

STATE OF MINNESOTA
COUNTY OF SCOTT

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

First National Bank of Montgomery,
Plaintiff,

Jerome Daly,
Defendant.

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
JUDGMENT

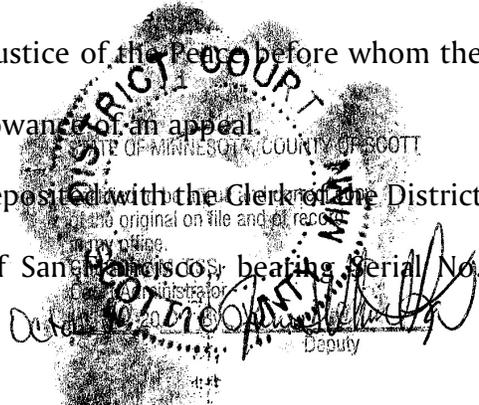
The above-entitled action came on before the Court on January 22; 1969 at 7:00 P. M., pursuant to Motion and Notice of Motion and Order to Show Cause, a true and correct copy of which is attached hereto as page 13 "A."

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 as 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 as 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 number I80410697A. A specimen, for illustrative purposes, is as follows:



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

No hearing was requested and this Court was order 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 purpose of making findings in fact and conclusions of law.

Pursuant thereto, the above-entitle action came on for hearing before this Court on January 22, 1969 at 7:00 P. M. The First. National Bank of Montgomery made no appearance although

service of the Motion and Order was served, upon Ralph Hendrickson, its Cashier, on January 20, 1969. No continuance was requested by Plaintiff or its Attorney.

The Defendant appeared by and on behalf of himself.

After waiting for one hour for the Bank or its representative to appear the Court received the testimony of Defendant.

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.

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 existence 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 existence 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 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 (See page 41) 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, 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 and National Banking Associations a legal tender for all debts, public and private, it is unconstitutional and void, being contrary to Article 1, Section 10, of the Constitution of the United States, which prohibits any State from making anything but gold 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 *Birstoe 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 convertibility 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 hereto as pages 21 thru 23. 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, included as page 30, and also Sections 215, 216 and 217 of 11 Amer. Jur. 2nd on Bills and Notes, included as 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

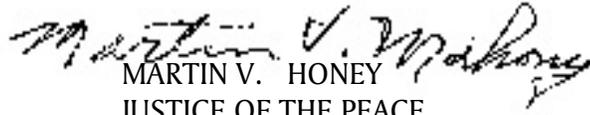
United States. The two banking acts and Sec. 462 of Title 31, U.S.C., see pages 41 & 42, are therefore unconstitutional and void.

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

This Court therefore is not allowing the appeal.

January 23, 1969

BY THE COURT



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

FURTHER MEMORANDUM'

The jurisdiction of this Court is conferred by Article 6, Sec: 1 of the Minnesota Constitution; "Sec. 1. The judicial power of the state is hereby vested in a Supreme Court, a District Court, a probate court, and such other Courts, minor judicial officers and commissioners with jurisdiction inferior to the District Court as the legislature may establish."

The pertinent 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 TRANQUILITY, PROVIDE FOR THE COMMON DEFENSE, PROMOTE THE GENERAL WELFARE AND SECURE THE BLESSINGS OF LIBERTY TO OURSELVES AND OUR POSTERITY, DO ORDAIN AND ESTABLISH THIS CONSTITUTION FOR THE UNITED STATES OF AMERICA.

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts the and provide for the common Defence, 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 any 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 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.

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

Article 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.

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, pages 26 thru 28. When a court is created the judicial power is conferred 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 see 16 Am Jur 2d Constitutional Law Sections 177 thru 179 attached hereto as pages 33 thru 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, unambiguous and without any qualification. This Court is without authority to interpolate any exception. My duty is simply to execute it, as written, and to pronounce the legal result. From an examination of the case of Edwards v. Kearzey, 96 U.S. 595, 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* :L08 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 to 40, containing Section 411,412, 417, 418, 420 of USC Title 12 and Title 31 USC Sec. 462.

On the one hand section 411 holds, and states that the Notes are to be used for the purpose of making advances to Federal Reserve Banks 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 referred 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 controlling then Congress is above and has superior authority from the Constitution and the People who ordained and established it.

Title 31 USC Section 432, 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 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 bookkeeping entry by which they acquire United States and State Securities. The collateral required to obtain the Notes is, by section 412, USC, Title 12. is a deposit of a like amount of Bonds; Bonds which the Banks acquired by creating money and credit by bookkeeping entry.

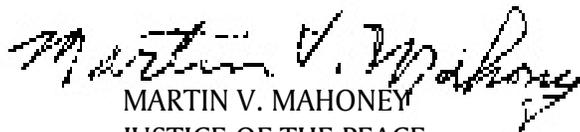
No rights can be acquired by fraud. The Federal Reserve Notes are acquired thru the use of unconstitutional statutes and fraud.

The Common Law requires a lawful consideration for any Contract or Note. These Notes are void for failure of a lawful consideration at Common Law, entirely apart from any Constitutional Considerations. Upon this ground the Notes are ineffectual for any purpose. This seems to be the principle objection to paper Fiat Money and the cause of its depreciation and failure down 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

January 23, 1969


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

STATE OF MINNESOTA

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

COUNTY OF SCOTT

First National Bank of Montgomery,

Plaintiff,

VS.

MOTION AND NOTICE OF MOTION AND
ORDER TO SHOW CAUSE

Jerome Daly,

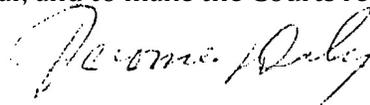
Defendant.

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 Courts refusal to allow appeal absolute.

January 20,1969



Jerome,%Daly
Attorney for himself
28 East Minnesota Street
Savage, Minnesota

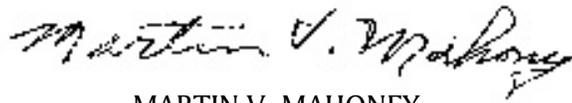
ORDER

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

IT IS HEREBY ORDERED that the Plaintiff appear before this court on January 22, 1969 at 7 P. M. at the Credit River Town Hall, Scott County, Minnesota, and Show Cause why this Court should not, at a hearing to be held at 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 Plaintiff, its Attorney, or Agents.

BY THE COURT

A handwritten signature in cursive script that reads "Martin V. Mahoney". The signature is written in black ink and is positioned above the printed name of the signatory.

MARTIN V. MAHONEY
CREDIT RIVER TOWNSHIP

January 20, 1969

STATE OF MINNESOTA

IN JUSTICE COURT

COUNTY OF SCOTT

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

First National Bank of Montgomery,
Plaintiff,

vs.

JUDGMENT AND DECREE

Jerome Daly, Defendant.

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

A Jury of Talesmen were called, impaneled and sworn to try the issues in this Case.

Lawrence V. Morgan was the only witness called for Plaintiff and Defendant testified as the only witness in his own behalf.

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

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

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

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

MEMORANDUM

The issues in this case were simple. There was no material dispute on the facts for the Jury to resolve. Plaintiff admitted that it, in combination with the Federal Reserve Bank of Minneapolis, which are for all practical purposes, because of their interlocking activity and practices, and both being Banking Institutions Incorporated under the Laws of the United States, are in the Law to be treated as one and the same Bank, did create the entire \$14,000.00 in money or credit upon its own books by bookkeeping entry. That this was the Consideration used to support the Note dated May 8, 1964 and the Mortgage of the same date. The money and credit first came into existence when they created it.

Mr. Morgan admitted that no United States Law or Statute existed which gave him the right to do this. A lawful consideration must exist and be tendered to support the Note. See *Anheuser-Busch Brewing Co. v. Emma Mason*, 44 Minn. 318, 46 N.W. 558. The Jury found there

was no lawful consideration and I agree. Only God can created something of value out of nothing.

Even if Defendant could be charged with waiver or estoppel as a matter of Law this is no defense to the Plaintiff.

The Law leaves wrongdoers where it finds them. See sections 50, 51 and. 52 of Am Jur 2d "Actions" on page 584 -"no action will lie to recover on a claim based upon, or in any manner depending upon, a fraudulent, illegal, or immoral transaction or contract to which Plaintiff was a party.

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

Nothing in the Constitution of the United States limits the Jurisdiction of this Court, which is one of original Jurisdiction with right of trial by Jury guaranteed. This is a Common Law Action.

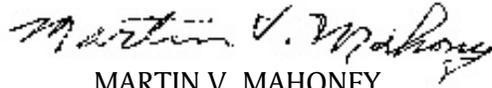
Minnesota cannot limit or impair the power of this Court to render Complete Justice between the parties. Any provisions in the Constitution and laws of Minnesota which attempt to do so repugnant to the Constitution of the United States and are void. No question as to the Jurisdiction of this Court was 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



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

December 9,1968

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

THE FEDERAL RESERVE SYSTEM

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

FUNCTION OF BANK RESERVES

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.

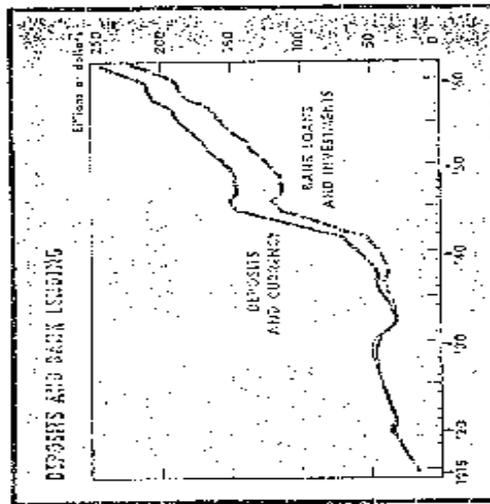
From the point of view of the individual bank, therefore, the statement that the ability of a single bank to lend or invest rests largely on the volume of funds brought to it by depositors is correct. Taking the banking system as a whole, however, demand deposits originate in bank loans and investments 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.

THE FEDERAL RESERVE SYSTEM

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

FUNCTION OF BANK RESERVES

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.

77

THE FEDERAL RESERVE SYSTEM

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

78



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

177

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

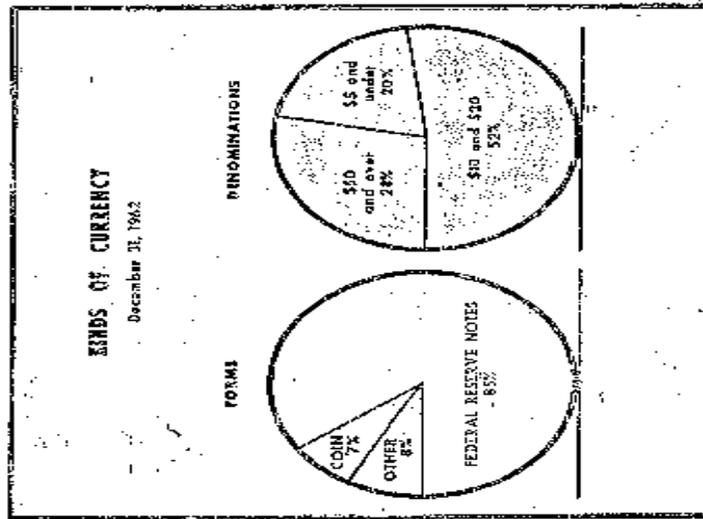
The currency mechanism provided under the Federal Reserve Act has worked satisfactorily: currency moves into and out of circulation automatically in response to an increase or decrease in the public demand. The Treasury, the Federal Reserve Banks, and the thousands of local banks throughout the country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

How Federal Reserve Notes Are Paid Out

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

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

ates 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 reposit 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 \$15.5 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-

by and lawfully current in commercial transactions as the equivalent of legal tender coin and paper money.

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

The word "specie" means gold or silver coin of the coinage of the United States.

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

The term "dollar" means money, since it is the unit of money in this country, and in the absence of qualifying words, it cannot mean promissory notes or bonds or other evidences of debt. The term also refers to specie coin of the value of one dollar.

§ 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 and ordinarily pass as money. They are a medium of exchange, unless specially objected to. They are not, like bills of exchange, considered as mere securities or documents for value, and generally, they are classed

- as money, *per se*.
- 11 East v. Hinchey*, 11 Ohio St. 146, 74 Am Dec 314.
- 12 Woodruff v. Mitchell*, 163 US 291, 40 L Ed 572, 13 S Ct 279, 21 Am Dec 794.
- 13 Klumb v. Blackhawk*, 47 Wis 561, 3 NW 257, 32 Am Rep 171.
- Generally as to bank notes as money, see *infra*, § 1.
- 14 School v. Woodward*, 153 Ill 124, 41 NE 1087, 23 LRA 592.
- 15 Galena Ins. Co. v. Knapp*, 27 Ill 272, 11 Am Dec 234; *Klumb v. Blackhawk*, 47 Wis 561, 3 NW 257, 32 Am Rep 171.
- 16 Woodruff v. Mitchell*, 163 US 291, 40 L Ed 572, 13 S Ct 279, 21 Am Dec 794.
- At one time, shortly after the first issue in this country of notes declared to have the qualities of dollars or bills of exchange, checks or orders of promissory notes, to indicate whether the same were to be paid in gold or silver or in such coin, and the term "current funds" was used to designate any of them, it being current and declared by positive enactment to be legal tender.
- 17 See supra*, § 1.
- 18 Ohio Rev. Stat.*, § 124, 125, 127, § 1.
- 19 United States v. Van Amburgh*, 91 US 216, 11 L Ed 582.
- 20 Bank of United States v. Bank of*

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

Even under the majority rule, all bank notes are not necessarily money. They are classed as such only by the general consent and usage of the community. This consent and usage is based upon the convertibility of such notes into coin at the pleasure of the holder, upon their presentation to the bank for redemption. 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, without consent from the ordinary attributes of money. But upon the failure of the bank by which they were issued, when the doors are closed and the inability to redeem its bills is openly avowed, they necessarily lose the character of money, their circulation as currency ceases with the usage and consent upon which it rested, and the notes become like mere dishonored and depreciated evidences of debt.

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

§ 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. 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, and it has also been held that where the question involved is whether negotiable paper was purchased with money, an over-issued check received and presently paid in cash is equivalent to money.

- Generally as to bills of exchange, see § 1.
- 21 Am Jur 194*, *Shoals v. Bank*, 101 Me 206, 123 Me 206, 123 Me 206, 123 Me 206.
- 22 State v. Shuman*, 137 Ill 206, 206, 123 Me 206, 123 Me 206.
- 23 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 24 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 25 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 26 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 27 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 28 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 29 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
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- 31 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 32 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 33 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 34 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 35 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 36 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 37 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
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- 54 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
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- 81 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 82 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 83 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 84 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
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- 87 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
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- 89 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 90 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 91 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 92 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 93 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 94 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 95 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 96 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 97 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 98 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 99 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.
- 100 Am Jur 194*, *State v. Shuman*, 137 Ill 206, 123 Me 206, 123 Me 206.

States have no power to make bank notes legal tender, except in payment of debts and dues owing the state.

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, and inasmuch as a state is prohibited from issuing 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. 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, endorse his consent on an assignment, to receive property in payment of his debt, is invalid.

§ 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 an implied power to issue such bills. Moreover, such power is not conferred by a clause in the city charter, authorizing the borrowing of money.

§ 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. Thus, it has been held that Congress may issue coins of the same denomination 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.

§ 16. Legal Tender.—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. Thus, it has been held that Congress may issue coins of the same denomination 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.

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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 power of various governmental authorities in this connection, and particular matters and subjects of regulation, are considered in the following sections. The establishment of a standard unit of value is discussed in a prior section. The issuance of bank notes is discussed under another title.

§ 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. 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 properly in taken without due process of law. 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.

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

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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 constitution of the states.¹ Using different language, it may be said that a judicial inquiry into a matter, declares, and enforces liabilities as they stand on present or past facts, under laws supposed already to exist.² The courts declare the law as it is and construe it, resolving every doubt in favor of its constitutionality,³ and enforce it.

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

¹ A judgment or decree which will be affirmed and binding upon facts, in respect to their essential or primary status in controversy in such proceedings, and the power to hear witness and the power in appellate and dispositive the status of the parties is not judicial power, as that term is used in the constitution. *People v. McLaughlin*, 206 N.Y. 465, 188 N.E. 590, 54 ALR 1206; *White v. Brown*, 100 Cal. 216, 32 Cal. 2d 270, 110 N.W. 700; *People v. McLaughlin*, 206 N.Y. 465, 188 N.E. 590, 54 ALR 1206; *People v. McLaughlin*, 206 N.Y. 465, 188 N.E. 590, 54 ALR 1206.

² Judicial power is the power of the court to carry its own effect between parties who maintain a suit before it according to the regular course of judicial procedure. *Muskrat v. United States*, 219 US 346, 55 L. ed. 216, 31 S. Ct. 250; *Goetz v. Black*, 238 Me. 366, 240 N.W. 96, 84 ALR 802.

³ But it has also been said that the power to ascertain and decide is not necessarily a judicial power and is frequently exercised by municipal officers and agents. *People v. McLaughlin*, 206 N.Y. 465, 188 N.E. 590, 54 ALR 1206. Whether the power to hear and determine a judicial dispute upon the nature of the facts and the effect of the laws is judicial power is a question which has been decided in *People v. McLaughlin*, 206 N.Y. 465, 188 N.E. 590, 54 ALR 1206.

⁴ 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 585, 95 L. ed. 1189, 71 S. Ct 971.

⁵ *Herrn v. Adolphus County*, 130 Md. 408, 100 A. 723.

⁶ *Ries v. Oregeno*, 227 US 131, 57 L. ed. 458, 33 S. Ct. 200; *Prentiss v. Anderson*, *Cour Ling*, 201 US 216, 53 L. ed. 150, 26 S. Ct 47; *Stacy v. United States*, 200 US 25, 26 S. Ct 136 (1906); *People v. McLaughlin*, 206 N.Y. 465, 188 N.E. 590, 54 ALR 1206; *People v. McLaughlin*, 206 N.Y. 465, 188 N.E. 590, 54 ALR 1206; *People v. McLaughlin*, 206 N.Y. 465, 188 N.E. 590, 54 ALR 1206.

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,¹ and it is not necessary that the adjudication be between the parties would be conclusive of their rights out to issue.² 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.³

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.⁴

§ 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 constitutional provisions 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.⁵

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.⁶ What 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.⁷ The whole

¹ *Redickson v. Harrison*, 131 Cal. 40, 90 P. 123.

² *People ex rel. Kim v. Chase*, 165 Ill. 337, 48 N.E. 484.

³ *Redickson v. Harrison*, 131 Cal. 40, 90 P. 123; *Garrison v. Russell*, 220 Ill. 392, 197 NE 102, 9 ALR 1334.

⁴ The general subject of departmental encroachment is discussed in *Department of Education v. Board of Education*, 131 Cal. 40, 90 P. 123.

⁵ *Gay v. Dietrich*, 41 Kan. 330, 177 P. 156, 123 P. 864, 3 ALR 754; *Ashton v. Goodwin*, 163 Tex. 481, 101 SW 535.

⁶ *Walker v. Cooper*, 14 How. (1853) 465, 34 L. ed. 510; *Hamilton Bank v. Dudley*, 2 Pet. (US) 492, 7 L. ed. 496; *Greenwood Cemetery Land Co. v. Smith*, 17 Colo. 156, 28 P. 1425; *Franklin Park Co. v. Hensler*, 129 Ind. 97, 155 NE 455, 30 ALR 1818; *State ex rel. Jamison v. Denver*, 117 Ind. 323, 21 NE 252; *State ex rel. Scamland Oil Co. v. Blahodell*, 28 ND 88, 132 NW 769.

⁷ *People v. State*, 131 Ind. 179, 32 NE 416, 33 N.E. 119; *State v. Drabell*, 207 Mo. 70, 123 SW 1085; *State ex rel. Richards v. Wheeler*, 95 S.W. 2d, 134 NW 767, *State ex rel. Peay v. Meain*, 407 Va. 1216, 36 S. Ct 542; *Peay v. Meain*, 407 Va. 1216, 36 S. Ct 542; 60 ALR 408.

⁸ The question whether the legislature may

121. *Jobe v. Urquhart*, 102 Ark. 170, 149 SW 121.

stripped some fundamental right of a citizen and whether it has assumed its proprietary character within its province are judicial questions. *State v. Manning*, 132 Ind. 330, 139 NE 234, 36 ALR 1286.

⁹ *Asst. Atty. Gen. v. State*, 131 Cal. 40, 90 P. 123.

¹⁰ The court's delicate and difficult office is to weigh and decide 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. Harlan*, 161 Or. 662, 31 P.2d 373.

¹¹ *State ex rel. Mueller v. Thompson*, 149 Wis. 480, 137 NW 23.

¹² Deciding whether a matter has in any measure been committed by the Federal Government to another branch of government, or whether the action of that branch extends to subjects being itself a judicial act, is a constitutional interpretation, it is a responsibility of the United States Supreme Court as the ultimate interpreter of the Constitution. *Whitely v. Carter*, 389 US 146, 7 L. ed. 26 065, 82 S. Ct 401.

¹³ It is a judicial function to serve as a bulwark for the people's protection against abuse of power by other branches of government. *United Public Workers v. Mitchell*, 330 US 75, 81 L. ed. 754, 69 S. Ct 556.

¹⁴ *Jobe v. Urquhart*, 102 Ark. 170, 149 SW 121.

¹⁵ The question whether the legislature may

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 constitution of the states.¹ Using different language, it may be said that a judicial inquiry into a matter, declares, and enforces liabilities as they stand on present or past facts, under laws supposed already to exist.² The courts declare the law as it is and construe it, resolving every doubt in favor of its constitutionality,³ and enforce it.

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

¹ *Maddison v. Minnesota State Street R. Co.*, 126 Minn. 286, 140 NW 711, State v. *Revis*, 193 NC 492, 136 SE 346, 50 ALR 98; *State v. Miller*, 224 Tex. 29, 76 SW2d 1025, 95 ALR 538; *White Bros. & Co. v. Watson*, 14 Wash. 668, 117 P. 491.

² *State v. Proctor*, 266 MS 349, 60 L. ed. 438, 45 S. Ct 186; *William Kinney's Sons Co. v. Worth*, 235 US 593, 62 L. ed. 497, 38 S. Ct 213; *United States v. Baltimore & O. R. Co.*, 228 US 308, 50 L. ed. 1106, 32 S. Ct 817; *Janney v. A. B. Dick Co.*, 231 US 1, 36 L. ed. 645, 32 S. Ct 354; *Dawey v. United States*, 170 US 310, 44 L. ed. 1170, 30 S. Ct 907; *Dwyer v. St. Louis*, 321 Mo. 514, 11 SW2d 1635; *State ex rel. People v. Gowder*, 214 NY 451, 155 NE 787, 58 ALR 9; *State ex rel. Harby v. Watson*, 201 NC 604, 161 SE 215, 79 ALR 441.

³ *Minnesota Rate Case* (*Stinson v. Stinson*), 286 US 305, 57 L. ed. 1531, 33 S. Ct 529; *Timberly v. United States*, 118 US 310, 78 L. ed. 999, 5 S. Ct 491; *Wright v. Chambers*, 5 Black (181) 430, 37 L. ed. 319; *Dixon v. Blackberry v. Madison*, 1 Cranch 538, 137 L. ed. 60; *Stampanian v. Watson*, 231 ALR 353, 172 So. 874, 120 ALR 970; *Township Park Co. v. Herdley*, 29 Ind. 97, 155 NE 465, 30 ALR 1512; *Sixth v. Leman Land & Lumber Co.*, 30 S.W. 2d, 138 NW 957, 62 L. ed. 103, 31 S.W. 141, 31 NW 975; *Exchange Nat. Bank v. United States*, 157 Wash. 156, 265 P. 725, 62 ALR 139, 212 US 481, 71 L. ed. 621, 49 S. Ct 321.

⁴ 1146, supra.

⁵ *Wilson v. New*, 242 US 517, 61 L. ed. 755, 17 S. Ct 398; *Burgett v. Indiana*, 235 US 48, 57 L. ed. 1300, 35 S. Ct 652; *State v. Peay*, 407 Va. 1216, 36 S. Ct 542; *State v. Peay*, 407 Va. 1216, 36 S. Ct 542; *State v. Peay*, 407 Va. 1216, 36 S. Ct 542; *State v. Peay*, 407 Va. 1216, 36 S. Ct 542.

⁶ *State v. Huber*, 129 W. Va. 190, 40 SE 2011, 130 ALR 803.

⁷ *Jobe v. Urquhart*, 102 Ark. 170, 149 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.¹²

It has been held in one jurisdiction that where there are two conflicting legislative acts, each claiming the right to exercise legislative functions, it is for the courts to determine which has the lawful authority.¹³

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.¹⁴ To be judicial, the exercise of discretion must be within the 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 by definition.¹⁵

Broadly speaking, a judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts, under laws supposed already to exist.¹⁶ 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.¹⁷

- 12. See *Johnson v. Ryan & R. Co.*, 151 Md 215, 101 A 713; *State ex rel Mason v. Roberts*, 69 Mo 426, 242 Mo 202; *Whitely & E. G. R. Co. v. Philadelphia*, 58 Va 174, 52 Gr 430.
- 13. The selection of a site on which a public work, or the purchase of any site, shall be subject to a public hearing, and not a judicial matter, but subject to public work authority, is presented according to law in *United States v. Carson*, 37 ALR 1151, 361 La 637, 109 So 509; *47 ALR 1151*.
- 14. The duties of a state board of railway commissioners relative to granting permits and discontinuing operation of certain lines are judicial. *See Mississippi v. E. & G. R. Co.*, 111 La 30, 30 ND 243; 122 NW 511.
- 15. § 220, supra.
- 16. *See* *Ray v. Oregon*, 227 US 150, 57 L ed 458, 35 S Ct 230; *French v. Atlantic Coast Line Co.*, 211 US 210, 53 L ed 197, 29 S Ct 87; *Shelton v. United States*, 59 US 25 L ed 496 (1852); *Wallace v. San Francisco*, 101 Cal 18, 35 P 523; *Van Winkle v. State*, 4 Boyer 124; 511 A 502; *Re Speer*, 53 Idaho 233, 23 22d 259, 30 ALR 1086; *State v. Hambley*, 34 Idaho 623, 23 P 279.
- 17. § 220, supra.

It has been said that the fact that a power is conferred by statute on a court of justice, is itself, in the first instance, in a proceeding distributed 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. 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.¹⁸

American courts are constantly wary not to reach 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.¹⁹

§ 223. — Imprecisability 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.²⁰ It has been

The legislative power can be retained only by constitutional provisions—must be the command of the majority of the people. *See* *Levy*, 182 NC 626, 35 52 530.

20. *See* *State v. Babin*, 86 Minn 110, 104 37W 703.

1. *See* *Partington v. Wauman*, 4 Utah 20 153, 231 724 400.

2. *See* *Shurtz v. Pierce*, 97 Ill 1032, 222 So 570, 80 ALR 254; *Ex parte Griffith*, 116 Mo 25, 20 NE 511; *Andrew v. Anderson*, 1-2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

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1. *See* *Partington v. Wauman*, 4 Utah 20 153, 231 724 400.

2. *See* *Shurtz v. Pierce*, 97 Ill 1032, 222 So 570, 80 ALR 254; *Ex parte Griffith*, 116 Mo 25, 20 NE 511; *Andrew v. Anderson*, 1-2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 96

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.¹⁷ It has been said generally that to give a consideration value for the purpose of a promise, it must be such as deprives the person in 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.¹⁸

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.¹⁹ Consideration need not move from the promisee, and it need not be pecuniary or beneficial to the promisor.²⁰ Consideration moving to the promisor may be a benefit to a third person²¹ or a detriment incurred on his behalf.²²

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.²³

§ 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, in the absence of fraud,²⁴ mistake, undue influence,²⁵ or material inequality of the consideration.²⁶

16. Beecher County Nat. Bank v Dwyer, 304 Minn 603, 284 NW 109; Evans v Lombard Trustco, 56 Ohio 58 p, 46 NE 63.

17. Western Nat. Bank v Lyons, 100 N.J.L. 153, 156 A 622.

18. St. Louis of Miami, Inc. v Graybow, Inc., 232 SC 181, 107 S2d 486 (quoting Restatement, Contracts § 34(2)).

19. Fines v Woodyscalzies, Inc. 173 Cal App 2d 762, 297 P2d 636; Hance Bookstore Co. v Howard, 40 Del. 209, 8 Atl 30.

20. Howard v The (C&AS Mfg) 151 274 581 (quoting Ohio law); Minnesota Loan & Trust Co. v The (C&AS Mfg) 151 274 581 (quoting Cal App 2d 762, 297 P2d 636); The Bank of America v The (C&AS Mfg) 151 274 581 (quoting Va. 114, 119 SE 277); The Bank of America v The (C&AS Mfg) 151 274 581 (quoting Va. 114, 119 SE 277); The Bank of America v The (C&AS Mfg) 151 274 581 (quoting Va. 114, 119 SE 277).

21. St. Louis of Miami, Inc. v Graybow, Inc., 232 SC 181, 107 S2d 486 (quoting Restatement, Contracts § 34(2)).

22. Fines v Woodyscalzies, Inc. 173 Cal App 2d 762, 297 P2d 636; Hance Bookstore Co. v Howard, 40 Del. 209, 8 Atl 30.

23. Fines v Woodyscalzies, Inc. 173 Cal App 2d 762, 297 P2d 636; Hance Bookstore Co. v Howard, 40 Del. 209, 8 Atl 30.

24. Fines v Woodyscalzies, Inc. 173 Cal App 2d 762, 297 P2d 636; Hance Bookstore Co. v Howard, 40 Del. 209, 8 Atl 30.

25. Fines v Woodyscalzies, Inc. 173 Cal App 2d 762, 297 P2d 636; Hance Bookstore Co. v Howard, 40 Del. 209, 8 Atl 30.

26. Fines v Woodyscalzies, Inc. 173 Cal App 2d 762, 297 P2d 636; Hance Bookstore Co. v Howard, 40 Del. 209, 8 Atl 30.

- 1. Fines v Woodyscalzies, Inc. 173 Cal App 2d 762, 297 P2d 636; Hance Bookstore Co. v Howard, 40 Del. 209, 8 Atl 30.
- 2. Fines v Woodyscalzies, Inc. 173 Cal App 2d 762, 297 P2d 636; Hance Bookstore Co. v Howard, 40 Del. 209, 8 Atl 30.
- 3. Fines v Woodyscalzies, Inc. 173 Cal App 2d 762, 297 P2d 636; Hance Bookstore Co. v Howard, 40 Del. 209, 8 Atl 30.
- 4. Fines v Woodyscalzies, Inc. 173 Cal App 2d 762, 297 P2d 636; Hance Bookstore Co. v Howard, 40 Del. 209, 8 Atl 30.
- 5. Fines v Woodyscalzies, Inc. 173 Cal App 2d 762, 297 P2d 636; Hance Bookstore Co. v Howard, 40 Del. 209, 8 Atl 30.
- 6. Fines v Woodyscalzies, Inc. 173 Cal App 2d 762, 297 P2d 636; Hance Bookstore Co. v Howard, 40 Del. 209, 8 Atl 30.
- 7. Walker v Wilson, 152 Ala 569, 39 So 121; Ferguson v Downen, 18 Cal App 2d 173, 62 P2d 857; Smock v Pearson, 63 Ind 495; Central Sav. Bank v O'Donnell, 153 Mich 378, 94 NW 111; Carmichael v Johnson, 298 Pa 462, 153 A 812, 63 ALR 1180; Baird v Burnett, 64 Vt 387, 24 A 786; Good v Dwyer, 137 Va 114, 119 SE 277; Batten v Egan, 233 Va 159, 253 SW 273.
- 8. Lester v Easley, 47 Cal App 2d 47, 117 P2d 621.
- 9. Inadequacy sufficient to affect the contract is not a question of fact, but a question of law. See, e.g., Ferguson v Downen, 18 Cal App 2d 173, 62 P2d 857; Smock v Pearson, 63 Ind 495; Central Sav. Bank v O'Donnell, 153 Mich 378, 94 NW 111; Carmichael v Johnson, 298 Pa 462, 153 A 812, 63 ALR 1180; Baird v Burnett, 64 Vt 387, 24 A 786; Good v Dwyer, 137 Va 114, 119 SE 277; Batten v Egan, 233 Va 159, 253 SW 273.
- 10. Lester v Easley, 47 Cal App 2d 47, 117 P2d 621.
- 11. Inadequacy sufficient to affect the contract is not a question of fact, but a question of law. See, e.g., Ferguson v Downen, 18 Cal App 2d 173, 62 P2d 857; Smock v Pearson, 63 Ind 495; Central Sav. Bank v O'Donnell, 153 Mich 378, 94 NW 111; Carmichael v Johnson, 298 Pa 462, 153 A 812, 63 ALR 1180; Baird v Burnett, 64 Vt 387, 24 A 786; Good v Dwyer, 137 Va 114, 119 SE 277; Batten v Egan, 233 Va 159, 253 SW 273.
- 12. Lester v Easley, 47 Cal App 2d 47, 117 P2d 621.
- 13. Inadequacy sufficient to affect the contract is not a question of fact, but a question of law. See, e.g., Ferguson v Downen, 18 Cal App 2d 173, 62 P2d 857; Smock v Pearson, 63 Ind 495; Central Sav. Bank v O'Donnell, 153 Mich 378, 94 NW 111; Carmichael v Johnson, 298 Pa 462, 153 A 812, 63 ALR 1180; Baird v Burnett, 64 Vt 387, 24 A 786; Good v Dwyer, 137 Va 114, 119 SE 277; Batten v Egan, 233 Va 159, 253 SW 273.
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of law,²⁷ or a statute requiring the quantum of consideration to be weighed.²⁸ The adequacy in fact, as distinguished from value in law, is for the parties to judge for themselves.²⁹ It is ordinarily immaterial that the consideration for a bill or note is inadequate as compared with the amount of the order or promise,³⁰ or that the obligor, knowing the circumstances or having an opportunity to inform himself, is disappointed in his expectations.³¹

Legal or valuable consideration may be of slight value,³² or it may be a trifling benefit, loss, or act,³³ or it may be of value only to the promising party.³⁴ It may be of indeterminate value,³⁵ such as property the value of which is incapable of reduction to any fixed sum and is altogether a matter of opinion,³⁶ the good will of a business,³⁷ or an act which affords the promising party pleasure or gratification, pleases his fancy, or advances his interests, as 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.³⁸

- 10. Rauschlebach v McDaniels, 201 Ky 438, 185 SW 281.
- 11. Heister v Lockwood, 9 Cal 2d 409, 71 P2d 230 (stipule providing that annual obligation is gross consideration to the extent of the obligation but no further).
- 12. Phillips v Gaultney, 14 Wall (US) 570, 20 L ed 643; Price v Jones, 103 Ind 545, 6 NE 683; Adams v Anderson v Gowdy, 6 Mich (Moel) 327; De Heus v De Heus, 200 Mich 374, 16 NW2d 793, 161 ALR 1366; Mallard v Barron, 64 Va 287, 25 A 259; Good v Dwyer, 137 Va 114, 119 SE 277; Zachary v Smith v McDaniels Estate, 122 W Va 658, 17 S2d 852 (specifying a master for the deceased maker to have determined, and his estate must pay the note); Hatcher's Estate, 293 Va 139, 200 P2d 277; Sheldon v Blackman, 88 W Va 6, 202 NW 436.
- 13. There is no rule by which the courts can be guided if they wish to take the question of adequacy as a question of fact. See, e.g., Heister v Lockwood, 9 Cal 2d 409, 71 P2d 230 (stipule providing that annual obligation is gross consideration to the extent of the obligation but no further).
- 14. Taylor v Greenberg, 31 Wall (US) 170, 20 L ed 443; Rauschlebach v McDaniels Estate, 122 W Va 658, 17 S2d 852; 156 P 815; Smock v Pearson, 63 Ind 495; Hance v Howard, 40 Del 209, 8 Atl 30, 1152.
- 15. First Nat. Bank v Trust, 236 Ill 400, 92 S2d 524; Fines v Woodyscalzies, Inc. 173 Cal App 2d 762, 297 P2d 636.
- 16. Richard v Burton, 67 Vt 387, 24 A 786; Good v Dwyer, 137 Va 114, 119 SE 277.
- 17. Smock v Pearson, 63 Ind 495.
- 18. Price v Jones, 103 Ind 545, 6 NE 683; Smock v Pearson, 63 Ind 495; Miller v Ferguson, 75 Mich 249; Sheldon v Blackman, 168 Wis 4, 305 NW 458.
- 19. Miller v Finley, 26 Mich 268.
- 20. Hanchbacher v Eby, 28 Idaho 753, 158 P 610 (business property, and good will; Smock v Pearson, 63 Ind 495 (even though business profits unsuccessful)).
- 21. In May v Toy, 224 Me 46, 197 P2d 117, 302 S2d 781, it was held that the present and good will of a physician, who had no other income and did not contemplate continuation of his practice, was not a matter of opinion, but a matter which was amenable to ascertainment of a fair value.
- 22. See, e.g., Taylor v Greenberg, 31 Wall (US) 170, 20 L ed 443; Rauschlebach v McDaniels Estate, 122 W Va 658, 17 S2d 852.
- 23. See, e.g., Taylor v Greenberg, 31 Wall (US) 170, 20 L ed 443; Rauschlebach v McDaniels Estate, 122 W Va 658, 17 S2d 852.
- 24. See, e.g., Taylor v Greenberg, 31 Wall (US) 170, 20 L ed 443; Rauschlebach v McDaniels Estate, 122 W Va 658, 17 S2d 852.
- 25. See, e.g., Taylor v Greenberg, 31 Wall (US) 170, 20 L ed 443; Rauschlebach v McDaniels Estate, 122 W Va 658, 17 S2d 852.
- 26. See, e.g., Taylor v Greenberg, 31 Wall (US) 170, 20 L ed 443; Rauschlebach v McDaniels Estate, 122 W Va 658, 17 S2d 852.
- 27. See, e.g., Taylor v Greenberg, 31 Wall (US) 170, 20 L ed 443; Rauschlebach v McDaniels Estate, 122 W Va 658, 17 S2d 852.
- 28. See, e.g., Taylor v Greenberg, 31 Wall (US) 170, 20 L ed 443; Rauschlebach v McDaniels Estate, 122 W Va 658, 17 S2d 852.
- 29. See, e.g., Taylor v Greenberg, 31 Wall (US) 170, 20 L ed 443; Rauschlebach v McDaniels Estate, 122 W Va 658, 17 S2d 852.
- 30. See, e.g., Taylor v Greenberg, 31 Wall (US) 170, 20 L ed 443; Rauschlebach v McDaniels Estate, 122 W Va 658, 17 S2d 852.
- 31. See, e.g., Taylor v Greenberg, 31 Wall (US) 170, 20 L ed 443; Rauschlebach v McDaniels Estate, 122 W Va 658, 17 S2d 852.
- 32. See, e.g., Taylor v Greenberg, 31 Wall (US) 170, 20 L ed 443; Rauschlebach v McDaniels Estate, 122 W Va 658, 17 S2d 852.
- 33. See, e.g., Taylor v Greenberg, 31 Wall (US) 170, 20 L ed 443; Rauschlebach v McDaniels Estate, 122 W Va 658, 17 S2d 852.
- 34. See, e.g., Taylor v Greenberg, 31 Wall (US) 170, 20 L ed 443; Rauschlebach v McDaniels Estate, 122 W Va 658, 17 S2d 852.
- 35. See, e.g., Taylor v Greenberg, 31 Wall (US) 170, 20 L ed 443; Rauschlebach v McDaniels Estate, 122 W Va 658, 17 S2d 852.
- 36. See, e.g., Taylor v Greenberg, 31 Wall (US) 170, 20 L ed 443; Rauschlebach v McDaniels Estate, 122 W Va 658, 17 S2d 852.
- 37. See, e.g., Taylor v Greenberg, 31 Wall (US) 170, 20 L ed 443; Rauschlebach v McDaniels Estate, 122 W Va 658, 17 S2d 852.
- 38. See, e.g., Taylor v Greenberg, 31 Wall (US) 170, 20 L ed 443; Rauschlebach v McDaniels Estate, 122 W Va 658, 17 S2d 852.

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

No one is bound to obey an unconstitutional law, and no courts are bound to enforce it.

A void act cannot be legally inconsistent with a valid one. And an uncon-

- Standard Oil Co. 107 Tenn 585, 71 SW2d 603, 43 ALR 1483; State v. Cabell, 38 Mo 346, 394 P 283.
- 15. Chicago, I. & N. W. Co. v. Hendrick, 228 US 595, 5 L. ed. 865, 25 S. Ct. 581; Norton v. Shelby County, 118 US 423, 30 L. ed. 178, 6 S. Ct. 1, 21; Illinois v. Black, 50 App DC 33, 207 F 614, 11 ALR 1232; Carr v. Smith v. Coughlin, 77 Ala 205, 200 P 742, 36 ALR2d 1020; Security Sav. Bank v. Cornwell, 198 Iowa 584, 250 NW 9, 36 ALR 486; Flannery v. First Nat. Bank, 157 Ia 1047, 3 So 2d 444; Garden of Eden Drainage Dist. v. Hartman, 7 Iowa 537, Mo 554, 56 SW2d 627, 54 ALR 1019; St. Louis v. First Ware Ice & Fuel Co. 517 Mo 507, 296 SW 995, 58 ALR 1002; Watkins v. Dunlop, 159 Neb 745, 60 NW2d 520; Board of County Standard Oil Co. 187 Tenn 485, 71 SW2d 682, 43 ALR 1483.

Under Michigan law an unconstitutional statute is an utter nullity, and void from its date of its enactment, and is treated as creating any rights, except by record of some Supreme Court, 100 Mich 403, 60 P 519, 27 P 216, 343 U.S. 963, 963 P 1241, 72 S. Ct. 635, 75 S. Ct. 345, 195 U.S. 947, 35 L. ed. 1944, 72 S. Ct. 708.

As to the effect of void rights under a statute based upon an unconstitutional law, see, however, the case of 325 U.S. 1, as to the enforcement thereof; 2. Michigan, see *infra* (see text at § 351).

- 16. Murray v. South County, 118 US 425, 30 L. ed. 170, 6 S. Ct. 1121; Security Sav. Bank v. Cornwell, 198 Iowa 584, 250 NW 9, 36 ALR 486; Flannery v. First Nat. Bank, 157 Ia 1047, 3 So 2d 444.
- 17. Tolly v. Wallace County, 67 Kan 302, 62 P 667; Henderson v. Liberty, 175 Kan 177, 192 SW 439, 9 ALR 620; First Nat. Bank v. First Nat. Bank, 197 La 1057, 5 So 23 144; Anderson v. Leitchfield, 119 Nal 457, 779 SW 713; Daly v. Berry, 45 MD 267, 178 NW 104.
- 18. Hamilton v. Warren, 133 DS 47, 30 L. ed. 608, 7 S. Ct. 469; Norton v. Shelby County, 118 US 423, 30 L. ed. 178, 6 S. Ct. 1, 21; South County, 118 Kan 177, 192 SW 439, 9 ALR 620; 290, 228 742; 58 ALR2d 1020; Ferguson v. Ferguson, v. Blooming Bank v. Cornwell, 198 Iowa 584, 250 NW 9, 36 ALR 486; Flannery v. First Nat. Bank, 157 Ia 1047, 3 So 2d 444; St. Louis v. First Ware Ice & Fuel Co. 517 Mo 507, 296 SW 995, 58 ALR 1002; Anderson v. Leitch-

stitutional law cannot operate to supersede any existing valid law. Indeed, a statute runs counter to the fundamental law of the land, it is superseded thereby. Since an unconstitutional statute cannot repeal or in any way affect an existing one, if a repealing statute is unconstitutional, the statute which it attempts to repeal remains in full force and effect. 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.

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. 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.

§ 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 applications, demand re-examination. It has been said that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.

The general rule is that an unconstitutional act of the legislature prevents no one, 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.

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

- 4. Chicago, I. & N. W. Co. v. Hendrick, 228 US 595, 5 L. ed. 865, 25 S. Ct. 581; Berry v. Board of Managers, 78 Idaho 416, 230 P2d 1963; Board of Managers v. Wilmington, 231 NC 379, 74 SE2d 742; State v. Swains, 96 Or 53, 184 P 587, 180 P 427.
- 5. Thiede v. Scandia Valley, 317 Minn 218, 14 NW2d 900.
- 6. State v. One Oldsmobile Two-Door Sedan, 227 Minn 289, 59 NW2d 525.
- 7. State v. One Oldsmobile Two-Door Sedan, *supra*.
- 8. See § 185, *infra*.
- 9. Funn v. Barry, 15 Wall 323, 610, 21 L. ed. 212; Cohen v. Virginia, 6 Wheat 165, 264, 5 L. ed. 277.
- 10. Flournoy v. First Nat. Bank, 197 Ia 1047, 3 So 2d 444; 42 Kansas v. Missouri, 118 US 423, 30 L. ed. 178, 6 S. Ct. 1, 21; 157 Tenn 485, 71 SW2d 682, 43 ALR 1483.
- 11. Clark County Drainage Dist. v. Dexter State Bank, 308 US 371, 84 L. ed. 359, 60
- 12. Chicago Coney Drainage Dist. v. Dexter State Bank, *supra*.
- 13. § 177, *supra*.
- 14. Sumner v. Beatty, 50 Ind 341.

are subject to be lost if the statute is adjudged invalid, though the statute is considered valid by eminent attorneys, public officers, and others.¹⁷ 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.¹⁸ 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.¹⁹ On the other hand, occasionally the position has been taken, as far as remedies 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 acts in an act which, but for the statute, would be required by law.²⁰ 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.²¹ 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.²²

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

While it has been broadly stated that an unconstitutional act cannot be validated by the legislature,²³ 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.²⁴ 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 tender the same valid by amendment; but where the objection 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. Nichols v. Green, 209 Mich. 209, 173 N.W. 155.
16. *Anniston v. City*, 35 ALR 259.

17. *Fleming v. South Carolina Electric & Gas Co.*, (L.M.A. 312) 220 F.2d 217; *Highway Garage v. Birmingham*, 253 Ill. 164, 97 NE 280; *Fisher v. McGirt*, 1 Gray (Mass.) 15; *Chalmers Brides Co. v. Baltimore*, 63 NY 173; *denonations*, 53 ALR 265.

18. *Texas Co. v. State*, 31 Ariz. 405, 254 P. 1650, 33 Ariz. 736.
Announcements, 53 ALR 273.

19. *State v. Carlson City*, 74 Idaho 513, 265 P.2d 920 (holding that an unconstitutional statute which is not unconstitutional as to public officers, under its protection up to the time it is declared unconstitutional).

20. *Fleming v. South Carolina Electric & Gas Co.* (C.A. 35) 225 F.2d 277.

many cases the absence of authority affords a strong presumption against its having any legal foundation.¹⁸

§ 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.¹⁹ 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.²⁰ 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.²¹ Thus, because of their legal utility, actions between husband and wife were ordinarily barred at common law,²² and considerations of public policy forbid the bringing of actions against the state or its subdivisions, except with its consent.²³ The maxim that there is no wrong without a remedy is not applicable to acts which the written law has declared to be wrongful, especially where not assumed to be authorized by a valid act of the legislature and performed with due care and skill in strict conformity with the provisions of the act.²⁴ 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.²⁵

§ 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, wrongful, or immoral nature cannot be the proper basis for a legal or equitable proceeding,²⁶ and the parties will be left to the dilemma which they themselves devise.²⁷ The law does not permit one to profit by his own fraud or like advantage.²⁸ At his own wrong or fraud any claim on his own liability or acquire property by his own wrong, and no court, substantially a court of equity, will lend its aid to a party who grounds his action upon an immoral or illegal act.

14. *Shoemaker v. Republic* (80r) [1930] 2 KB 43, 10 ALR 233, 572.
15. *Pechounek v. Duzell*, 365 Mich. 484, 9 NW2d 612.

16. *Robertson v. New Orleans & G. N. R. Co.*, 156 Me. 24, 125 So. 100, 69 ALR 1169.
17. *Deereck v. Wilson*, 287 NY 211, 177 NE 431, 76 ALR 876.

18. See *Hessard and Sons* (14-1) § 5844.
19. See *Stevens Transportation and Discharge*, 111, 163 P. 995, 4 ALR 32.

20. *Elieck v. McLaughlin*, 129 Wis. 647, 101 NW 200, 132 NW 542.
21. *Francis v. Chicago*, 185 Ill. 490, 57 NE 1055.

22. *Tustin v. United States*, 92 US 105, 23 L. ed. 625.
23. *Miller v. Miller* (57) 296 SW2d 634, 65

4. *Robinson v. Tamm*, 224 Ky. 56, 5 SW2d 214.
5. *Davis v. Bowen*, 94 US 473, 24 L. ed. 204; *Union Bank v. Towne*, 39 How. (US) 307, 13 L. ed. 1000; *Ward v. McArthur*, 103 NY 80, 165 NE 210, 59 ALR 307; *Boyer v. Palmer*, 111 NY 506, 23 148 488; *Boyer v. Boyer*, 129 NY 85, 23 525 407; *Allen v. Coover*, 151 Or. 85, 240 P.2d 532; *Smith v. Gerhardt*, 7 Pa. Co. 103 Or. 589, 202 P. 1038, 19 ALR 1444; *State v. Sliger*, 355 Pa. 311, 14 428 179; *Lansley v. Devlin*, 95 Wash. 698 (CA).

6. *Finde v. Walker* (CA2) 237 F. 698, 5 ALR 831.
7. *The Florida*, (Coffin v. The Florida) 101 US 37, 35 L. ed. 593; *Hunter v. Weis*, 59 App. D.C. 265, 369 F. 604, 31 ALR 900; *Weserm L. Teller Co. v. McLaurin*, 408 S.W.2d 575, 66 84, 3 194; *Perranzion v. Laska*, 45 N.J. 87, 137 A.2d 84.

or an illegal contract, or whose conduct in connection with the transaction upon which his claim is based is illegal or criminal. No action can be founded upon acts which constitute a violation of criminal or penal laws of the state or upon one's own dishonest, fraudulent, or tortious act or conduct, or upon his own moral turpitude. Hence, an action will not lie to recover money or property which is the fruit of an employment involving a violation of law, where a recovery would have to be based on the illegal contract, or to recover back the consideration given for the maintenance of illicit relations with the defendant.

§ 52. — Where parties are in pari delicto.

The principle which precludes an action based upon the plaintiff's wrongful, immoral, or illegal act applies where both plaintiff and defendant were parties to such act; there may be times when the objection that the plaintiff has broken the law may sound in the mouth of the defendant, yet, as a general rule, under the doctrine of in pari delicto, 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 the plaintiff was a party. It is a rule and

- 4. Standard Oil Co. v. Chert. (CA2 NY) 163 F.2d 917, cert den 333 US 879, 92 L. ed 1149, 88 S. Ct 801, 802.
- 5. Talcott v. Federal Deposit Ins. Corp. (CA5 Pa.) 257 F.2d 207.
- There is no imputed recovery where a court of law or of equity has given aid and comfort to one wrongdoer against his fellow wrongdoer seeking a division of the loot. *Friedman v. Bivard*, 335 Mich 426, 9 NW2d 605.
- 10. *Chapin v. Postal Tel.-Cable Co.*, 297 Mass (19) 19, 502d 491; *Winnick v. S. H. H. Co.*, 54 NE 355, 225 F.2d 141; *Lloyd v. North Carolina Lumber Co.*, 131 NC 236, 65 SE 804; *Stevens v. Thibault* (Tex. Civ. App.) 189 SW 2d 13106.
- 11. *Pictorial Plays Theatre Co. v. Williams*, 21 Tex 506, 78 So 674, 5 ALR 11; *S. L. F. L. Mutual Co. v. Northern Am. Co.*, 204 Ill 264, 120 NE 362, 1 ALR 602; *Swallowe v. O'Connell*, 10 W. R. Co. v. Evans, 168 Ind 450, 82 NE 711.
- 12. *Talbot v. Seaman, J. Cranch* (US) 1, 2 L. ed 14.
- 13. *Lery v. Kansas City* (CA6) 168 F.5d 1; *Newton v. Illinois Oil Co.*, 316 Ill 416, 143 NE 465, 40 ALR 1200.
- 14. *Bostonian Bottling Co. v. O'Connell*, 231 Mass 408, 121 NE 411, 2 ALR 902; *Washington v. Hopkins*, 85 Miss 171, 37 So 1000, 30 So 208; *Buck v. Albert*, 26 Va 184; *L'anno v. Casanovi*, 22 Wis 447.
- Annotations: 2 ALR 902.
- 15. *Reel v. Freeman*, 73 Ala 203; *Manatt v. Parker*, 30 La Ann 587; *Cris v. Freeman*, 199 Mass 160, 85 NE 168; *Blatt v. Zilber*, 166 NY 574, 75 NE 1; *Dunson v. Elishak*, 11 SW2d (2 Mett & McD) 681; *Lambert v. Meadood*, 75 W Va 618, 78 SE 720.
- 16. That which one promises to give for illegal or immoral consideration he cannot be compelled to give, and that which he is given on such a consideration he cannot recover. *East v. Elick*, 186 NY 374, 75 NE 771, 8 ALR 242.

contemplates a 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. Neither law nor equity interposes to relieve either of the persons who engage in fraudulent transactions, against the other from the consequences of their own misconduct.

Some courts have applied the rule in pari delicto to transactions with a public officer or an official of the court, but those 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.

However, illegality is no defense when merely collateral to the cause of action sued on, one affords 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, and not even then when the plaintiff's unlawful participation was innocent, being induced by the fact fraud of the defendant on which the action is based. 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. Moreover, courts will grant relief against present wrongs and to enforce existing rights, although the property involved was acquired by some past illegal act. It is generally agreed, although there is authority to the contrary, that one who has interested 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.

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 prohibit the contract void of extraneous prohibition the name. *Sauvage v. Suddeutsche Bank*, Mig. Co. 172 Ind 152, 41 NE 280.

Although a man may contract with a woman even only to pay over to her which he has by no means a limited power, he cannot sue her for the recovery of the money he has paid not over, an agreement that the man requires a legal set-off of the consideration or a third person, no more important in law, is an equity to compel the consideration to be performed. *Saxe v. Humpert*, 335 US 90, 59 L. ed 147, 45 S. Ct 94.

- 20. *Ford v. Garsen* (CA2 NY) 128 F.2d 804; *Dunson v. Elick*, 318 Ill 539, 149 NE 495.
- 21. *Clark v. United States*, 102 US 372, 26 L. ed 101; *Re Green's Estate*, 147 Kan 305, 26 P.2d 155, 116 ALR 1042; *Smith v. Smith*, 80 Nev 10, 275 P.2d 279.
- Annotations: 116 ALR 1042.
- 22. *Ford v. Garsen* (CA2 NY) 128 F.2d 804.
- 23. *Annott v. Cuyper* (CA2 NY) 125 F.2d 881.
- 24. *Re Sylvester*, 195 Iowa 329, 192 NW 410, 30 ALR 120; *Re Brown's Estate*, 143 Kan 395, 76 P.2d 657, 116 ALR 1017; *Re Brown v. Coakley*, 343 Mass 223, 137 NE 667, 25 ALR 90.

Annotations: 116 ALR 1042-1043.

- 3. *Langheim v. Louchman*, 229 US 216, 74 L. ed 1219, 25 S. Ct 684, 14 S. Ct 851, 645, 73 L. ed 1474, 24 S. Ct 851.
- 4. *Wallace v. Dunlop*, 38 Ga 120.

See, also, *dem. The Cincinnati v. Hunt*, 1 Ind 363; *Jelinski v. Grosz*, 253 Mass 313, 161 NE 609, 82 ALR 526; *Conner v. Cooper*, 137 Mass 370, 17 NC 921; *Stans v. Wiggan*, 153 Mich 309, 131 NW 234; *Benson v. Baruch*, 37 NY 534; *Merrill v. Palmer*, 63 Vt 1, 31 A. 829; *Pellett v. Sullivan*, 53 Vt 307.

This principle is particularly applicable in actions for deceit in inducing unlawful collaboration by representations of a lawful marriage. See Annotations: 72 ALR2d 956.

- 3. *Langley v. Deville*, 95 Wash 371, 152 P 395, 4 ALR 371; *Matta v. Karanah*, 132 Wis 212, 212 NW 251, 50 ALR 391.

- 4. *Louchman v. Langheim*, 229 US 216, 74 L. ed 1219, 25 S. Ct 684, 14 S. Ct 851, 645, 73 L. ed 1474, 24 S. Ct 851.
- 5. *Larocque v. Ames*, 103 Me 87, 63 A 313; *Scott v. Freeman*, 295 NY 368, 42 NE2d 371, 8 ALR2d 204.

Annotations: 8 ALR2d 314, § 3; 516, § 4.

- 11. *Okedochas Ogun v. Kinnon* (CA5 Tex) 162 F.2d 684, cert den 324 US 801, 33 S. Ct 440, 68 S. Ct 1020, 100-3, 278 F.2d 79 NE 1; *Dunson v. Elick*, 11 SW2d (2 Mett & McD) 681; *Lambert v. Meadood*, 75 W Va 618, 78 SE 720.

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.* 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

103 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

¹⁰ *Gunn v. Barry*, 16 Wall (US) 610, 21 L. ed 212; *Cohen v. Virginia*, 6 Wheat (US) 264, 5 L. ed 237.

¹¹ *Flournoy v. First Nat. Bank*, 197 La. 4067, 3 So 2d 244; *Gilkeson v. Missouri*, P. R. Co. 222 Mo. 113, 121 SW 138; *Pey v. Nolan*, 157 Tenn. 222, 1 SW 2d 845, 60 ALR 468.

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. *Cosley*, Const. Lim. 250; *Ex parte Young*, 209 U.S. 123, 28 Sup. Ct. 441, 62 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*, 83 Minn. 267, 101 N.W. 74.

STATE ex rel. E. W. CHELDS, 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. 484, 40 N.E. 895.

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,—say, 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 depositories 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 depositories, custodians, and fiscal agents for the Home Owners' Loan Corporation. (Apr. 27, 1934, ch. 188, § 8, 48 Stat. 846.)

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, 1935, ch. 170, § 21, 47 Stat. 126, see note under section 1483 of this title.

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

The Federal Reserve banks are authorized to act as depositories, custodians, and fiscal agents for the Commodity Credit Corporation. (July 18, 1943, ch. 241, § 3, 57 Stat. 588.)

TRANSFER OF FUNCTIONS

Administration of program of Commodity Credit Corporation was transferred to Secretary of Agriculture by 1948 Reorg. Plan No. 3, 1948, eff. July 15, 1948, 11 P. R. 7877, 60 Stat. 1199. See note under section 710 of Title 16, 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 exempted 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, 16 P. R. 2519, 67 Stat. 838, 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. 8, § 16, 38 Stat. 265; Jan. 30, 1934, ch. 6, § 2 (b) (1), 48 Stat. 337; Aug. 23, 1935, ch. 514, § 203 (a), 49 Stat. 706.)

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 31, 1917, ch. 84, § 16, 40 Stat. 238, are classified to sections 412-414, 415, 416; 318-321, 303, 248 (c) and 487, 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. 358, § 1, 48 Stat. 1223.

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 hereinafter 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 62, 342-347, 347c, and 373 of this title, or bills of exchange endorsed by a member bank of any Federal Reserve district and purchased under the provisions of sections 340a and 353-350 of this title, or bankers' acceptances purchased under the provisions of said sections 348a and 353-350 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. 8, § 16, 38 Stat. 265; Sept. 7, 1918, ch. 461, 39 Stat. 754; June 21, 1917, ch. 82, § 7, 40 Stat. 236; Feb. 27, 1932, ch. 55, § 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. 514, § 203 (a), 49 Stat. 706; Mar. 1, 1937, ch. 29, 50 Stat. 23; June 30, 1939, ch. 250, 53 Stat. 591; June 30, 1941, ch. 264, 55 Stat. 305; May 25, 1943, ch. 102, 57 Stat. 85; June 12, 1945, ch. 186, § 2, 60 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 421 of this title.

AMENDMENTS

1945—Act of June 13, 1945, substituted "or direct obligations of the United States" for previous 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 26, 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 513 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. 764; June 30, 1961, Pub. L. 87-60, § 6(b), 75 Stat. 147.)

COOPERATION

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. 87-60 provided for recovery of collateral upon payment of notes of series prior to 1929 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, § 14, 2, eff. July 31, 1950, 15 F. R. 4936, 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. d, § 2 (b) (8), 48 Stat. 332; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 764.)

REFERENCES IN TEXT

For distribution of the Federal Reserve Act, referred to in the text, in this code, see section 228 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 ex-

ceptions, 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, § 14, 2, eff. July 31, 1950, 15 F. R. 4936, 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, 1919, ch. 177, § 3, 40 Stat. 669; June 4, 1963, Pub. L. 88-36, title I, § 3, 77 Stat. 64.)

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 228 of this title.

COOPERATION

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. 4936, 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 depository 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 20, 1930, 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 228 of this title.

DERIVATION

Act Feb. 21, 1857, ch. 55, § 2, 11 Stat. 168.

CROSS REFERENCES

All coins and currencies of the United States to be legal tender for all debts, see sections 463 and 621 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. § 3505.)

DERIVATION

Act Feb. 12, 1872, ch. 131, § 14, 17 Stat. 425.

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 463 and 621 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. 35, 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.)

DERIVATION

Section 14 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, § 8 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 467 and 623 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.

§ 456. Subsidiary silver coins.

The silver coins of the United States in existence June 9, 1878, 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, 1878, ch. 32, § 3, 21 Stat. 8.)

DERIVATION

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. 476, 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 467 and 621 of this title.

§ 450. 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, 1872, 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 467 and 621 of this title.

§ 46a. Commemorative coins.

DERIVATION

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, 1864, ch. 1263, § 6, 32 Stat. 170; 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. 1263; Feb. 2, 1922, ch. 44, 42 Stat. 362; Jan. 24, 1923, ch. 26, § 1, 42 Stat. 1172; Feb. 20, 1923, ch. 113, § 1, 42 Stat. 1287; Mar. 17, 1924, ch. 68, § 1, 43 Stat. 23; Jan. 14, 1925, ch. 79, § 1, 43 Stat. 748; Feb. 24, 1925, ch. 302, §§ 1-3, 43 Stat. 265, 266; Mar. 2, 1926, ch. 482, § 4, 43 Stat. 1954; May 17, 1926, ch. 307, § 1, 44 Stat. 559; Mar. 7, 1928, ch. 138, § 1, 45 Stat. 199; June 16, 1938, ch. 82, § 1, 45 Stat. 149; May 6, 1934, ch. 265, §§ 1-4, 46 Stat. 670; May 14, 1934, ch. 266, §§ 1-3, 46 Stat. 776; May 20, 1934, ch. 365, §§ 1-4, 46 Stat. 807; June 21, 1934, ch. 395, §§ 1-4, 46 Stat. 1206; May 2, 1935, ch. 88, §§ 1-5, 46 Stat. 166, 168; May 3, 1935, ch. 90, §§ 1-4, 46 Stat. 174; June 8, 1935, ch. 178, 46 Stat. 324; Mar. 18, 1936, ch. 149, §§ 1-8, 46 Stat. 1165; Mar. 20, 1936, ch. 164, §§ 1-3, 46 Stat. 1187; Apr. 13, 1936, ch. 312, §§ 1-3, 46 Stat. 1206; May 6, 1936, ch. 300, §§ 1-3, 46 Stat. 1257; May 6, 1936, ch. 304, §§ 1-3, 46 Stat. 1259; May 6, 1936, ch. 327, §§ 1-3, 46 Stat. 1262, 1263; May 16, 1936, ch. 399, §§ 1-8, 46 Stat. 1278; May 15, 1936, ch. 402, §§ 1-3, 46 Stat. 1277, 1278; May 15, 1936, ch. 405, §§ 1-3, 46 Stat. 1302, 1303; May 23, 1936, ch. 455, §§ 1-3, 46 Stat. 1387, 1388; June 16, 1936, ch. 543, §§ 1-3, 46 Stat. 1622; June 16, 1936, ch. 584, §§ 1-3, 46 Stat. 1523; June 16, 1936, ch. 586, §§ 1-3, 46 Stat. 1624; June 24, 1936, ch. 760, §§ 1-3, 46 Stat. 1911; June 26, 1936, ch. 828, §§ 1-3, 46 Stat. 1972; June 26, 1936, ch. 827, §§ 1-3, 46 Stat. 1973; June 24, 1937, ch. 277, §§ 1-3, 50 Stat. 308; June 28, 1937, ch. 284, §§ 1-8, 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

Money, 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. 4, § 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, 757, 771, 821, 822a, 822b, and 824 of this title and sections 212, 411—413, 417, and 467 of Title 12 are repealed. (Jan. 30, 1934, ch. 4, § 17, 48 Stat. 344.)

SILVER PURCHASE

§§ 446—449e. Repealed. Pub. L. 88-36, Title 2, § 1, June 4, 1965, 77 Stat. 54.

Sections 448, 449a, act June 19, 1934, ch. 474, § 10, 48 Stat. 1170, 1381, 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, act June 19, 1934, ch. 474, § 10, 48 Stat. 1181; June 26, 1934, Pub. L. 86-70, § 26, 78 Stat. 147, defined "person", "the continental United States", "monetary value", "stocks of silver" and "stocks of gold".

Sections 448c—449e, act June 19, 1934, ch. 474, § 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 6.—LEGAL TENDER

Sec.

- 451. United States gold certificates.
- 452. United States notes.
- 453. Treasury notes.
- 454. Interest-bearing notes.
- 455. Legal-tender quality of money not affected by certain sections.
- 456. Foreign coins.
- 457. Gold coins of United States.
- 458. Standard silver dollar; paid in silver.
- 459. Subsidiary silver coins.
- 460. Minor coins.
- 461. Commemorative coins.
- 462. Coins and currencies.
- 463. Provision for payment of obligations in gold prohibited; uniformity in value of coins and currencies.

§ 451. United States gold certificates.

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

CROSS REFERENCES

All coins and currencies of the United States to be legal tender, see sections 462 and 621 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

Acta Feb. 25, 1863, ch. 33, § 1, 12 Stat. 846; July 11, 1862, ch. 142, § 1, 12 Stat. 832; Rev. Jan. 17, 1863, No. 2, 12 Stat. 823; act Mar. 3, 1863, ch. 72, § 9, 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 621 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, § 7, 26 Stat. 289.)

DERIVATION

Act July 17, 1861, ch. 5, § 3, 12 Stat. 259; act Feb. 12, 1862, ch. 20, § 1, 12 Stat. 338; act Feb. 26, 1862, ch. 32, § 1, 12 Stat. 340; act Mar. 27, 1862, ch. 48, § 3, 12 Stat. 370.

COMPARISON

The first sentence of section 4 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 621 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, 12 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, 12 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. § 3600.)

DERIVATION

Acta Mar. 3, 1863, ch. 73, § 2, 12 Stat. 710; June 30, 1864, ch. 172, § 2, 12 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 621 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 621 of this title.

§ 456. Foreign coins.

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

