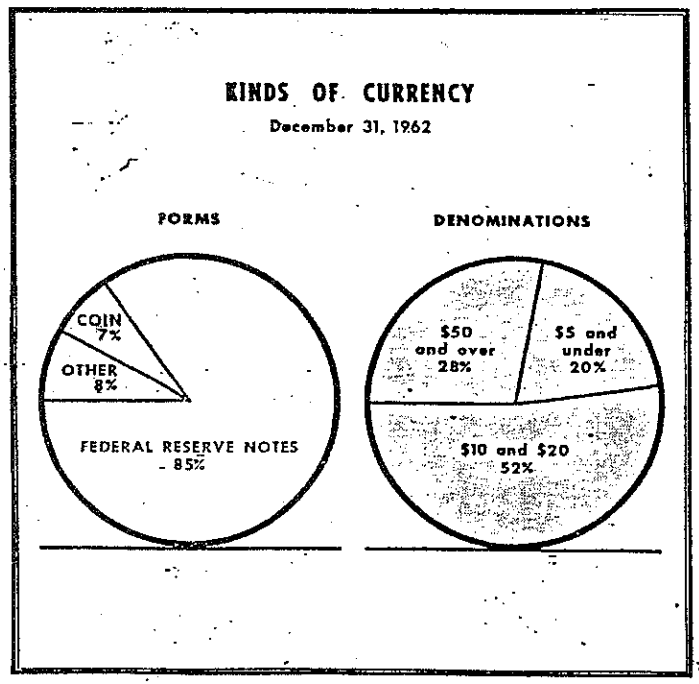
prevent such crises by providing a kind of currency that responds in volume to the needs of the country. The Federal Reserve note is such a currency.

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 certificates 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
had pledged as collatera

As of mid-1963 the to
tion outside the Treasu
$35.5 billion, of which
was Federal Reserve no
rency in circulation are
includes United States
financing), various issu
retirement, silver certific

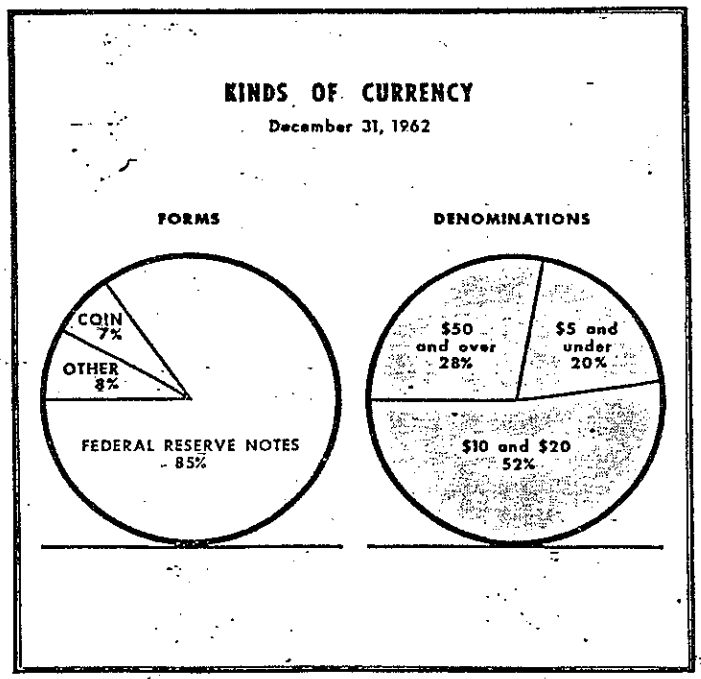
Until 1963, Federal
for issue in denominati
the $1 and $2 bills, as
nations, were in other f
certificates and United
permits the Federal R
inations as low as $1, a
be retired.

All kinds of currency
are legal tender, and
among them. It may be
endowed all forms of
are all receivable at the
the public has more cu
may all be paid out by
for currency increase
reference will be made
tion rather than to any

Demand for Currency

It has already been s
in circulation changes

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-

r and lawfully current in commercial transactions as the equivalent of legal ender 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 urisdictions, to bank bills or other paper money which passes at par as a irculating medium in the business community as and for the constitutional oin of the country.[18] It has also been held, however, that it includes both oin and paper money and is practically synonymous with "money," and that he only practical distinction between paper money and coined money, as urrency, is that coined money must generally be received, paper money nay generally be specially refused in payment of debt, but a payment in ei-her 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, 98 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 630.

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, 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]

[1] See infra, §§ 12 et seq.

[2] See infra, §§ 12 et seq.

[3] See supra, § 5.

[4] See 7 Am Jur 284, BANKS, § 402.

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

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

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

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

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

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

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

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

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

Anno: 31 ALR 246.

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

[9] See infra, § 17.

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

Anno: 31 ALR 246.

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

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

[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.

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]

§ 220. Judicial functions, generally.

As a rule no effort is made in a constitution to accurately define the scope or nature of judicial powers. These matters are left to be determined in the light of the common law and the history of our institutions as they existed

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.

anterior to, and at the adoption of, the constitution.[11] It has been stated that the term "judicial power" is not capable of a precise definition.[12] The constitution is, however, the common source of the power and authority of every court, and all questions concerning jurisdiction of a court must be determined by that instrument,[13] with the exception of certain inherent powers which of right belong to all courts.[14] Therefore, unless the power or authority of a court to perform a contemplated act can be found in the constitution or the laws enacted thereunder, it is without jurisdiction and its acts are invalid.[15]

Various tests have been suggested for determining what are or what are not judicial powers.[16] It has been said that where the inquiry to be made involves questions of law as well as fact, where it affects a legal right, and where the decision may result in terminating or destroying that right, the powers to be exercised and the duties to be discharged are essentially judicial.[17] Thus,

11. State v Noble, 118 Ind 350, 21 NE 244; Decamp v Archibald, 50 Ohio St 618, 35 NE 1056.

Judicial power in matters of law and equity is, under a constitutional provision vesting it in courts, such power as the courts, under the English and American systems of jurisprudence, had always exercised in actions at law and in equity. State ex rel. Ellis v Thorne, 112 Wis 81, 87 NW 797.

12. People ex rel. Rusch v White, 334 Ill 465, 166 NE 100, 64 ALR 1006; Rohde v Newport, 246 Ky 476, 55 SW2d 368, 87 ALR 701; Goetz v Black, 256 Mich 564, 240 NW 94, 84 ALR 802; American State Bank v Jones, 184 Minn 498, 239 NW 144, 78 ALR 770; State ex rel. Standard Oil Co. v Blaisdell, 22 ND 86, 132 NW 769; State v Creamer, 85 Ohio St 349, 97 NE 602.

13. State v Bigelow, 76 Ariz 13, 258 P2d 409, 37 ALR2d 979; Wilmington Trust Co. v Baldwin, 38 Del 595, 195 A 287; State ex rel. Peterson v Dunlap, 28 Idaho 784, 156 P 1141; Washington-Detroit Theatre Co. v Moore, 249 Mich 673, 229 NW 618, 68 ALR 105; McWillie v Van Vacter, 35 Miss 428; Atchison, T. & S. F. R. Co. v State Corp. Commission, 43 NM 503, 95 P2d 676; Springer v Shavender, 118 NC 33, 23 SE 976; Alexander v Gladden, 205 Or 375, 288 P2d 219; Deitz Colliery Co. v Ott, 99 W Va 663, 129 SE 708; Smith v Smith, 81 W Va 761, 95 SE 199, 8 ALR 1149; State v True, 26 Wyo 314, 184 P 229.

The jurisdiction of courts is subject to regulation only by the supreme sovereign power of the state. Sapulpa v Land, 101 Okla 22, 223 P 640, 35 ALR 872.

The constitutional power of states to provide for the determination of controversies in their courts may be restricted only by the action of Congress in conformity to the judiciary sections of the Constitution. Healy v Ratta, 292 US 263, 78 L ed 1248, 54 S Ct 700.

Except so far as is necessary to secure the supremacy of the Constitution, laws, and treaties of the United States, the jurisdiction of the state courts has not been interfered with by the federal judicial system established by Congress in exercising its constitutional powers. Whitten v Tomlinson, 160 US 231, 40 L ed 406, 16 S Ct 297.

14. Re Buckles, 331 Mo 405, 53 SW2d 1055.

15. Godchaux Sugars, Inc. v Ockman, 225 La 599, 73 So 2d 577; Gay v Clark County, 41 Nev 330, 171 P 156, 173 P 885, 3 ALR 224; Christianson v Farmers' Warehouse Asso. 5 ND 438, 67 NW 300.

But see Boggess v Buxton, 67 W Va 679, 69 SE 367, holding that the constitutional jurisdiction of mandamus conferred on a court might be extended by an enlargement of the scope of the writ by the legislature.

Where a court is established and its jurisdiction is specifically defined by the organic law, the legislature is powerless to diminish, enlarge, transfer, or otherwise infringe upon the powers thus conferred. State ex rel. Cave v Tincher, 256 Mo 1, 166 SW 1028.

The power of a state to determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard in them and to deny access to its courts, in the exercise of its right to regulate practice and procedure, is subject to the restrictions imposed by the contract, full faith and credit, and privileges or immunities clauses of the Federal Constitution. Angel v Bullington, 330 US 183, 91 L ed 832, 67 S Ct 657.

16. State ex rel. Standard Oil Co. v Blaisdell, 22 ND 86, 132 NW 769.

17. State ex rel. Standard Oil Co. v Blaisdell, supra.

Judicial adherence to the doctrine of the separation of powers preserves the courts for the decision of issues, between litigants, capable of effective determination. United Public Workers v Mitchell, 330 US 75, 91 L ed 754, 67 S Ct 556.

"Judicial power" is the power which adjudicates upon and protects the rights and interests of individual citizens, and to that end construes and applies the laws, and this power involves, not only the power to hear and determine a cause, but also the power and jurisdiction to adjudicate and determine the rights of the parties to the controversy and to render

where the facts out of which a moral or legal obligation is claimed to arise are disputed, the contention falls within the province of the courts, under the distribution of governmental powers prescribed by the constitutions of the states.[18] Using different language, it may be said that a judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts, under laws supposed already to exist.[19] The courts declare the law as it is[20] and construe it,[1] resolving every doubt in favor of its constitutionality,[2] and enforce it.[3]

It has also been said that judicial power is the power which a regularly constituted court exercises in matters brought before it, in the manner prescribed by statute or established rules of practice, and which matters do not come within powers granted to the executive or vested in the legislative department of the government.[4]

a judgment or decree which will be effectual and binding upon them in respect to their personal or property rights in controversy in such proceedings, and the power to hear without the power to adjudicate and determine the rights of the parties is not judicial power, as that term is used in the constitution. People ex rel. Rusch v White, 334 Ill 465, 166 NE 100, 64 ALR 1006; Devine v Brunswick-Balke-Collender Co. 270 Ill 504, 110 NE 780; People ex rel. Deneen v Simon, 176 Ill 165, 52 NE 910; People ex rel. Kern v Chase, 165 Ill 527, 46 NE 454.

Judicial power is the power of the court to decide and pronounce its judgment and to carry it into effect between parties who institute a suit before it according to the regular course of judicial procedure. Muskrat v United States, 219 US 346, 55 L ed 246, 31 S Ct 250; Goetz v Black, 256 Mich 564, 240 NW 94, 84 ALR 802.

But it has also been said that the power to ascertain and decide is not necessarily a judicial power and is frequently exercised by ministerial officers and legislative bodies. Whether the power to hear and determine is judicial depends upon the nature of the subject of the inquiry, the parties to be affected, and the effect of the determination. State ex rel. Monnett v Guilbert, 56 Ohio St 575, 47 NE 551.

If a change is to be made in a statute, Congress, and not the court, is the one to do it. Timken Roller Bearing Co. v United States, 341 US 593, 95 L ed 1199, 71 S Ct 971.

18. Harris v Alleghany County, 130 Md 488, 100 A 733.

19. Ross v Oregon, 227 US 150, 57 L ed 458, 33 S Ct 220; Prentis v Atlantic Coast Line Co. 211 US 210, 53 L ed 150, 29 S Ct 67; Sinking Fund Cases, 99 US 700, 25 L ed 496 (per Field, J.); Rosenbaum v Stone, 131 Ark 251, 199 SW 388; Van Winkle v State, 1 Boyce (Del) 578, 91 A 385; Fenske Bros. v Upholsterers' International Union, 358 Ill 239, 193 NE 112, 97 ALR 1318, cert den 295 US 734, 79 L ed 1682, 55 S Ct 645; Nega v Chicago R. Co. 317 Ill 482, 148 NE 250, 49 ALR 1057; Local Union, N. B. O. P. v Kokomo, 211 Ind 72, 5 NE2d 624, 108 ALR 1111; Mathison v Minneapolis Street R. Co. 126 Minn 286, 148 NW 71; State v Revis, 193 NC 192, 136 SE 346, 50 ALR 98; Langever v Miller, 124 Tex 80, 76 SW2d 1025, 96 ALR 836; White Bros. & C. Co. v Watson, 64 Wash 666, 117 P 497.

20. Ebert v Poston, 266 US 548, 69 L ed 435, 45 S Ct 188; William Filene's Sons Co. v Weed, 245 US 597, 62 L ed 497, 38 S Ct 211; United States v Baltimore & O. R. Co. 225 US 306, 56 L ed 1100, 32 S Ct 817; Henry v A. B. Dick Co. 224 US 1, 56 L ed 645, 32 S Ct 364; Dewey v United States, 178 US 510, 44 L ed 1170, 20 S Ct 981; Dysart v St. Louis, 321 Mo 514, 11 SW2d 1045, 62 ALR 762; People v Gowasky, 244 NY 451, 155 NE 737, 58 ALR 9; State ex rel. Harris v Watson, 201 NC 661, 161 SE 215, 79 ALR 441.

1. Minnesota Rate Cases (Simpson v Shepard) 230 US 352, 57 L ed 1511, 33 S Ct 729; Thornley v United States, 113 US 310, 28 L ed 999, 5 S Ct 491; Ward v Chamberlain, 2 Black (US) 430, 17 L ed 319; Ogden v Blackledge, 2 Cranch (US) 272, 2 L ed 276; Marbury v Madison, 1 Cranch (US) 137, 2 L ed 60; Birmingham v Weston, 233 Ala 563, 172 So 643, 109 ALR 970; Fountain Park Co. v Hensler, 199 Ind 95, 155 NE 465, 50 ALR 1518; Straub v Lyman Land & Invest. Co. 30 SD 310, 138 NW 957, affd on reh 31 SD 571, 141 NW 979; Exchange Nat. Bank v United States, 147 Wash 176, 265 P 722, 62 ALR 139, affd 279 US 80, 73 L ed 621, 49 S Ct 321.

2. § 146, supra.

3. Wilson v New, 243 US 332, 61 L ed 755, 37 S Ct 298; Barrett v Indiana, 229 US 26, 57 L ed 1050, 33 S Ct 692; United States v Baltimore & O. R. Co. 225 US 306, 56 L ed 1100, 32 S Ct 817; New Jersey v Anderson, 203 US 483, 51 L ed 284, 27 S Ct 137; Calhoun County v Galbraith, 99 US 214, 25 L ed 410; Journeymen Barbers, H. C. & P. I. U. v Industrial Com. 128 Colo 121, 260 P2d 941, 42 ALR2d 700.

4. State v Huber, 129 W Va 198, 40 SE 2d 11, 168 ALR 808.

It is clear that a proceeding is not necessarily nonjudicial because it is not adversary nor because there is not an appearance or active opposition by some defendant,[5] and it is not necessary that the adjudication between the parties would be conclusive of their rights put in issue.[6] Judicial power is not restricted to determining controversies actually existing, but may be extended to controversies anticipated, so as to include the functions of providing security against disputes and claims which may arise, of protecting property and rights from possible, though at the time unknown, hostile claims and pretensions, and of declaring a status or right, thereby forestalling and preventing controversies.[7]

Express provisions in the state constitutions often modify the general doctrine of separation of powers as applied to the judicial department. Certain powers which are essentially nonjudicial in character and not ordinarily to be used by the courts may be expressly entrusted to them by the constitution.[8]

§ 221. — Interpretation of constitution; maintaining separation of powers.

Under the American system of constitutional government, among the most important functions entrusted to the judiciary are the interpreting of constitutions[9] and, as a closely connected power, the determination of whether laws and acts of the legislature are or are not contrary to the provisions of the federal and state constitutions.[10]

The judicial powers include the important function of preventing departmental encroachment, such as marking out the boundaries of each department and remedying the invasions by either of the territory of the other.[11] When called on to review and control the acts of an officer of a co-ordinate branch of the government, however, the courts should proceed with extreme caution, and the right to exercise the power should be manifestly clear.[12] The whole

5. Robinson v Kerrigan, 151 Cal 40, 90 P 129.

6. People ex rel. Kern v Chase, 165 Ill 527, 46 NE 454.

7. Robinson v Kerrigan, 151 Cal 40, 90 P 129; Greenfield v Russel, 292 Ill 392, 127 NE 102, 9 ALR 1334.

The general subject of declaratory judgments is discussed in DECLARATORY JUDGMENTS.

8. Gay v District Ct. 41 Nev 330, 171 P 156, 173 P 885, 3 ALR 224; Ashford v Goodwin, 103 Tex 491, 131 SW 535.

9. Webster v Cooper, 14 How (US) 488, 14 L ed 510; Hamilton Bank v Dudley, 2 Pet (US) 492, 7 L ed 496; Greenwood Cemetery Land Co. v Routt, 17 Colo 156, 28 P 1125; Fountain Park Co. v Hensler, 199 Ind 95, 155 NE 465, 50 ALR 1518; State ex rel. Jameson v Denny, 118 Ind 382, 21 NE 252; State ex rel. Standard Oil Co. v Blaisdell, 22 ND 86, 132 NW 769.

10. Parker v State, 133 Ind 178, 32 NE 836, 33 NE 119; Pitman v Drabelle, 267 Mo 78, 183 SW 1055; 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; Peay v Nolan, 157 Tenn 222, 7 SW2d 815, 60 ALR 408.

The questions whether the legislature has abridged some fundamental right of a citizen and whether it has assumed its prerogative over subjects not within its province are judicial questions. State v Martin, 193 Ind 120, 139 NE 282, 26 ALR 1386.

And see §§ 101 et seq., supra.

The court's delicate and difficult office is to ascertain and declare whether the legislation is in accordance with, or in contravention of, the provisions of the constitution; and, having done that, its duty ends. Savage v Martin, 161 Or 660, 91 P2d 273.

11. State ex rel. Mueller v Thompson, 149 Wis 488, 137 NW 20.

Deciding whether a matter has in any measure been committed by the Federal Constitution to another branch of government, or whether the action of that branch exceeds its authority, being itself a delicate exercise in constitutional interpretation, is a responsibility of the United States Supreme Court as ultimate interpreter of the Constitution. Baker v Carr, 369 US 186, 7 L ed 2d 663, 82 S Ct 691.

It is a judicial function to serve as a balance for the people's protection against abuse of power by other branches of government. United Public Workers v Mitchell, 330 US 75, 91 L ed 754, 67 S Ct 556.

12. Jobe v Urquhart, 102 Ark 470, 143 SW 121.

subject as to the power of the judiciary to construe constitutions and thus to determine the constitutionality of acts of the other two departments of government has been accorded detailed consideration elsewhere.[13]

It has been held in one jurisdiction that where there are two conflicting legislatures, each claiming the right to exercise legislative functions, it is for the courts to determine which has the lawful authority.[14]

2. Limitations

§ 222. Distinctions between judiciary and executive and legislative departments.

The distinction between legislative or ministerial functions and judicial functions is difficult to point out. What is a judicial function does not depend solely on the mental operation by which it is performed or the importance of the act. In solving this question, due regard must be had to the organic law of the state and the division of powers of government. In the discharge of executive and legislative duties, the exercise of discretion and judgment of the highest order is necessary, and matters of the greatest weight and importance are dealt with. It is not enough to make a function judicial that it requires discretion, deliberation, thought, and judgment.[15] To be judicial, the exercise of discretion and judgment must be within that subdivision of the sovereign power which belongs to the judiciary or, at least, which does not belong to the legislative or executive department. If the matter in respect to which it is exercised belongs to either of the two last-named departments of government, it is not judicial. What is judicial and what is not in such cases seem to be better indicated by the nature of a thing than its definition.[16]

Broadly speaking, a judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts, under laws supposed already to exist.[17] Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power.[18]

13. §§ 101 et seq., supra.

14. Prince v Skillin, 71 Me 361.

15. Wheeling & E. G. R. Co. v Triadelphia, 58 W Va 487, 52 SE 499.

An official act requiring the exercise of discretion in judgment may be administrative or judicial according to the nature of the subject matter. Trybulski v Bellows Falls Hydro-Electric Corp. 112 Vt 1, 20 A2d 117.

A court may not, under the guise of protecting private property, extend its authority to a subject of regulation not within its competency, but is confined to ascertaining whether the particular assertion of the legislative power to regulate has been exercised to so unwarranted a degree as, in substance and effect, to exceed regulation and to be equivalent to a taking of property without due process of law or a denial of the equal protection of the laws. Atlantic Coast Line R. Co. v North Carolina Corp. Com. 206 US 1, 51 L ed 933, 27 S Ct 585; Budd v New York, 143 US 517, 36 L ed 247, 12 S Ct 468 (fees chargeable by grain elevators); Durgin v Minot, 203 Mass 26, 89 NE 144; People v Luhrs 195 NY 377, 89 NE 171.

16. Solvuca v Ryan & R. Co. 131 Md 265, 101 A 710; State ex rel. Mason v Baker, 69 ND 488, 288 NW 202; Wheeling & E. G. R. Co. v Triadelphia, 58 W Va 487, 52 SE 499.

The selection of a site on which a public necessity or public work of any sort shall be located is essentially a legislative, and not a judicial, matter, but whether a public work or utility is prosecuted according to law is a judicial question. Gibson v Baton Rouge, 161 La 637, 109 So 339, 47 ALR 1151.

The duties of a state board of railway commissioners relative to granting permission to discontinue operation of certain trains are legislative. Re Minneapolis, St. P. & S. Ste. M. R. Co. 30 ND 221, 152 NW 513.

17. § 220, supra.

18. Ross v Oregon, 227 US 150, 57 L ed 458, 33 S Ct 220; Prentis v Atlantic Coast Line Co. 211 US 210, 53 L ed 150, 29 S Ct 67; Sinking Fund Cases, 99 US 700, 25 L ed 496 (per Field, J.); Wulzen v San Francisco, 101 Cal 15, 35 P 353; Van Winkle v State, 4 Boyce (Del) 578, 91 A 385; Re Speer, 53 Idaho 293, 23 P2d 239, 88 ALR 1086; State v Ramirez, 34 Idaho 623, 203 P 279, 29 ALR 297; Fenske Bros. v Upholsterers' International Union, 358 Ill 239, 193 NE 112, 97 ALR 1318, cert den 295 US 734, 79 L ed 1682, 55 S Ct 645; Nega v Chicago R. Co. 317 Ill 482, 148 NE 250, 39 ALR 1057; Local Union, N. B. O. P. v Kokomo, 211 Ind 72, 5 NE2d 624, 108 ALR 1111; Mathison v Minneapolis Street R. Co. 126 Minn 286, 148 NW 71; State v Revis, 193 NC 192, 136 SE 346, 50 ALR 98; Re Minneapolis, St. P. & S. Ste. M. R. Co. 30 ND 221, 152 NW 513; State ex rel. Yaple v Creamer, 85 Ohio St 349, 97 NE 602; Langever v Miller, 124 Tex 80, 76 SW2d 1025, 96 ALR 836.

To declare what the law is or has been is a judicial power; to declare what it shall be is legislative. Gorham v Robinson, 57 RI 1, 186 A 832.

Legislation consists in laying down laws or rules for the future; administration has to do with the carrying of those laws into effect, their practical application to current affairs by way of management and oversight including investigation, regulation, and control, in accordance with, and in execution of, the principles prescribed by the lawmaker; the judicial function is confined to injunctions, etc., preventing wrongs for the future, and judgments giving redress for those of the past. Mitchell Coal & Coke Co. v Pennsylvania R. Co. 230 US 247, 57 L ed 1472, 33 S Ct 916, Pitney, J., dissenting.

The judicial power is exercised in the decision of cases; the legislative in making general regulations by the enactment of laws. The latter acts from considerations of public policy, the former by the pleadings and evidence in a case (per McLean, J.). Pennsylvania v Wheeling & B. Bridge Co. 18 How (US) 421, 15 L ed 435.

19. Zanesville v Zanesville Teleg. & Teleph. Co. 64 Ohio St 67, 59 NE 781.

The legislative power can be restrained only by constitutional provisions—not by the common or statutory law of England. State v Lewis, 142 NC 626, 55 SE 600.

20. State v Bates, 96 Minn 110, 104 NW 709.

1. Parkinson v Watson, 4 Utah 2d 191, 291 P2d 400.

2. Burnett v Greene, 97 Fla 1007, 122 So 570, 69 ALR 244; Ex parte Griffiths, 118 Ind 83, 20 NE 513; Auditor v Atchison, T. & S. F. R. Co. 6 Kan 500; Searle v Yensen, 118 Neb 835, 226 NW 464; Woodward v Pearson, 165 Or 40, 103 P2d 737; State v Huber, 129 W Va 198, 40 SE2d 11, 168 ALR 808.

Annotation: 69 ALR 266, et seq.

There are limits to the nature of duties which Congress may impose on the constitutional courts vested with the federal judicial power. National Mut. Ins. Co. v Tidewater Transfer Co. 337 US 582, 93 L ed 1556, 69 S Ct 1173.

Powers of a legislative or executive nature are not capable of being conferred upon a court exercising solely the judicial power of the United States. United Steelworkers of America v United States, 361 US 39, 4 L ed 2d 12, 80 S Ct 1.

In Anway v Grand Rapids R. Co. 211 Mich 592, 179 NW 350, 12 ALR 26, it was held that under a constitution dividing governmental powers into three departments and conferring the judicial power upon the courts, the legislature cannot confer upon the courts a power not judicial or require them to perform functions not judicial in character.

As to imposing nonjudicial functions on courts by provision for review of adminis-

It has been said that the fact that a power is conferred by statute on a court of justice, to be exercised by it in the first instance in a proceeding instituted therein, is, itself, of controlling importance as fixing the judicial character of the power and is decisive in that respect, unless it is reasonably certain that the power belongs exclusively to the legislative or the executive department.[19] Every doubt will be resolved in favor of a statute conferring powers of an ambiguous character upon a judicial officer, in order that the powers so conferred may be held to be judicial.[20]

American courts are constantly wary not to trench upon the prerogatives of other departments of government or to arrogate to themselves any undue powers, lest they disturb the balance of power; and this principle has contributed greatly to the success of the American system of government and to the strength of the judiciary itself.[1]

§ 223. —Impermissibility of imposition of nonjudicial functions upon judiciary.

One application of the general principle as to the separation of the powers of government is the rule which has itself been described by some authorities as a rudimentary principle of constitutional law—namely, that on judges as such no functions can be imposed except those of a judicial nature.[2] It has been

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 646, 71 ALR 542; Testmeyer 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.

D. Effect of Totally or Partially Unconstitutional Statutes

1. Total Unconstitutionality

§ 177. Generally.

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

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

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

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

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

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

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

7. § 146, supra.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

are subject to be lost if the statute is adjudged invalid, though the statute was considered valid by eminent attorneys, public officers, and others.[15] This general principle as to rights has varied practical applications. Thus, it is held that the fact that one acts in reliance on a statute which has theretofore been adjudged unconstitutional does not protect him from civil or criminal responsibility, if his act otherwise subjects him to such liability.[16] In a majority of jurisdictions it is held that reliance on a statute which is subsequently declared unconstitutional does not protect one from civil responsibility for an act in reliance thereon which would otherwise subject him to liability.[17] On the other hand, occasionally the position has been taken, as far as omissions to perform some duty are concerned, that reliance on a statute which is subsequently held to be unconstitutional protects from civil or criminal liability one who omits an act which, but for the statute, would be required by law.[18] It has been stated that an unconstitutional law should not be applied to work a hardship or impose a liability on one who has acted in good faith and relied on the validity of a statute before the courts have declared it invalid.[19] And it has also been held that reliance on a statute subsequently declared unconstitutional may properly be considered by the jury on the issue of damages in a civil action against the one who relied upon the statute.[20]

§ 179. Validation—generally; by amendment of legislation.

While it has been broadly stated that an unconstitutional act cannot be validated by the legislature,[1] it seems that it may be amended into a constitutional one so far as its future operation is concerned by removing its objectionable provisions, or supplying others, to conform it to the requirements of the constitution.[2] The true rule seems to be that where a statute is invalid by reason of an absence of power in the legislature in the first instance under the constitution to enact the law, it is not possible for that body to confirm or render the same valid by amendment; but where the obnoxious features of the statute may be removed or essential ones supplied by a proper amendment, so that had the law been primarily thus framed it would have been free from the objections existing

15. State ex rel. Nuveen v Greer, supra; Trustees of Wofford College v Burnett, 209 SC 92, 39 SE2d 155.

16. ***Annotation:*** 53 ALR 269.

17. Fleming v South Carolina Electric & Gas Co. (CA4 SC) 239 F2d 277; Highway Comrs. v Bloomington, 253 Ill 164, 97 NE 280; Fisher v McGirr, 1 Gray (Mass) 1; Chenango Bridge Co. v Paige, 83 NY 178.
Annotation: 53 ALR 269.

18. Texas Co. v State, 31 Ariz 485, 254 P 1060, 53 ALR 258.
Annotation: 53 ALR 273.

19. State v Garden City, 74 Idaho 513, 265 P2d 328 (holding that an unconstitutional act protects citizens dealing with public officers under its provision up to the time it is declared unconstitutional).

20. Fleming v South Carolina Electric & Gas. Co. (CA4 SC) 239 F2d 277.

437; Atkinson v Southern Exp. Co. 94 SC 444, 78 SE 516; State v Whitesides, 30 SC 579, 9 SE 661.

2. Magnolia Petroleum Co. v Carter Oil Co. (CA10 Okla) 218 F2d 1, cert den 349 US 916, 99 L ed 1249, 75 S Ct 605; Los Angeles County v Jones, 6 Cal 2d 695, 59 P2d 489; Commissioners of Roads & Revenues v Davis, 213 Ga 792, 102 SE2d 180; State v Silver Bow Refining Co. 70 Mont 1, 252 P 301, later app 83 Mont 380, 272 P 684; Allison v Corker, 67 NJL 596, 52 A 362; State v Cincinnati, 52 Ohio St 419, 40 NE 508; Oklahoma Natural Gas Co. v State, 187 Okla 164, 101 P2d 795; Commonwealth v Great American Indem. Co. 312 Pa 183, 167 A 793; Paris Mountain Water Co. v Greenville, 110 SC 36, 96 SE 545.

A statute valid and enforceable within a certain limited field, but unconstitutional and unenforceable in a wider field, may by amendment or law removing unconstitutional features be extended into the wider field. Re Gillette Daily Journal, 44 Wyo 226, 11 P2d 265, supp op 45 Wyo 173, 17 P2d 665.

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

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

n illegal contract,[8] or whose conduct in connection with the transaction . which his claim is based is illegal or criminal.[9] No action can be founded acts which constitute a violation of criminal or penal laws of the state[10] pon one's own dishonest, fraudulent,[11] or tortious act or conduct,[12] or upon wn moral turpitude.[13] Hence, an action will not lie to recover money o: erty which is the fruit of an employment involving a violation of law, e a recovery would have to be based on the illegal contract,[14] or to recover the consideration given for the maintenance of illicit relations with the ndant.[15]

. — Where parties are in pari delicto.

he principle which precludes an action based upon the plaintiff's wrongful, ioral, or illegal act applies where both plaintiff and defendant were parties ich act; there may be times when the objection that the plaintiff has broken law may sound ill in the mouth of the defendant,[16] yet, as a general rule, er the doctrine of in pari delicto,[17] no action will lie to recover on a claim :d upon, or in any manner depending upon, a fraudulent, illegal, or immora: isaction[18] or contract[19] to which the plaintiff was a party.[20] It is a trite and

Standard Oil Co. v Clark (CA2 NY) F2d 917, cert den 333 US 873, 92 L ed), 68 S Ct 901, 902.

Falconi v Federal Deposit Ins. Corp. (CA3 257 F2d 287.

here is no recorded instance where a rt of law or of equity has given aid or fort to one wrongdoer against his fel- wrongdoer seeking a division of the loot. howiak v Bissell, 305 Mich 486, 9 NW2d

. Capps v Postal Teleg.-Cable Co. 197 s 118, 19 So2d 491; Desmet v Sublett, NM 355, 225 P2d 141; Lloyd v North olina R. Co. 151 NC 536, 66 SE 604; vens v Hallmark (Tex Civ App) 109 SW 1106.

. Picture Plays Theatre Co. v Williams, Fla 556, 78 So 674, 1 ALR 1; D. I. Fel- thal Co. v Northern Assur. Co. 284 Ill , 120 NE 268, 1 ALR 602; Baltimore & S. W. R. Co. v Evans, 169 Ind 410, 82 ; 773.

2. Talbot v Seeman, 1 Cranch (US) 1, 2 ed 15.

3. Levy v Kansas City (CA8) 168 F 524; wton v Illinois Oil Co. 316 Ill 416, 147 : 465, 40 ALR 1200.

4. Boylston Bottling Co. v O'Neill, 231 ass 498, 121 NE 411, 2 ALR 902; Woodson Hopkins, 85 Miss 171, 37 So 1000, 38 So 8; Buck v Albee, 26 Vt 184; Lemon v rosskopf, 22 Wis 447.

nnotation: 2 ALR 906.

5. Hill v Freeman, 73 Ala 200; Monatt v rker, 30 La Ann 585; Otis v Freeman, 199 lass 160, 85 NE 168; Platt v Elias, 186 NY 4, 79 NE 1; Denton v English, 11 SCL 2 Nott & M'C) 581; Lanham v Meadows, 2 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 Mi: 502, 106 So 97, 44 ALR 124.

18. Hunter v Wheate, 53 App DC 206, 28: F 604, 31 ALR 980; Kearney v Webb, 27: Ill 17, 115 NE 844, 3 ALR 1631; Re Brown 147 Kan 395, 76 P2d 857, 116 ALR 101 (holding that such rule does not apply wher the one complained of is an official of th court, who seeks to retain to his own us certain moneys he acquired by his official mi: conduct); Bowlan v Lunsford, 176 Okla 11: 54 P2d 666 (plaintiff attempting to recove damages from a man who induced her to sub mit to an operation which produced an abo: tion where she was of full age and voluntar 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 th parties to a criminal act or listen to the: complaints against each other, but will leav them where their own act has placed ther Stone v Freeman, 298 NY 268, 82 NE2 571, 8 ALR2d 304.

19. Ring v Spina (CA2 NY) 148 F2d 64: 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 S 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 cann 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.

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
108 Minnesota Reports
P. 388
Reported in 122 N.W. 251

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

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

[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, t
party in his person or prop
100, 57 N.W. 331, 22 L.R.A
tutional it is as if it neve
built up under it, and, if
enforce it, his act is his in
and he is subject to the co
a private individual. Coo
Young, 209 U.S. 123, 28 S

The pivotal question the
constitutional prohibition
ing therefrom the buildin
including bridges? If it c
strue it. But it cannot be
constitution and the peopl
that which is the plain imp
the language of the consti
all ambiguity, all courts a
the refinements of legal
meaning to avoid the har
must accept the constituti
is unambiguous, for it is
power. State v. Sutton,
L.R.A. 630, 56 Am. St. 45
267, 101 N.W. 74.

STATE ex rel. H. W. CHI
General v. JOHN B. SU
63 Minnesota Reports
P. 147
Reported in 65 N.W. 262

In treating of constitut
the general rule among c
tory, and not to leave it
lature to obey or disrega

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

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

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

§ 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. 236, are classified to sections 412—414, 415, 416, 418—421, 300, 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. 250, 53 Stat. 991; June 30, 1941, ch. 264, 55 Stat. 395; May 25, 1943, ch. 102, 57 Stat. 85; June 12, 1945, ch. 186, § 2, 59 Stat. 237.)

CODIFICATION

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

AMENDMENTS

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

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

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

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

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

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

CODIFICATION

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

AMENDMENTS

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

CHANGE OF NAME

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

TRANSFER OF FUNCTIONS

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

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

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

REFERENCES IN TEXT

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

AMENDMENTS

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

CHANGE OF NAME

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

TRANSFER OF FUNCTIONS

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

CROSS REFERENCES

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

§ 418. Printing of notes; denomination and form.

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

REFERENCES IN TEXT

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

CODIFICATION

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

AMENDMENTS

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

EXCEPTION AS TO TRANSFER OF FUNCTIONS

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

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

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

REFERENCES IN TEXT

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

CODIFICATION

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

EXCEPTION AS TO TRANSFER OF FUNCTIONS

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

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

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

REFERENCES IN TEXT

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

CODIFICATION

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

CHANGE OF NAME

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

EXCEPTION AS TO TRANSFER OF FUNCTIONS

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

§ 421. Examination of plates and dies.

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

REFERENCES IN TEXT

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

CODIFICATION

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

§ 422. Repealed. June 26, 1934, ch. 756, § 1, 48 Stat. 1225.

Section, act Dec. 23, 1913, ch. 6, § 16, 38 Stat. 267, made permanent appropriations for printing notes besides authorizing the use of certain printing stock on hand December 23, 1913. See section 725 (b) of Title 31, Money and Finance.

CIRCULATING NOTES AND BONDS SECURING SAME

§ 441. Retirement of circulating notes by member banks; application for sale of bonds securing circulation.

At any time during a period of twenty years from December 23, 1915, any member bank desiring to retire the whole or any part of its circulating notes may file with the Treasurer of the United States an application to sell for its account, at par and accrued interest, United States bonds securing circulation to be retired. (Dec. 23, 1913, ch. 6, § 18, 38 Stat. 268.)

CODIFICATION

Section is comprised of first par. of section 18 of act Dec. 23, 1913. Pars. 2 and 3, 4, 5, and 7—9 of section 18 are classified to sections 442, 443, 444, and 446—448 of this title, respectively. Par. 6 of section 18, which was classified to section 445 of this title, was repealed by act June 12, 1945, ch. 186, § 3, 59 Stat. 238.

TRANSFER OF FUNCTIONS

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

§ 442. Purchase of bonds by reserve banks.

The Treasurer shall, at the end of each quarterly period, furnish the Board of Governors of the Federal Reserve System with a list of such applications, and the Board of Governors of the Federal Reserve System may, in its discretion, require the Federal reserve banks to purchase such bonds from the banks whose applications have been filed with the Treasurer at least ten days before the end of any quarterly period at which the Board of Governors of the Federal Reserve System may direct the purchase to be made: *Provided*, That Federal reserve banks shall not be permitted to purchase an amount to exceed $25,000,000 of such bonds in any one year, and which amount shall include bonds acquired under sections 301—308 and 341 of this title by the Federal reserve bank.

Provided further, That the Board of Governors of the Federal Reserve System shall allot to each Federal reserve bank such proportion of such bonds as the capital and surplus of such bank shall bear to the aggregate capital and surplus of all the Federal reserve banks. (Dec. 23, 1913, ch. 6, § 18, 38 Stat. 268; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704.)

CODIFICATION

Section is comprised of second and third pars. of section 18 of act Dec. 23, 1913. For classification to this title of other paragraphs of section 18, see note under section 441 of this title.

DERIVATION

Act Feb. 21, 1857, ch. 56, § 3, 11 Stat. 163.

CROSS REFERENCES

All coins and currencies of the United States to be legal tender for all debts, see sections 462 and 821 of this title.

§ 457. Gold coins of United States.

The gold coins of the United States shall be a legal tender in all payments at their nominal value when not below the standard weight and limit of tolerance provided by law for the single piece, and, when reduced in weight below such standard and tolerance, shall be a legal tender at valuation in proportion to their actual weight. (R. S. § 3585.)

DERIVATION

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

CROSS REFERENCES

Acquisition and use of gold in violation of law to subject the gold to forfeiture and subject person to penalty equal to twice the value of the gold, see section 448 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. 3.)

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. 1267; 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. 1264; 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. 308; 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

tions, or the application thereof to any person or circumstances, is held invalid, the remainder of said sections, and the application of such provision to other persons or circumstances, shall not be affected thereby. (Jan. 30, 1934, ch. 6, § 16, 48 Stat. 344.)

REPEALS

All laws inconsistent with the provisions of this section were repealed by section 446 of this title.

§ 446. Laws repealed.

All Acts and parts of Acts inconsistent with any of the provisions of sections 315b, 405b, 408a, 408b, 440—446, 733, 734, 752, 753, 754a, 754b, 767, 771, 821, 822a, 822b, and 824 of this title and sections 213, 411—415, 417, and 467 of Title 12 are repealed. (Jan. 30, 1934, ch. 6, § 17, 48 Stat. 344.)

SILVER PURCHASE

§§ 448—448e. Repealed. Pub. L. 88-36, title I, § 1, June 4, 1963, 77 Stat. 54.

Sections 448, 448a, act June 19, 1934, ch. 674, §§ 1, 9, 48 Stat. 1178, 1181, declared the short title for the silver provisions to be the "Silver Purchase Act of 1934" and authorized the issuance of rules and regulations, respectively.

Section 448b, acts June 19, 1934, ch. 674, § 10, 48 Stat. 1181; June 25, 1959, Pub. L. 86-70, § 26, 73 Stat. 147, defined "person", "the continental United States", "monetary value", "stocks of silver" and "stocks of gold".

Sections 448c—448e, act June 19, 1934, ch. 674, §§ 11—13, 48 Stat. 1181, authorized appropriations, reserved the right to amend or repeal the silver purchase provisions and provided for a separability clause, and repealed inconsistent laws and declared the authority of the President and the Secretary of the Treasury to be supplemental to other conferred authority, respectively.

Chapter 9.—LEGAL TENDER

§ 451. United States gold certificates.

Gold certificates of the United States payable to bearer on demand shall be legal tender in payment of all debts and dues, public and private. (Dec. 24, 1919, ch. 16, § 1, 41 Stat. 370.)

CROSS REFERENCES

All coins and currencies of the United States to be legal tender, see sections 462 and 821 of this title.

§ 452. United States notes.

United States notes shall be lawful money, and a legal tender in payment of all debts, public and private, within the United States, except for duties on imports and interest on the public debt. (R. S. § 3588.)

DERIVATION

Acts Feb. 25, 1862, ch. 33, § 1, 12 Stat. 345; July 11, 1862, ch. 142, § 1, 12 Stat. 532; Res. Jan. 17, 1863, No. 9, 12 Stat. 823; act Mar. 3, 1863, ch. 73, § 3, 12 Stat. 711.

CROSS REFERENCES

All coins and currencies of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 821 of this title.

§ 453. Treasury notes.

Demand Treasury notes authorized by the Act of July 17, 1861, chapter 5, 12 Stat. 259, and the Act of February 12, 1862, chapter 20, 12 Stat. 338, shall be lawful money and a legal tender in like manner as United States notes. Treasury notes issued under the Act of July 14, 1890, chapter 708, 26 Stat. 289, shall be a legal tender in payment of all debts, public and private, except where otherwise expressly stipulated in the contract, and shall be receivable for customs, taxes, and all public dues. (R. S. § 3589; July 14, 1890, ch. 708, § 2, 26 Stat. 289.)

DERIVATION

Act July 17, 1861, ch. 5, § 1, 12 Stat. 259; act Feb. 12, 1862, ch. 20, § 1, 12 Stat. 338; act Feb. 25, 1862, ch. 33, § 1, 12 Stat. 345; act Mar. 17, 1862, ch. 45, § 2, 12 Stat. 370.

CODIFICATION

The first sentence of section is from R. S. § 3589. The second sentence is from act July 14, 1890.

CROSS REFERENCES

All coins and currencies of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 821 of this title.

§ 454. Interest-bearing notes.

Treasury notes issued under the authority of the Acts of March 3, 1863, chapter 73, 12 Stat. 710, and June 30, 1864, chapter 172, 13 Stat. 218—222, shall be legal tender to the same extent as United States notes, for their face value, excluding interest: *Provided*, That Treasury notes issued under the Act June 30, 1864, ch. 172, 13 Stat. 218—222 shall not be a legal tender in payment or redemption of any notes issued by any bank, banking association, or banker, calculated and intended to circulate as money. (R. S. § 3590.)

DERIVATION

Acts Mar. 3, 1863, ch. 73, § 2, 12 Stat. 710; June 30, 1864, ch. 172, § 2, 13 Stat. 218.

CROSS REFERENCES

All coins and currencies of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 821 of this title.

§ 455. Legal-tender quality of money not affected by certain sections.

Nothing contained in sections 146, 313, 314, 320, 406, 408, 410, 411, 429, and 751 of this title, and sections, 51, 101, 177, and 178 of Title 12 shall be construed to affect the legal-tender quality as now provided by law of the silver dollar, or of any other money coined or issued by the United States. (Mar. 14, 1900, ch. 41, § 3, 31 Stat. 46.)

CROSS REFERENCES

All coins and currencies of the United States to be legal tender for all debts, see sections 462 and 821 of this title.

§ 456. Foreign coins.

No foreign gold or silver coins shall be a legal tender in payment of debts. (R. S. § 3584.)