THE DALY EAGLE

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IN THIS ISSUE: "A LANDMARK DECISION"

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

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

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

Patrick Henry's advice

on the cold war . . .

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

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

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

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

HOUSE OF BURGESSES, VIRGINIA
MARCH, 1775

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

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

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

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

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

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

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

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

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

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

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

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

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

Jerome Daly October 13, 1968

Jerome Daly

February 7, 1969

INTRODUCTION

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

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

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

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

JEROME DALY
SAVAGE, MINNESOTA

OVER

STATE OF MINNESOTA
COUNTY OF SCOTT

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

First National Bank of Montgomery,

Plaintiff,

vs.

JUDGMENT AND DECREE

Jerome Daly,

Defendant.

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

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

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

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

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

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

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

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

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

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

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

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

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

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

7. A 10 day stay is granted.

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

Dated December 9, 1968

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

MEMORANDUM

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

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

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

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

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

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

December 9, 1968

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

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

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

STATE OF MINNESOTA
COUNTY OF SCOTT

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

First National Bank of Montgomery,
Plaintiff,

-vs-

Jerome Daly,
Defendant.

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND JUDGMENT

- - - - -

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

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

Sirs:

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

/s/ Jerome Daly
Jerome Daly
Attorney for himself
[illegible] Street
[illegible]

ORDER

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

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

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

BY THE COURT

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

January 20, 1969

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

JUDGMENT AND DECREE

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

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

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

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

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

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

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

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

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

January 30,1969.

BY THE COURT

Martin V. Mahoney

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

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

An Apparent Banking Paradox?

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

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

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

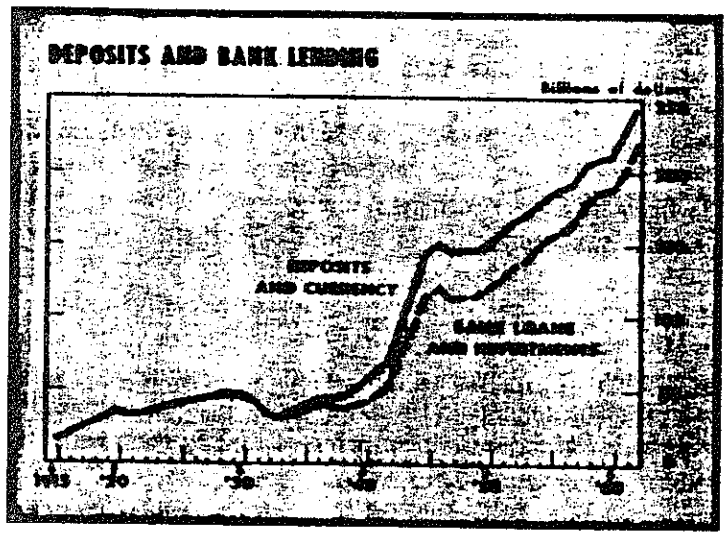
account in favor of various of his creditors who deposit them at their banks. Thus the lending bank is likely to retain or receive back as deposits only a small portion of the money that it lent, while a large portion of the money that is lent by other banks is likely to be brought to it by its customers.

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

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

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

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



Additional Aspects of Bank Credit Expansion

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

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

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

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

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

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

Management of Reserve Balances

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

CHAPTER X

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

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

One of the tasks of the Federal Reserve System is to

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

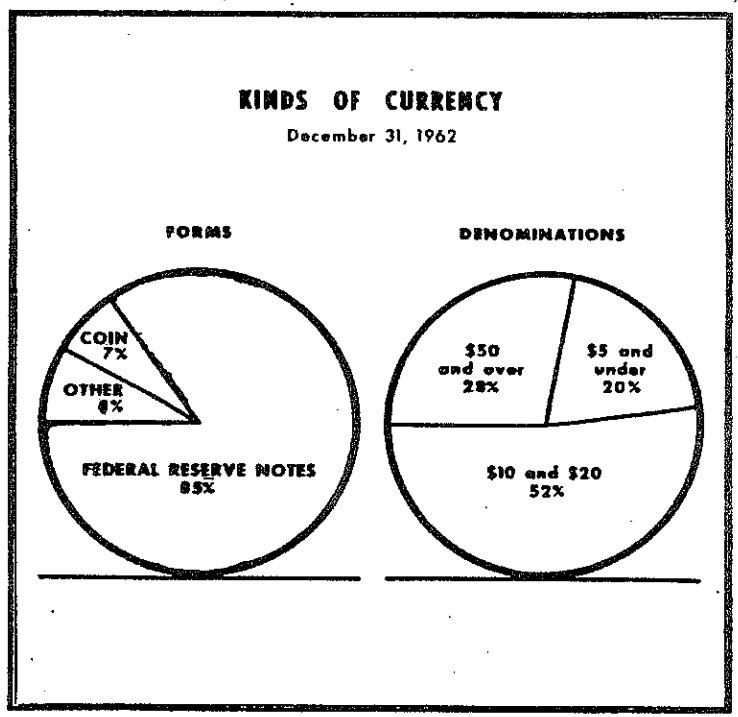
The currency mechanism provided under the Federal Reserve Act has worked satisfactorily: currency moves into and out of circulation automatically in response to an increase or decrease in the public demand. The Treasury, the Federal Reserve Banks, and the thousands of local banks throughout the country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

How Federal Reserve Notes Are Paid Out

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

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

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



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

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

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

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

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

Demand for Currency

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

D. Effect of Totally or Partially Unconstitutional Statutes

1. Total Unconstitutionality

§ 177. Generally.

The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law,[1] but is wholly void,[2] and ineffective for

Del Sordo, 16 NJ 530, 109 A2d 631; Fearon v Treanor, 272 NY 268, 5 NE2d 815, 109 ALR 1229; State v Weddington, 188 NC 13, 125 SE 257, 37 ALR 573; State v Williams, 146 NC 618, 61 SE 61; Daniels v Homer, 139 NC 219, 51 SE 992; State ex rel. Sathre v Board of University & School Lands, 65 ND 687, 262 NW 60; State v First State Bank, 52 ND 231, 202 NW 391; Wilson v Fargo, 48 ND 447, 186 NW 263; U'ren v Bagley, 118 Or 77, 245 P 1074, 46 ALR 1173; Templeton v Linn County, 22 Or 313, 29 P 795; State v Kofines, 33 RI 211, 80 A 432; Beaufort County v Jasper County, 220 SC 469, 68 SE2d 421; Parker v Bates, 216 SC 52, 56 SE2d 723; Gaud v Walker, 214 SC 451, 53 SE2d 316; Rio Grande Lumber Co. v Darke, 50 Utah 114, 167 P 241; Shea v Olson, 185 Wash 143, 53 P2d 615, 111 ALR 998, affd on reh 186 Wash 700, 59 P2d 1183, 111 ALR 1011; Uhden v Greenough, 181 Wash 412, 43 P2d 983, 98 ALR 1181; State v Pitney, 79 Wash 608, 140 P 918; State Road Com. v County Ct. 112 W Va 98, 163 SE 815; Booten v Pinson, 77 W Va 412, 89 SE 985; Van Dyke v Tax Com. 217 Wis 528, 259 NW 700, 98 ALR 1332.

A reasonable doubt in favor of the validity of a statute is enough to sustain it. McLaughlin v Warfield, 180 Md 75, 23 A2d 42.

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

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

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

7. § 146, supra.

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

any purpose;[19] since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it,[21] an unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed.[12] Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted.[13]

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

Tenn 485, 71 SW2d 683, 93 ALR 1483; Peay v Nolan, 157 Tenn 222, 7 SW2d 815, 60 ALR 408; State v Candland, 36 Utah 406, 104 P 285; Miller v State Entomologist (Miller v Schoene) 146 Va 175, 135 SE 813, 67 ALR 197, affd 276 US 272, 72 L ed 568, 48 S Ct 246; Bonnett v Vallier, 136 Wis 193, 116 NW 885.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 178. Protection of rights.

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

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

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

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

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

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

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

8. See § 185, infra.

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

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

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

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

13. § 177, supra.

14. Sumner v Beeler, 50 Ind 341.

This warning has been so phrased as to present the actual concept underlying the utter nullity of an invalid law by a holding to the effect that all persons are held to notice that all statutes are subject to all express and implied applicable provisions of the constitution, and also that should a conflict between a statute and any express or implied provision of the constitution be duly adjudged, the constitution by its own superior force and authority would render the statute invalid from its enactment, and further that the courts have no power to control the effect of the constitution in nullifying a statute that is adjudged to be in conflict with any of the express or implied provisions of the constitution. State ex rel. Nuveen v Greer, 80 Fla 249, 102 So 739, 37 ALR 1298.

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

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

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

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

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

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

[16] See supra, § 2.

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

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

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

Generally as to bank notes as money, see infra, § 9.

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

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

[2] Woodruff v. Mississippi, 162 US 291, 40 L ed 973, 16 S Ct 820.

At one time, shortly after the first issue in this country of notes declared to have the quality of legal tender, it was a common practice of drawers of bills of exchange or checks, or makers of promissory notes, to indicate whether the same were to be paid in gold or silver or in such notes; and the term "current funds" was used to designate any of these, all being current and declared by positive enactment to be legal tender. Ibid.

[3] See supra, § 5.

[4] 27 Ohio Jur pp. 125, 126, § 2.

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

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

Anno: 4 Ann Cas 630.

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

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

Anno: 4 Ann Cas 639.

Bank notes lawfully issued and actually current at par in lieu of coin are treated as money because they flow as such through the channels of trade and commerce without question. Woodruff v. Mississippi, 162 US 291, 40 L ed 973, 16 S Ct 820; Klauber v. Biggerstaff, 47 Wis 551, 3 NW 357, 32 Am Rep 773. Anno: 4 Ann Cas 630.

Bank notes are regarded as money to the extent that they will pass by a bequest of cash. Anno: 52 Am Dec 448.

See also 7 Am Jur 283, BANKS, §§ 400 et seq.

[8] See infra, § 18.

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

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

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

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

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

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

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

[10] State v. Finnegean, 127 Iowa 286, 103 NW 155, 4 Ann Cas 628; State v. Kube, 20 Wis 217, 91 Am Dec 390.

Anno: 4 Ann Cas 630.

See 18 Am Jur 574, EMBEZZLEMENT, § 6; 32 Am Jur 987, LARCENY, § 77.

[11] Hamilton v. State, 60 Ind 193, 28 Am Rep 653.

Anno: 4 Ann Cas 630.

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

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

[14] Howe v. Hartness, 11 Ohio St 449, 78 Am Dec 312; Westfall v. Braley, 10 Ohio St 188, 75 Am Dec 509.

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

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

[17] See infra, § 13.

[18] Allibone v. Ames, 9 SD 74, 68 NW 165, 33 LRA 585; State v. McFetridge, 84 Wis 473, 54 NW 1, 998, 20 LRA 223.

Anno: Ann Cas 1912C 356.

Generally as to the definition and nature of certificates of deposit, see 7 Am Jur 361, BANKS, §§ 491 et seq.

[19] Smith v. Field, 19 Idaho 558, 114 P 668, Ann Cas 1912C 364.

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

III. COINAGE, ISSUANCE, AND REGULATION

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

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

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

§ 13. By States.—By the Constitution of the United States, the several states are prohibited from coining money,[8] emitting bills of credit,[9] or making anything but gold and silver coin a tender in payment of debts.[10] Thus, states have no power to make bank notes legal tender,[11] except in payment of debts and dues owing the state.[12]

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

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

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

[1] See infra, §§ 12 et seq.

[2] See infra, §§ 12 et seq.

[3] See supra, § 5.

[4] See 7 Am Jur 284, Banks, § 402.

[5] Perry v. United States, 294 US 330, 79 L ed 912, 55 S Ct 432, 95 ALR 1335; Norman v. Baltimore & O. R. Co. 294 US 240, 79 L ed 885, 55 S Ct 407, 95 ALR 1352, affirming 265 NY 37, 191 NE 726, 92 ALR 1523; Ling Su Fan v. United States, 218 US 302, 54 L ed 1049, 31 S Ct 21, 30 LRA(NS) 1176; Legal Tender Case, 110 US 421, 28 L ed 204, 4 S Ct 122; United States v. Ballard, 14 Wall.(US) 457, 20 L ed 845; Legal Tender Cases, 12 Wall.(US) 457, 20 L ed 287; Veazie Bank v. Fenno, 8 Wall.(US) 533, 19 L ed 482; United States v. Marigold, 9 How.(US) 560, 13 L ed 257; Federal Land Bank v. Wilmarth, 218 Iowa 339, 252 NW 607, 94 ALR 1338.

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

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

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

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

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

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

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

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

Anno: 31 ALR 246.

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

[9] See infra, § 17.

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

Anno: 31 ALR 246.

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

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

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

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

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

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

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

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

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

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

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

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

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

the same rule has been applied with regard to an option to purchase property at the price offered to the optionor by a third person.[8]

G. Consideration

1. In General; Necessity

§ 85. Generally; definitions and nature of consideration.

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

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

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

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

9. Slaughter v Mallet Land & Cattle Co. (CA5 Tex) 141 F 202, cert den 201 US 646, 50 L ed 903, 26 S Ct 761; Marske v Willard, 69 Ill 276, 40 NE 290; Hayes v O'Brien, 149 Ill 403, 37 NE 73; Levy v Peabody, 230 Mass 264, 130 NE 261; Nu-Way Service Stations v Vandenberg Bros. Oil Co. 283 Mich 551, 278 NW 683; Driebe v Ft. Penn Realty Co. 331 Pa 314, 200 A 62, 117 ALR 1091; Peerless Dept. Stores v George M. Snook Co. 123 W Va 77, 15 SE2d 169, 136 ALR 130; Goerke Motor Co. v Lonergan, 236 Wis 544, 295 NW 671.

Annotation: 136 ALR 139, 140.

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

58 Columbia L Rev 929 et seq.

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

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

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

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

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

15. Wilson v Blair, 65 Mont 155, 211 P 209, 27 ALR 1235; Clements v Jackson County Oil & Gas Co. 61 Okla 247, 161 P 216.

16. Thompson v Thompson, 17 Ohio St 649.

17. Williston, Contracts 3d ed § 110.

18. § 95, infra.

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

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

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

§ 86. Necessity.

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

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

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

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

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

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

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

1. § 102, infra.

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

3. See Seals (1st ed § 13).

4. See Seals (1st ed § 8).

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

6. Uniform Commercial Code § 2–203.

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

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

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

§ 214. Revenue stamps.[3]

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

III. CONSIDERATION

A. In General

§ 215. Generally.

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

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

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

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

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

1. Uniform Commercial Code § 3–113.

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

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

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

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

5. Goodale v Thorn, 199 Cal 307, 249 P 11; Newhall Sav. Bank v Buck, 197 Iowa 732, 197 NW 986; Farmers Sav. Bank v Neel, 193 Iowa 605, 187 NW 555, 21 ALR 1116; Currie-McGraw Co. v Friedman, 135 Miss 701, 100 So 273; Bank of High Hill v Rockey (Mo App) 277 SW 573; Security State Bank v Brown, 110 Neb 237, 193 NW 336.

6. §§ 334 et seq. infra.

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

7. §§ 302 et seq., infra.

8. § 141, supra.

9. §§ 90, 145, 188, 189, supra.

10. §§ 452 et seq., infra.

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

B. What Constitutes

§ 216. Generally.

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

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

11. § 237, infra.

12. See Vol. 12.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 217. Adequacy.

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

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

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

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

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

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

3. Howard v Tarr (CA8 Mo) 261 F2d 561 (applying Ohio law); Moriconi v Flemming, 125 Cal App 2d 742, 271 P2d 182; Re Berbecker, 277 Ill App 201; Kelley, Glover & Vale, Inc. v Heitman, 220 Ind 625, 44 NE2d 981, cert den 319 US 672, 87 L ed 1713, 63 S Ct 1320; Chick v Trevett, 20 Me 462; Greenwood Leflore Hospital Com. v Turner, 213 Miss 200, 56 So 2d 496; Leach v Treber, 164 Neb 419, 82 NW2d 544; County Trust Co. v Mara, 242 App Div 206, 273 NYS 597, affd 266 NY 540, 195 NE 190; First Nat. Bank v Boxley, 129 Okla 159, 264 P 184, 64 ALR 586; Shayne of Miami, Inc. v Greybow, Inc. 232 SC 161, 101 SE2d 486; Ballard v Burton, 64 Vt 387, 24 A 769.

4. Bromfield v Trinidad Nat. Invest. Co. (CA10) 36 F2d 616, 71 ALR 512; Tegtmeyer v Nordlund, 259 Ill App 247; Greenwood Leflore Hospital Com. v Turner, 213 Miss 200, 56 So 2d 496; Coast Nat. Bank v Bloom, 113 NJL 597, 174 A 576, 95 ALR 528; First Nat. Bank v Boxley, 129 Okla 159, 264 P 184, 64 ALR 588; Swanson v Sanders, 75 SD 40, 58 NW2d 809; Barrett v Mahnken, 6 Wyo 541, 48 P 202.

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

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

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

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

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

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

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

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

10. Rauschenbach v McDaniel's Estate, supra.

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

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

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

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

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

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

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

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

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

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

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

17. Smock v Pierson, 68 Ind 405.

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

19. Miller v Finley, 26 Mich 249.

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

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

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

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

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

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

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

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

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

This language has been several times cited with approval.

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

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

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

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

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

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

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

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

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

On the 22d of August, 1868, the Legislature passed an Act which prescribed the mode of laying off the homestead, and setting off the personal property so exempted by the Constitution. On the 7th of April, 1869, another Act was passed, which repealed the prior Act, and prescribed a different mode of doing what the prior Act provided for. This latter Act has not been repealed or modified.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

material, it will be regarded as of no account.

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

We will, however, further examine the subject.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"No sooner did the new government begin its auspicious course than order seemed to arise out of confusion. Commerce and industry awoke, and were cheerful at their labors, for credit and confidence awoke with them. Everywhere was the appearance of prosperity, and the only fear was that its progress was too rapid to consist with the purity and simplicity of ancient manners." Fisher Ames' Works, *supra*, 123.

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

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

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

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

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

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

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

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

Mr. Justice **Clifford**, concurring:

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

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

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

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

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

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

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

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

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

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

Mr. Justice **Hunt.**

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

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

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

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

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

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

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

Cited—96 U. S., 637; 102 U. S., 419; 107 U. S., 233, 750, 798; 108 U. S., 65; 5 Dill., 193, 213, 215, 418; 1 McCrary, 527; 66 Ind., 408, 509.

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

v.

HORATIO D. VANSYCLE.

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

Missouri Constitution—estoppel as to county bonds.

1. The section of the Constitution of Missouri relating to municipal subscriptions, is a limitation upon the future power of the Legislature, and was ling application to laws in existence when the Constitution was adopted.

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

[No. 216.]

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

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

Statement by Mr. Justice **Harlan.**

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

Each bond contained these recitals:

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

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

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

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

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

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

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

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

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

L. O. COOKE v. SAMUEL G. IVERSON

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Reported in 122 N.W. 251

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

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

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

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

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

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

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

63 Minnesota Reports

P. 147

Reported in 65 N.W. 262

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

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

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

ABOLISHMENT OF HOME OWNERS' LOAN CORPORATION

For dissolution and abolishment of the Home Owners' Loan Corporation, referred to in the section, by act June 30, 1953, ch. 170, § 21, 67 Stat. 126, see note under section 1469 of this title

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

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

TRANSFER OF FUNCTIONS

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

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

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

FEDERAL RESERVE NOTES

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

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

REFERENCES IN TEXT

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

CODIFICATION

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

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

AMENDMENTS

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

CHANGE OF NAME

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

CROSS REFERENCES

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

§ 412. Application for notes; collateral required.

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

CODIFICATION

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

AMENDMENTS

1946—Act of June 12, 1945, substituted ", or direct obligations of the United States." for proviso following "gold certificates" in first sentence which limited period during which direct obligations of the United States could be accepted as collateral security.

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

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

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

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

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

CODIFICATION

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

AMENDMENTS

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

CHANGE OF NAME

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

TRANSFER OF FUNCTIONS

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

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

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

REFERENCES IN TEXT

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

AMENDMENTS

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

CHANGE OF NAME

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

TRANSFER OF FUNCTIONS

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

CROSS REFERENCES

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

§ 418. Printing of notes; denomination and form.

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

REFERENCES IN TEXT

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

CODIFICATION

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

AMENDMENTS

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

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Secretary of the Treasury, made by 1950 Reorg. Plan No. 26, § 1, eff. July 31, 1950, 15 F. R. 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 depositary or mint of the United States nearest the place of business of each Federal reserve bank and shall be held for the use of such bank subject to the order of the Comptroller of the Currency for their delivery, as provided by this chapter. (Dec. 23, 1913, ch. 6, § 16, 38 Stat. 267; May 29, 1920, ch. 214, § 1, 41 Stat. 654.)

REFERENCES IN TEXT

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

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CODIFICATION

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

EXCEPTION AS TO TRANSFER OF FUNCTIONS

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

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

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

REFERENCES IN TEXT

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

CODIFICATION

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

CHANGE OF NAME

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

EXCEPTION AS TO TRANSFER OF FUNCTIONS

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

§ 421. Examination of plates and dies.

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

REFERENCES IN TEXT

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

CODIFICATION

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

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

Section, act Dec. 23, 1913, ch. 6, § 16, 38 Stat. 267, made permanent appropriations for printing notes besides authorizing the use of certain printing stock on hand December 23, 1913. See section 728 (b) of Title 31, Money and Finance.

CIRCULATING NOTES AND BONDS SECURING SAME

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

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

CODIFICATION

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

TRANSFER OF FUNCTIONS

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

§ 442. Purchase of bonds by reserve banks.

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

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

CODIFICATION

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

DERIVATION

Act Feb. 21, 1857, ch. 56, § 2, 11 Stat. 160.

CROSS REFERENCES

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

§ 457. Gold coins of United States.

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

DERIVATION

Act Feb. 12, 1873, ch. 131, § 14, 17 Stat. 428.

CROSS REFERENCES

Acquisition and use of gold in violation of law to subject the gold to forfeiture and subject person to penalty equal to twice the value of the gold, see section 443 of this title.

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

Gold coinage discontinued and existing gold coins withdrawn from circulation, see section 315b of this title.

Provisions requiring obligations to be payable in gold declared against public policy, see section 463 of this title.

§ 458. Standard silver dollars; paid in silver.

Silver dollars coined under the Act of February 28, 1878, ch. 20, 20 Stat. 25, 26, together with all silver dollars coined by the United States, of like weight and fineness prior to the date of such Act, shall be a legal tender, at their nominal value, for all debts and dues public and private, except where otherwise expressly stipulated in the contract. But nothing in this section shall be construed to authorize the payment in silver of certificates of deposit issued under the provisions of sections 428 and 429 of this title. (Feb. 28, 1878, ch. 20, § 1, 20 Stat. 25.)

CODIFICATION

Section is from the first section of the Bland-Allison Coinage of Silver Act.

Portions of the original text omitted here provided for the coinage of silver dollars of the weight of 412½ grains Troy of standard silver with the devices and superscriptions provided by act Jan. 18, 1837, ch. 3, 5 Stat. 137; and for the purchase of bullion to be coined into silver dollars. The provision for the purchase of bullion was repealed by act July 14, 1890, ch. 708, § 6, 26 Stat. 289. The provision for the coinage of silver dollars was omitted as superseded or obsolete.

CROSS REFERENCES

All coins and currencies of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and banking associations, to be legal tender for payment of public debts, public charges, taxes, duties, and dues, see sections 462 and 463 of this title.

Obligations payable in any coin or currency which at the time is a legal tender notwithstanding a provision for payment in a particular kind of coin or currency, see section 463 of this title.

§ 459. Subsidiary silver coins.

The silver coins of the United States in existence June 9, 1879, of smaller denominations than $1 shall be a legal tender in all sums not exceeding $10 in full payment of all dues public and private. (June 9, 1879, ch. 12, § 3, 21 Stat. 2.)

CODIFICATION

Prior to its incorporation into the Code, this section read as follows: "The present silver coins of the United States of smaller denominations than one dollar shall hereafter be a legal tender in all sums not exceeding ten dollars in full payment of all dues public and private."

The twenty-cent piece, the coinage of which was authorized by act Mar. 3, 1875, ch. 143, § 1, 18 Stat. 478, was made a legal tender at its nominal value for any amount not exceeding five dollars in any one payment, by section 3 of that act. The act was repealed by act May 3, 1878, ch. 79, 20 Stat. 47.

CROSS REFERENCES

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

§ 460. Minor coins.

The minor coins of the United States shall be a legal tender, at their nominal value for any amount not exceeding 25 cents in any one payment. (R. S. § 3587.)

DERIVATION

Act Feb. 12, 1873, ch. 131, § 16, 17 Stat. 427.

CROSS REFERENCES

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

§ 461. Commemorative coins.

CODIFICATION

Section, making certain enumerated commemorative coins legal tender, is omitted as executed in view of section 376a of this title discontinuing coinage and issuance of commemorative coins under acts enacted prior to Mar. 1, 1939.

Section was from acts Apr. 13, 1904, ch. 1353, § 6, 33 Stat. 178; June 1, 1916, 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. 1353; Feb. 2, 1922, ch. 46, 42 Stat. 362; Jan. 24, 1923, ch. 55, § 1, 42 Stat. 1172; Feb. 26, 1923, ch. 113, § 1, 42 Stat. 1267; Mar. 17, 1924, ch. 56, § 1, 43 Stat. 23; Jan. 14, 1925, ch. 72, § 5, 43 Stat. 749; Feb. 24, 1925, ch. 302, §§ 1—3, 43 Stat. 965, 966; Mar. 3, 1925, ch. 482, § 4, 43 Stat. 1264; May 17, 1926, ch. 307, § 1, 44 Stat. 569; Mar. 7, 1928, ch. 135, § 1, 45 Stat. 198; June 15, 1933, ch. 82, § 1, 48 Stat. 149; May 9, 1934, ch. 265, §§ 1—4, 48 Stat. 779; May 14, 1934, ch. 286, §§ 1—3, 48 Stat. 776; May 26, 1934, ch. 353, §§ 1—4, 48 Stat. 807; June 21, 1934, ch. 695, §§ 1—4, 48 Stat. 1200; May 2, 1935, ch. 88, §§ 1—5, 49 Stat. 165, 166; May 3, 1935, ch. 90, §§ 1—4, 49 Stat. 174; June 8, 1935, ch. 176, 49 Stat. 324; Mar. 18, 1936, ch. 149, §§ 1—5, 49 Stat. 1165; Mar. 20, 1936, ch. 164, §§ 1—3, 49 Stat. 1187; Apr. 13, 1936, ch. 212, §§ 1—3, 49 Stat. 1205; May 5, 1936, ch. 300, §§ 1—3, 49 Stat. 1287; May 5, 1936, ch. 304, §§ 1—3, 49 Stat. 1289; May 6, 1936, ch. 331, §§ 1—3, 49 Stat. 1362, 1363; May 15, 1936, ch. 399, §§ 1—3, 49 Stat. 1376; May 15, 1936, ch. 402, §§ 1—3, 49 Stat. 1277, 1278; May 18, 1936, ch. 405, §§ 1—3, 49 Stat. 1353, 1363; May 28, 1936, ch. 466, §§ 1—3, 49 Stat. 1387, 1388; June 18, 1936, ch. 583, §§ 1—3, 49 Stat. 1522; June 18, 1936, ch. 584, §§ 1—3, 49 Stat. 1523; June 18, 1936, ch. 585, §§ 1—3, 49 Stat. 1524; June 24, 1936, ch. 760, §§ 1—3, 49 Stat. 1911; June 26, 1936, ch. 835, §§ 1—3, 49 Stat. 1972; June 26, 1936, ch. 837, §§ 1—3, 49 Stat. 1973; June 24, 1937, ch. 377, §§ 1—3, 50 Stat. 306; June 28, 1937, ch. 384, §§ 1—3, 50 Stat. 322, 323.

§ 462. Coins and currencies.

All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single

many cases the absence of authority affords a strong presumption against its having any legal foundation.[14]

§ 50. Actions contrary to public policy and practical considerations.

It does not follow, from the general statement that there is no wrong without a remedy, that a remedy is always obtainable in the courts.[15] Indeed, it is not sufficient for the maintenance of an action to remedy a supposed wrong that a technical right of action exists, unless it is at the same time practical, and in the interest of sound government to permit the action to prevail.[16] Practical considerations must at times determine the bounds of correlative rights and duties and the point beyond which the courts will decline to impose legal liability.[17] Thus, because of their legal unity, actions between husband and wife were ordinarily barred at common law;[18] and considerations of public policy forbid the bringing of actions against the state or its subdivisions, except with its consent.[19] The maxim that there is no wrong without a remedy is not applicable to acts which the written law has declared to be rightful,[20] especially things not malum in se, authorized by a valid act of the legislature and performed with due care and skill in strict conformity with the provisions of the act.[1] Public policy also forbids the maintenance of any suit in a court of justice, the trial of which would inevitably lead to the disclosure of matters which the law itself regards as confidential, and respecting which it will not allow the confidence to be violated.[2]

§ 51. Actions based upon plaintiff's wrongful, illegal, or immoral acts or conduct.

It is universally recognized that any conduct or any contract of an illegal, vicious, or immoral nature cannot be the proper basis for a legal or equitable proceeding,[3] and the parties will be left in the dilemma which they themselves devised.[4] The law does not permit one to profit by his own fraud or take advantage of his own wrong or found any claim on his own iniquity or acquire property by his own wrong,[5] and no court, particularly a court of equity,[6] will lend its aid to a party who grounds his action upon an immoral or illegal act[7]

14. Shearman v Folland (Eng) [1950] 2 KB 43, 18 ALR2d 652.

15. Pacific Steam Whaling Co. v United States, 187 US 447, 47 L ed 253, 23 S Ct 154.

16. Robertson v New Orleans & G. N. R. Co. 158 Miss 24, 129 So 100, 69 ALR 1180.

17. Comstock v Wilson, 257 NY 231, 177 NE 431, 76 ALR 676.

18. See HUSBAND AND WIFE (1st ed § 584).

19. See STATES, TERRITORIES, AND DEPENDENCIES (1st ed § 91).

20. Pietsch v Milbrath, 123 Wis 647, 101 NW 388, 102 NW 342.

1. Frazer v Chicago, 186 Ill 480, 57 NE 1055.

2. Totten v United States, 92 US 105, 23 L ed 605.

3. Miller v Miller (Ky) 296 SW2d 684, 65 A. Robenson v Yann, 224 Ky 56, 5 SW2d 271; Piechowiak v Bissell, 305 Mich 486, 9 NW2d 685.

5. Davis v Brown, 94 US 423, 24 L ed 204; Union Bank v Stafford, 12 How (US) 327, 13 L ed 1008; Watts v Malatesta, 262 NY 80, 186 NE 210, 88 ALR 1072; Riggs v Palmer, 115 NY 506, 22 NE 188; Byers v Byers, 223 NC 85, 25 SE2d 466; Merit v Losey, 194 Or 89, 240 P2d 933; Smith v Germania F. Ins. Co. 102 Or 569, 202 P 1088, 19 ALR 1444; Slater v Slater, 365 Pa 321, 74 A2d 179; Langley v Devlin, 95 Wash 171, 163 P 395, 4 ALR 32.

Hyams v Stuart King [1908] 2 KB (Eng) 696 (CA).

6. Finnie v Walker (CA2) 257 F 698, 5 ALR 831.

7. The Florida (Collins v The Florida) 101 US 37, 25 L ed 898; Hunter v Wheate, 53 App DC 206, 289 F 604, 31 ALR 980; Western U. Teleg. Co. v McLaurin, 108 Miss 273, 66 So 739; Pennington v Todd, 47 NJ Eq

or an illegal contract,[8] or whose conduct in connection with the transaction upon which his claim is based is illegal or criminal.[9] No action can be founded upon acts which constitute a violation of criminal or penal laws of the state[10] or upon one's own dishonest, fraudulent,[11] or tortious act or conduct,[12] or upon his own moral turpitude.[13] Hence, an action will not lie to recover money or property which is the fruit of an employment involving a violation of law,[14] where a recovery would have to be based on the illegal contract,[15] or to recover back the consideration given for the maintenance of illicit relations with the defendant.[16]

§ 52. — Where parties are in pari delicto.

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

8. Standard Oil Co. v Clark (CA2 NY) 163 F2d 917, cert den 333 US 873, 92 L ed 1149, 68 S Ct 901, 902.

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

There is no recorded instance where a court of law or of equity has given aid or comfort to one wrongdoer against his fellow wrongdoer seeking a division of the loot. Piechowiak v Bissell, 305 Mich 486, 9 NW2d 685.

10. Capps v Postal Teleg.-Cable Co. 197 Miss 118, 19 So2d 491; Desmet v Sublett, 54 NM 355, 225 P2d 141; Lloyd v North Carolina R. Co., 151 NC 536, 66 SE 604; Stevens v Hallmark (Tex Civ App) 109 SW 2d 1106.

11. Picture Plays Theatre Co. v Williams, 75 Fla 556, 78 So 674, 1 ALR 1; D. I. Felsenthal Co. v Northern Assur. Co. 284 Ill 343, 120 NE 268, 1 ALR 602; Baltimore & O. S. W. R. Co. v Evans, 169 Ind 410, 82 NE 773.

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

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

14. Boylston Bottling Co. v O'Neill, 231 Mass 498, 121 NE 411, 2 ALR 902; Woodson v Hopkins, 85 Miss 171, 37 So 1000, 38 So 298; Buck v Albee, 26 Vt 184; Lemon v Grosskopf, 22 Wis 447.

Annotation: 2 ALR 906.

15. Hill v Freeman, 73 Ala 200; Monatt v Parker, 30 La Ann 585; Otis v Freeman, 199 Mass 160, 85 NE 168; Platt v Elias, 186 NY 374, 79 NE 1; Denton v English, 11 SCL (2 Nott & M'C) 581; Lanham v Meadows,

16. Western U. Teleg. Co. v McLarvin, 10 Miss 273, 66 So 739.

17. Grapico Bottling Co. v Ennis, 140 Mi 502, 106 So 97, 44 ALR 124.

18. Hunter v Wheate, 53 App DC 206, 2 F 604, 31 ALR 980; Kearney v Webb, 27 Ill 17, 115 NE 844, 3 ALR 1631; Re Brow 147 Kan 395, 76 P2d 857, 116 ALR 101 (holding that such rule does not apply whe the one complained of is an official of t court, who seeks to retain to his own u certain moneys he acquired by his official mi conduct); Bowlan v Lunsford, 176 Okla 11 54 P2d 666 (plaintiff attempting to recov damages from a man who induced her to su mit to an operation which produced an abo tion where she was of full age and volunta ily consented to the operation); Gulf, C. & S F. R. Co. v Johnson, 71 Tex 619, 9 SW 60

A court will not extend aid to either of t parties to a criminal act or listen to the complaints against each other, but will lea them where their own act has placed the Stone v Freeman, 298 NY 268, 82 NE 571, 8 ALR2d 304.

19. Ring v Spina (CA2 NY) 148 F2d 6 160 ALR 371; Reilly v Clyne, 27 Ariz 43 234 P 35, 40 ALR 1005; Berka v Woodwar 125 Cal 119, 57 P 777; Western U. Tel. C v Yopst, 118 Ind 248, 20 NE 222; Grapi Bottling Co. v Ennis, 140 Miss 502, 106 97, 44 ALR 124; Short v Bullion-Beck C. Min. Co. 20 Utah 20, 57 P 720; Rolle Murray, 112 Va 780, 72 SE 665.

Major v Canadian P. R. Co. 51 Ont L R 370, 67 DLR 341, affd 64 Can SC 367, DLR 242.

That which one promises to give for illegal or immoral consideration he can be compelled to give, and that which he given on such a consideration he cannot cover. Platt v Elias, 186 NY 374, 79

commonplace maxim that where parties are equally in wrong the courts will not give one legal redress against the other but will leave them where it finds them.[1] Neither law nor equity interferes to relieve either of the persons who engage in fraudulent transactions, against the other from the consequences of their own misconduct.[2]

Some courts have applied the rule in pari delicto to transactions with a public officer or an official of the court,[3] but most take the position that the rule does not apply to prevent maintenance of an action against public officers for the recovery of money acquired by official misconduct.[4]

However, illegality is no defense when merely collateral to the cause of action sued on;[5] one offender against the law cannot set up as a defense to an action the fact that plaintiff was also an offender, unless the parties were engaged in the same illegal transaction. It is only in such a case that the maxim, "in pari delicto potior est conditio defendentis et possidentis," applies,[6] and not even then when the plaintiff's unlawful participation was innocent, being induced by the fraud of the defendant on which the action is based.[7] Nor will a plaintiff be barred of his action against the defendant by the fact that he has done a wrong to a third person.[8] Moreover, courts will grant relief against present wrongs and to enforce existing rights, although the property involved was acquired by some past illegal act.[9] It is generally agreed, although there is authority to the contrary,[10] that one who has entrusted another with money or property for an illegal use or purpose may maintain an action to recover such property or money so long as it has not been used by the person to whom it was given.[11]

There can be no recovery as between the parties on a contract made in violation of a statute, the violation of which is prohibited by a penalty, although the statute does not pronounce the contract void or expressly prohibit the same. Sandage v Studebaker Bros. Mfg. Co. 142 Ind 148, 41 NE 380.

Although a man may contract that a future event may come to pass over which he has no, or only a limited, power, including contracts for the conveyance of land that he does not own, an agreement that on its face requires an illegal act, either of the contractor or a third person, no more imposes a liability to damages for nonperformance than it creates an equity to compel the contractor to perform. Sage v Hampe, 235 US 99, 59 L ed 147, 35 S Ct 94.

20. Ford v Caspers (CA7 Ill) 128 F2d 884; Duncan v Dazey, 318 Ill 500, 149 NE 495.

1. Clark v United States, 102 US 322, 26 L ed 181; Re Brown's Estate, 147 Kan 395, 76 P2d 857, 116 ALR 1012; Smith v Smith, 68 Nev 10, 226 P2d 279.

Annotation: 116 ALR 1018.

2. Ford v Caspers (CA7 Ill) 128 F2d 884.

3. *Annotation:* 116 ALR 1019, 1023.

4. Re Sylvester, 195 Iowa 1329, 192 NW 442, 30 ALR 180; Re Brown's Estate, 147 Kan 395, 76 P2d 857, 116 ALR 1012; Berman v Coakley, 243 Mass 348, 137 NE 667, 26 ALR 92.

Annotation: 116 ALR 1023-1031.

5. Loughran v Loughran, 292 US 216, 78 L ed 1219, 54 S Ct 684, reh den 292 US 615, 78 L ed 1474, 54 S Ct 861.

6. Wallace v Cannon, 38 Ga 199.

7. Doe ex dem. Hutchinson v Horn, 1 Ind 363; Jekshewitz v Groswald, 265 Mass 413, 164 NE 609, 62 ALR 525; Cooper v Cooper, 147 Mass 370, 17 NE 892; Sears v Wegner, 150 Mich 388, 114 NW 224; Blossom v Barrett, 37 NY 434; Morrill v Palmer, 68 Vt 1, 33 A 829; Pollock v Sullivan, 53 Vt 507.

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

8. Langley v Devlin, 95 Wash 171, 163 P 395, 4 ALR 32; Matta v Katsoulas, 192 Wis 212, 212 NW 261, 50 ALR 291.

9. Loughran v Loughran, 292 US 216, 78 L ed 1219, 54 S Ct 684, reh den 292 US 615, 78 L ed 1474, 54 S Ct 861.

10. Lancaster v Ames, 103 Me 87, 68 A 533; Stone v Freeman, 298 NY 268, 82 NE2d 571, 8 ALR2d 304.

Annotation: 8 ALR2d 314, § 3; 316, § 4.

11. Okeechobee County v Nuveen (CA5 Fla) 145 F2d 684, cert den 324 US 881, 89 L ed 1432, 65 S Ct 1028; Kearney v Webb, 278 Ill 17, 115 NE 844, 3 ALR 1631; Ware v Spinney, 76 Kan 289, 91 P 787.

Annotation: 8 ALR2d 312, § 3; 317, § 5.

VIII. DEPARTMENTAL SEPARATION OF GOVERNMENTAL POWERS

A. In General

§ 210. Principle of separation, generally.

In considering the nature of any government, it must be remembered that the power existing in every body politic is an absolute despotism; in constituting a government, the body politic distributes that power as it pleases and in the quantity it pleases, and imposes what checks it pleases upon its public functionaries. The natural and necessary distribution of that power, with respect to individual security, is into legislative, executive, and judicial departments. It is obvious, however, that every community may make a perfect or imperfect separation and distribution of that power at its will.[1]

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

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

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

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

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

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

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

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

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

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

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

— pilotage. See Shipping.

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

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

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

And see § 150, supra.

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

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

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

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

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

5. O'Donoghue v United States, 289 US 516, 77 L ed 1356, 53 S Ct 740; Springer v Philippine Islands, 277 US 189, 72 L ed 845, 48 S Ct 480; J. W. Hampton Jr., & Co. v United States, 276 US 394, 72 L ed 624, 48 S Ct 348; Evans v Gore, 253 US 245, 64 L ed 887, 40 S Ct 550, 11 ALR 519; Kilbourn v Thompson, 103 US 168, 26 L ed 377; Fox v McDonald, 101 Ala 51, 13 So 416; Hawkins v Governor, 1 Ark 570; Denver v Lynch, 92 Colo 102, 18 P2d 907, 86 ALR 907; Stockman v Leddy, 55 Colo 24, 129 P 220; Norwalk Street R. Co.'s Appeal, 69 Conn 576, 37 A 1080, 38 A 708; Florida Nat. Bank of Jacksonville v Simpson (Fla) 59 So 2d 751, 33 ALR2d 581; Burnett v Green, 97 Fla 1007, 122 So 570, 69 ALR 244; Re Speer, 53 Idaho 293, 23 P2d 239, 88 ALR 1006; People v Kelly, 347 Ill 221, 179 NE 898, 80 ALR 890; People ex rel. Rusch v White, 334 Ill 465, 166 NE 100, 64 ALR 1006; Greenfield v Russel, 292 Ill 392, 127 NE 102, 9 ALR 1334; Ellingham v Dye, 178 Ind 336, 99 NE 1, error dismd 231 US 250, 58 L ed 206, 34 S Ct 92; Overshiner v State, 156 Ind 187, 59 NE 468; Parker v State, 135 Ind 534, 35 NE 179; State v Barker, 116 Iowa 96, 89 NW 204; Harris v Allegany County, 130 Md 488, 100 A 733; Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059; Anway v Grand Rapids R. Co. 211 Mich 592, 179 NW 350, 12 ALR 26; People v Dickerson, 164 Mich 148, 129 NW 199; Veto Case, 69 Mont 325, 222 P 428, 35 ALR 592; Searle v Yensen, 118 Neb 835, 226 NW 464, 69 ALR 257; Tyson v Washington County, 78 Neb 211, 110 NW 634; Saratoga Springs v Saratoga Gas, E. L. & P. Co. 191 NY 123, 83 NE 693; State ex rel. Atty.-Gen. v Knight, 169 NC 333, 85 SE 418; Re Minneapolis, St. P. & S. Ste. M. R. Co. 30 ND 221, 152 NW 513; State v Blaisdell, 22 ND 86, 132 NW 769; Riley v Carter, 165 Okla 262, 25 P2d 666, 88 ALR 1018; Simpson v Hill, 128 Okla 269, 263 P 635, 56 ALR 706; Baskin v State, 107 Okla 272, 232 P 338, 40 ALR 941; Wilson v Philadelphia School Dist. 328 Pa 225, 195 A 90, 113 ALR 1401; State ex rel. Richards v Whisman, 36 SD 260, 154 NW 707, error dismd 241 US 643, 60 L ed 1218, 36 S Ct 449; Langever v Miller, 124 Tex 80, 76 SW2d 1025, 96 ALR 836; Trimmier v Carlton, 116 Tex 572, 296 SW 1070; Peterson v Grayce Oil Co. (Tex Civ App) 37 SW2d 367, affd 128 Tex 550, 98 SW2d 781; Kimball v Grantsville City, 19 Utah 368, 57 P 1; Sabre v Rutland R. Co. 86 Vt 347, 85 A 693; State v Huber, 129 W Va 198, 40 SE2d 11, 168 ALR 808; State v Thompson, 149 Wis 488, 137 NW 20.

Annotation: 3 ALR 451; 69 ALR 266.

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

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

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

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

Annotation: 69 ALR 266.

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

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

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

The difference between the departments is that the legislature makes, the executive executes, and the judiciary construes, the law; but the maker of the law may commit something to the discretion of the other departments. Wayman v Southard, 10 Wheat (US) 1, 6 L ed 253.

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

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

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

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

10. § 213, infra.

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

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

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

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

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

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

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

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

17. Porter v Investors' Syndicate, 287 US 346, 77 L ed 354, 53 S Ct 132 (Montana Constitution); Abbott v McNutt, 218 Cal 225, 22 P2d 510, 89 ALR 1109; Re Battelle, 207 Cal 227, 277 P 725, 65 ALR 1497; Denver v Lynch, 92 Colo 102, 18 P2d 907, 86 ALR 907; Stockman v Leddy, 55 Colo 24, 129 P 220; Burnett v Greene, 97 Fla 1007, 122 So 570, 69 ALR 244; State v Atlantic Coast Line R. Co. 56 Fla 617, 47 So 969; Re Speer, 53 Idaho 293, 23 P2d 239, 88 ALR 1006; Winter v Barrett, 352 Ill 441, 186 NE 113, 89 ALR 1398; People v Kelly, 347 Ill 221, 179 NE 898, 80 ALR 890; People ex rel. Rusch v White, 334 Ill 465, 166 NE 100, 64 ALR 1006; State v Shumaker, 200 Ind 716, 164 NE 408, 63 ALR 218; State v Barker, 116 Iowa 96, 89 NW 204; Rouse v Johnson, 234 Ky 473, 28 SW2d 745, 70 ALR 1077; State ex rel. Young v Butler, 105 Me 91, 73 A 560; Harris v Allegany County, 130 Md 488, 100 A 733; Re Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059; American State Bank v Jones, 184 Minn 498, 239 NW 144, 78 ALR 770; University of Mississippi v Waugh, 105 Miss 623, 62 So 82 affd 237 US 589, 59 L ed 1131, 35 S Ct 720; State v J. J. Newman Lumber Co. 10 Miss 802, 59 So 923; State ex rel. Hadley v Washburn, 167 Mo 680, 67 SW 592; State v Field, 17 Mo 529; Searle v Yensen, 118 Neb 835, 226 NW 464, 69 ALR 257; Follmer v State, 94 Neb 217, 142 NW 908; Tyson v Washington County, 78 Neb 211, 110 NW 634; State v Roy, 40 NM 397, 60 P2d 646, 110 ALR 1; State ex rel. Duchek v Watland, 51 ND 710, 201 NW 680, 39 ALR 1169; Riley v Carter, 165 Okla 262, 25 P2d 666, 88 ALR 1018; Simpson v Hill, 128 Okla 269, 263 P 635, 56 ALR 706; Hopper v Oklahoma County, 43 Okla 288, 143 P 4; Macartney v Shipherd, 60 Or 133, 117 P 814; State v George, 22 Or 142, 29 P 356; Biggs v McBride, 17 Or 640, 21 P 878; Langever v Miller, 124 Tex 80, 76 SW2d 1025, 96 ALR 836; Union Cent. L. Ins Co. v Chowning, 86 Tex 654, 26 SW 982; State v Mounts, 36 W Va 179, 14 SE 407; Public Serv. Com. v Grimshaw, 49 Wyo 158, 53 P2d 1, 109 ALR 534. See also State ex rel. Duchek v Watland, 51 ND 710, 201 NW 680, 39 ALR 1169.

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

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

Annotation: 69 ALR 266; 89 ALR 1114, 15; 79 L ed 476.

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

18. Porter v Investors' Syndicate, 287 US 346, 77 L ed 354, 53 S Ct 132 (Montana Constitution); Montgomery v State, 231 Ala 1, 163 So 365, 101 ALR 1391; Hawkins v Governor, 1 Ark 570; Abbott v McNutt, 218 Cal 225, 22 P2d 510, 89 ALR 1109; Re Battelle, 207 Cal 227, 277 P 725, 65 ALR 1497; Denver v Lynch, 92 Colo 102, 18 P2d 907, 86 ALR 907; Stockman v Leddy, 55 Colo 24, 129 P 220; Florida Nat. Bank of Jacksonville Simpson (Fla) 59 So 2d 751, 33 ALR2d 41; Burnett v Greene, 97 Fla 1007, 122 So 70, 69 ALR 244; Singleton v State, 38 Fla 297, 21 So 21; Re Speer, 53 Idaho 293, 23 P 2d 239, 88 ALR 1086; Winter v Barrett, 352 Ill 441, 186 NE 113, 89 ALR 1398; People v Kelly, 347 Ill 221, 179 NE 898, 80 ALR 890; Fergus v Marks, 321 Ill 510, 152 NE 557, 46 ALR 960; State v Shumaker, 200 Ind 716, 164 NE 408, 63 ALR 218; State v Noble, 118 Ind 350, 21 NE 244; Rouse v Johnson, 234 Ky 473, 28 SW2d 745, 70 ALR 1077; Re Dennett, 32 Me 508; Harris v Allegany County, 130 Md 488, 100 A 733; Re Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059; American State Bank v Jones, 184 Minn 498, 239 NW 144, 78 ALR 770; State ex rel. Hadley v Washburn, 167 Mo 680, 67 SW 592; Searle v Yensen, 118 Neb 835, 226 NW 464, 69 ALR 257; Follmer v State, 94 Neb 217, 142 NW 908; State v Roy, 40 NM 397, 60 P2d 646, 110 ALR 1; Riley v Carter, 165 Okla 262, 25 P2d 666, 89 ALR 1010; Simpson v Hill, 128 Okla 269, 263 P 635, 56 ALR 706; Hopper v Oklahoma County, 43 Okla 288, 143 P 4; Union Cent. L. Ins. Co. v Chowning, 86 Tex 654, 26 SW 982; Kimball v Grantsville City, 19 Utah 368, 57 P 1; Public Serv. Com. v Grimshaw, 49 Wyo 158, 53 P2d 1, 109 ALR 534.

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

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

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

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

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

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

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

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

§ 212. — Importance of principle.

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

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

Annotation: 67 ALR 740.

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

Annotation: 79 L ed 476.

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

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

4. Springer v Philippine Islands, 277 US 189, 72 L ed 845, 48 S Ct 480 (Federal Constitution); State v Brill, 100 Minn 499, 111 NW

294, 639; Zanesville v Zanesville Tel. & Tel. Co. 64 Ohio St 67, 59 NE 781; Kimball v Grantsville City, 19 Utah 368, 57 P 1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. § 214, infra.

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

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

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

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

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

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

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

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

It is particularly essential that the respective branches of the government keep within the powers assigned to each by the constitution. Lichter v United States, 334 US 742, 92 L ed 1694, 68 S Ct 1294, reh den 335 US 836, 93 L ed 389, 69 S Ct 11.

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

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

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

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

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

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

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

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

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

Annotation: 153 ALR 522.

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

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

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

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

§ 213. Independence of separate departments.

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

C. Judicial Powers

1. In General

§ 219. Generally.[1]

The power to maintain a judicial department is an incident to the sovereignty of each state.[2] Under the doctrine of the separation of the powers of government,[3] judicial power, as distinguished from executive and legislative power, is vested in the courts as a separate magistracy.[4]

The judiciary is an independent department of the state and of the federal government, deriving none of its judicial power from either of the other departments. This is true although the legislature may create courts under the provisions of the constitution. When a court is created, the judicial power is conferred by the constitution, and not by the act creating the court.[5] It was said at an early period in American law that the judicial power in every well-organized government ought to be coextensive with the legislative power so far, at least, as private rights are to be enforced by judicial proceedings.[6] The rule is now well settled that under the various state governments, the constitution confers on the judicial department all the authority necessary to exercise powers as a co-ordinate department of the government.[7] Moreover, the independence of the judiciary is the means provided for maintaining the supremacy of the constitution.[8]

In a general way the courts possess the entire body of judicial power. The other departments cannot, as a general rule, properly assume to exercise any part of this power,[9] nor can the constitutional courts be hampered or limited in the discharge of their functions by either of the other two branches.[10]

1. Discussed at this point is the judicial power in its constitutional relationship to the other powers of government. A broad discussion of judicial power, generally, will be found in the article, Courts.

Hoxie v New York, N. H. & H. R. Co. 82 Conn 352, 73 A 754.

2. § 210, supra.

3. Brydonjack v State Bar, 208 Cal 439, 281 P 1018, 66 ALR 1507; Norwalk Street R. Co.'s Appeal, 69 Conn 576, 37 A 1080, 38 A 708; Brown v O'Connell, 36 Conn 432; Burnett v Green, 97 Fla 1007, 122 So 570, 69 ALR 244; Ex parte Earman, 85 Fla 297, 95 So 755, 31 ALR 1226; State v Shumaker, 200 Ind 623, 157 NE 769, 162 NE 441, 163 NE 272, 58 ALR 954; State v Denny, 118 Ind 382, 21 NE 252; Flournoy v Jeffersonville, 17 Ind 69; Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059; American State Bank v Jones, 184 Minn 490, 239 NW 144, 78 ALR 770.

4. Brown v O'Connell, 36 Conn 432; Norwalk Street R. Co.'s Appeal, 69 Conn 576, 37 A 1030, 38 A 708; Parker v State, 135 Ind 534, 35 NE 179; Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1059.

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

6. Opinion of Justices, 279 Mass 607, 180 NE 725, 81 ALR 1509.

7. Riley v Carter, 165 Okla 262, 25 P2d 666, 88 ALR 1018.

8. State v Noble, 118 Ind 350, 21 NE 244; Attorney General ex rel. Cook v O'Neill, 280 Mich 649, 274 NW 445; Washington-Detroit Theatre Co. v Moore, 249 Mich 673, 229 NW 618, 68 ALR 105.

The whole of judicial power reposing in the sovereignty is granted to courts except as restricted in the constitution. Washington-Detroit Theatre Co v Moore, supra.

9. Vidal v Backs, 218 Cal 99, 21 P2d 952, 86 ALR 1131; Shaw v Moore, 104 Vt 529, 162 A 373, 86 ALR 1139.

And see § 217, supra, and §§ 234 et seq., infra.

I certify that the foregoing is my amended return to Order to Show Cause issued out of the District Court on January 8, 1969.

The Act of February 12, 1873, 17 Stat 426 fixed the Gold Dollar at 25.8 grains, Troy weight 9/10 fine for the Gold Dollar.

The Act of February 28, 1878 fixed the Silver Dollar at 412 1/2 grains Troy weight of Silver. These are the last two Constitutional Act of Congress, pursuant to the Constitution in which they coined money, regulated the value thereof and fixed the Standard of weights and measures. The Congress cannot abdicate or delegate these legislative powers. Usurpation by the Executive or his Agents is void. Thus the Silver clad-copper coins are a debasing of the Coins when once the Standard has been fixed. They are also not a legal tender, and are unconstitutional and void. These debased Coins and void Federal Reserve Notes constitute a shallow and impudent artifice, the least covert of all modes of knavery, a miserable scheme of robbery, all of which were the final characteristics of Arbitrary and profligate governments preceeding their downfall. No longer does any sentiment of honor influence the governing power of this Nation.

Based upon the Law and Facts presented to me, the Appeal is not allowed in this Court.

BY THE COURT

February 4, 1969 MARTIN V. MAHONEY
Justice of the Peace
Credit River Twp.
Scott County, Minn.

Lightning Over the Treasury Building

CHAPTER I

The Goldsmiths

Once upon a time, gold—being the most useless of all metals—was held in low esteem. Things which possessed intrinsic value were labored for—fought for—accumulated—and prized. These things became the standards of value and the mediums of exchange in the respective localities producing them.

One of the most urgent requirements of man is a wife, and it used to be that one of the most prized possessions of a father was a strong, hard working daughter; and she was considered his property. In those days he didn't give a dowry with her to get rid of her—but if a young blade desired her he had to recompense the Dad before he could lead her away to his cave. Good milch cows were as scarce as good girls—so a wooer hit upon the happy idea, one day, of offering a cow to the "Old Man" for his daughter. The deal was made and cows became, probably, the first money in history.

Since that ancient date most everything that you can think of has been used for money. Carpets, cloth, ornaments, beads, shells, feathers, teeth, hides, tobacco, gophers' tails, woodpeckers' heads, salt, fish hooks, nails, beans, spears,

bronze, silver and gold—and later, receipts for gold which did not exist—have all been used for money.

The latter article was the invention of the goldsmith and has yielded greater profits than all other inventions combined. It all came about like this:

Women have always had a fondness for beautiful ornaments. The plainer women—the ones who needed decorating with trinkets—were the ones who received the fewest ornaments. This was because men were the ones who supplied them, and—as contradictory as it may seem—the more beautiful the lady was, the more ornaments she usually received. Rings for her fingers—rings for her toes—rings for her ears—and rings for her nose—bracelets, anklets, tiaras, throatlets, pendants and foibles of yellow gold were hung on her like decorations on a Christmas tree.

Gold was also used to beautify the palaces of the kings, and of the near kings, shrines and temples. It was held in such high esteem that the people actually began to worship it—making gods and goddesses of it. It became the most desired of all substances. Because of the high esteem in which it was held it superseded all of its competitors in the civilized world as a medium of exchange. The value of other goods was measured by the amount of gold for which those goods could be exchanged.

The yellow metal, for convenience sake, and because the gold itself—and not the ornaments which could be made from it—was in demand, was shaped into rings, bars, discs and cubes, usually bearing an imprint of the kingly or princely owner.

Every community, or city, had its king or ruler. These rulers were all eager to increase their hoard of gold. Raiding expeditions were promoted and the weaker tribes, or kingdoms, were looted of the gold which they had accumulated. At times they would become so prosaic and unromantic as to carry on legitimate trade with other communi-

ties and obtain the gold in that way—but that was usually too slow and unexciting.

When the king arrived home with the precious stuff, his worries were not over. There were thieves in those days. There were also goldsmiths. The goldsmiths were the manufacturers of the ornaments which the ladies wore, and they always had a considerable amount of the coveted metal on hand. To safeguard their treasures they built strong-rooms on their premises in which to store the gold entrusted to their care.

It was not surprising, then, that the custom grew for the leader, upon his return from his thieving expedition, to leave the hoard of gold which he had obtained, with the goldsmith for safe-keeping. The merchants, too, who had traded profitably with other nations, communities or tribes, as well as other merchants and raiders passing through the city where the goldsmith lived, found it convenient—and usually safe—to leave their gold in the strong-room of the goldsmith.

When the gold was weighed and safely deposited in the strong-room, the goldsmith would give the owner a warehouse receipt for his deposit. These receipts were of various sizes, or for various amounts; some large, others smaller and others still more small. The owner of the gold, when wishing to transact business, would not as a rule take the actual gold out of the strong-room but would merely hand over a receipt for gold which he had in storage.

The goldsmith soon noticed that it was quite unusual for anyone to call for his gold. The receipts, in various amounts, passed from hand to hand instead of the gold itself being transferred. He thought to himself: "Here I am in possession of all this gold and I am still a hard working artisan. It doesn't make sense. Why there are scores of my neighbors who would be glad to pay me interest for the use of this gold which is lying here and never called for.

It is true, the gold is not mine—but it is in my possession, which is all that matters."

The birth of this new idea was promptly followed by action. At first he was very cautious, only loaning a little at a time—and that, on tremendous security. But gradually he became bolder and larger amounts of the gold were loaned.

One day the amount of loan requested was so large that the borrower didn't want to carry the gold away. The goldsmith solved the problem, pronto, by merely suggesting that the borrower be given a receipt for the amount of gold borrowed—or several receipts for various amounts totalling the amount of gold figuring in the transaction. To this the borrower agreed, and off he walked with the receipts, leaving the gold in the strong-room of the goldsmith.

After his client left, the goldsmith smiled broadly. He could have a cake and eat it too. He could lend gold and still have it. The possibilities were well nigh limitless. Others, and still more neighbors, friends, strangers and enemies expressed their desire for additional funds to carry on their businesses—and so long as they could produce sufficient collateral they could borrow as much as they needed—the goldsmith issuing receipts for ten times the amount of gold in his strong-room, *and he not even the owner of that.*

Everything was hunky-dory so long as the real owners of the gold didn't call for it—or so long as the confidence of the people was maintained—or a whispering campaign was not begun; in which case, upon the discovery of the facts, the goldsmith was usually taken out and shot.

In this manner, through the example of the goldsmiths, bank credit entered upon the scene. The practice of issuing receipts—entries in bank ledgers and figures in bank pass books—balancing the borrower's debt against the bank's obligation to pay, and multiplying the obligations to pay by thirty or forty times the amount of money which they (the

banks) hold, is a hangover of the goldsmith's racket and is the cause of most of the distress in America and the civilized world today.

As a result of the enormous profits being made by the bankers, the United Nations scheme has been formed to protect them in their franchise and to enable them to exploit the world.

The Bank of Amsterdam, established in 1609 in the City of Amsterdam, was, it seems, the first institution which followed the practice of the goldsmiths under the title of banking. It accepted deposits and gave separate receipts for each deposit of its many depositors, each deposit comprising a new account. The procedure greatly multiplied the number of receipts outstanding. The receipts constituted the medium of exchange in the country.

At first these bankers did not think of or did not intend to follow the practice of the goldsmiths in issuing more receipts than they had in gold, but their avarice soon gained control and that practice was introduced and pursued. The receipts were not covered by gold but by mortgages and property which they believed could be converted into gold on short notice, if necessary.

All went well for a time, but in 1795 the truth leaked out. It was found that the outstanding receipts called for several times the amount of gold which was held by the bank. This discovery caused a panic and a run on the bank resulting in its destruction—because the demand for its gold far exceeded its supply.

The collapse of the Bank of Amsterdam should have been an object lesson to all posterity, but alas, avaricious men again took advantage of the forgetfulness and gullibility of the people and the fraud was revived and perpetuated.

CHAPTER II

The Bank of England

For centuries, in England, the Christians were taught, and believed, that it was contrary to Christian ethics to loan money at usury, or interest. During those centuries the Church and the State saw eye to eye, for they were practically one and the same. It was, therefore, not only un-Christian, but also illegal to loan money at interest.

The laws of King Alfred, in the Tenth Century, provided that the effects and lands of those who loaned money upon interest should be forfeited to the Crown and the lender should not be buried in consecrated ground. Under Edward the Confessor, in the next Century, it was provided that the usurer should forfeit all his property, be declared an outlaw and banished from England.

During the reign of Henry II, in the Twelfth Century, the estates of usurers were forfeited at their death and their children disinherited. In the Thirteenth Century, King John confiscated and gathered in the wealth of all known usurers. In the Fourteenth Century, the crime of loaning money at interest was made a capital offense, and during the reign of James I, it was held that the taking of usury was no better than taking a man's life.

In view of these facts it is quite understandable how the Jews became, for the most part, the money lenders and the goldsmiths of England. They for some reason had no compunction of conscience on the matter. They lived outside the pale of the teachings of the New Testament and ignored the unmistakable commands of the Old regarding usury. It is true that they had to carry on their business secretly, but carry it on they did.

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On the Constitutionality of the Bank of the United States, *1791*

Jefferson to Washington:

I consider the foundation of the Constitution as laid on this ground: That "all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people . . ." To take a single step beyond the boundaries thus specially drawn around the powers of Congress is to take possession of a boundless field of power, no longer susceptible of any definition.

The incorporation of a bank, and the powers assumed by this bill, have not, in my opinion, been delegated to the United States by the Constitution.

I. They are not among the powers specially enumerated: for these are: 1. A power to lay taxes for the purpose of paying the debts of the United States; but no debt is paid by this bill, nor any tax laid. Were it a bill to raise money, its origination in the Senate would condemn it by the Constitution.

2. "To borrow money." But this bill neither borrows money nor insures the borrowing it. The proprietors of the bank will be just as free as any other money-holders to lend or not to lend their money to the public. The operation proposed in the bill, first, to lend them two millions, and then to borrow them back again, cannot change the nature of the latter act, which will still be a payment, and not a loan, call it by what name you please.

3. To "regulate commerce with foreign nations, and among the states, and with the Indian tribes." To erect a bank, and to regulate commerce, are very different acts. He who erects a bank creates a subject of commerce in its bills; so does he who makes a bushel of wheat or digs a dollar out of the mines; yet neither of these persons regulates commerce thereby. To make a thing which may be bought and sold is not to prescribe regulations for buying and selling. Besides, if this was an exercise of the power of regulating commerce, it would be void, as extending as much to the internal commerce of every State, as to its external. For the power given to Congress by the Constitution does not extend to the internal regulation of the commerce of a State (that is to say of the commerce between citizen and citizen), which remain exclusively with its own legislature; but to its external commerce only, that is to say, its commerce with another State, or with foreign nations, or with the Indian tribes. Accordingly the bill does not propose the measure as a regulation of trade, but as "productive of considerable advantages to trade." Still less are these powers covered by any other of the special enumerations.

II. Nor are they within either of the general phrases, which are the two following:

1. To lay taxes to provide for the general welfare of the United States, that is to say, "to lay taxes for the purpose of providing for the general welfare." For the laying of taxes is the power, and the general welfare the purpose for which the power is to be exercised. They are not to lay taxes *ad libitum* for any purpose they please but only to pay the debts or provide for the welfare of the Union. In like manner, they are not to do anything they please to provide for the general welfare but only to lay taxes for that purpose. To consider the latter phrase, not as describing the purpose of the first, but as giving a distinct and independent power to do any act they please, which might be for the good of the Union, would render all the preceding and subsequent enumerations of power completely useless.

It would reduce the whole instrument to a single phrase, that of instituting a Congress with power to do whatever would be for the good of the United States; and, as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they please.

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It is an established rule of construction where a phrase will bear either of two meanings to give it that which will allow some meaning to the other parts of the instrument and not that which would render all the others useless. Certainly no such universal power was meant to be given them. It was intended to lace them up straitly within the enumerated powers, and those without which, as means, these powers could not be carried into effect. It is known that the very power now proposed as a means was rejected as an end by the Convention which formed the Constitution. A proposition was made to them to authorize Congress to open canals, and an amendatory one to empower them to incorporate. But the whole was rejected, and one of the reasons for rejection urged in debate was that then they would have a power to erect a bank, which would render the great cities, where there were prejudices and jealousies on the subject, adverse to the reception of the Constitution.

2. The second general phrase is "to make all laws necessary and proper for carrying into execution the enumerated powers." But they can all be carried into execution without a bank. A bank therefore is not necessary and consequently not authorized by this phrase.

It has been urged that a bank will give great facility or convenience in the collection of taxes. Suppose this were true: yet the Constitution allows only the names which are "necessary," not those which are merely "convenient" for effecting the enumerated powers. If such a latitude of construction be allowed to this phrase as to give any nonenumerated power, it will go to every one, for there is not one which ingenuity may not torture into a convenience in some instance or other, to some one of so long a list of enumerated powers. It would swallow up all the delegated powers and reduce the whole to one power, as before observed. Therefore it was that the Constitution restrained them to the *necessary* means, that is to say, to those means without which the grant of power would be nugatory. . . .

Perhaps, indeed, bank bills may be a more convenient vehicle than treasury orders. But a little difference in the degree of convenience cannot constitute the necessity which the Constitution makes the ground for assuming any nonenumerated power. . . .

It may be said that a bank whose bills would have a currency all over the States would be more convenient than one whose currency is limited to a single State. So it would be still more convenient that there should be a bank whose bills should have a currency all over the world. But it does not follow from this superior conveniency that there exists anywhere a power to establish such a bank or that the world may not get on very well without it.

Can it be thought that the Constitution intended that for a shade or two of convenience, more or less, Congress should be authorized to break down the most ancient and fundamental laws of the several States; such as those against mortmain, the laws of alienage, the rules of descent, the acts of distribution, the laws of escheat and forfeiture, the laws of monopoly? Nothing but a necessity invincible by any other means can justify such a prostitution of laws, which constitute the pillars of our whole system of jurisprudence. Will Congress be too strait-laced to carry the Constitution into honest effect, unless they may pass over the foundation laws of the State government for the slightest convenience of theirs?

The negative of the President is the shield provided by the Constitution to protect against the invasions of the legislature: 1. The right of the executive. 2. Of the judiciary. 3. Of the States and States legislatures. The present is the case of a right remaining exclusively with the States, and consequently one of those intended by the Constitution to be placed under its protection. . . .

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Veto of the Bank Renewal Bill, *Andrew Jackson, 1832*

The bill "to modify and continue" the act entitled "An act to incorporate the subscribers to the Bank of the United States" was presented to me on the 4th July instant. Having considered it with that solemn regard to the principles of the Constitution which the day was calculated to inspire, and come to the conclusion that it ought not to become a law, I herewith return it to the Senate, in which it originated, with my objections.

A bank of the United States is in many respects convenient for the Government and useful to the people. Entertaining this opinion, and deeply impressed with the belief that some of the powers and privileges possessed by the existing bank are unauthorized by the Constitution, subversive of the rights of the States, and dangerous to the liberties of the people, I felt it my duty at an early period of my Administration to call the attention of Congress to the practicability of organizing an institution combining all its advantages and obviating these objections. I sincerely regret that in the act before me I can perceive none of those modifications of the bank charter which are necessary, in my opinion, to make it compatible with justice, with sound policy, or with the Constitution of our country.

The present corporate body, denominated the president, directors, and company of the Bank of the United States, will have existed at the time this act is intended to take effect twenty years. It enjoys an exclusive privilege of banking under the authority of the General Government, a monopoly of its favor and support, and, as a necessary consequence, almost a monopoly of the foreign and domestic exchange. The powers, privileges, and favors bestowed upon it in the original charter, by increasing the value of the stock far above its par value, operated as a gratuity of many millions to the stockholders.

An apology may be found for the failure to guard against this result in the consideration that the effect of the original act of incorporation could not be certainly foreseen at the time of its passage. The act before me proposes another gratuity to the holders of the same stock, and in many cases to the same men, of at least seven millions more. This donation finds no apology in any uncertainty as to the effect of the act. On all hands it is conceded that its passage will increase at least 20 or 30 per cent more the market price of the stock, subject to the payment of the annunity of $200,000 per year secured by the act, thus adding in a moment one-fourth to its par value. It is not our own citizens only who are to receive the bounty of our Government. More than eight millions of the stock of this bank are held by foreigners. By this act the American Republic proposes virtually to make them a present of some millions of dollars. For these gratuities to foreigners, and to some of our own opulent citizens the act secures no equivalent whatever. They are the certain gains of the present stockholders under the operation of this act, after making full allowance for the payment of the bonus.

Every monopoly and all exclusive privileges are granted at the expense of the public, which ought to receive a fair equivalent. The many millions which this act proposes to bestow on the stockholders of the existing bank must come directly or indirectly out of the earnings of the American people. It is due to them, therefore, if their Government sell monopolies and exclusive privileges, that they should at least exact for them as much as they are worth in open market. The value of the monopoly in this case may be correctly ascertained. The twenty-eight millions of stock would probably be at an advance of 50 per cent, and command in market at least $42,000,000, subject to the payment of the present bonus. The present value of the monopoly, therefore, is $17,000,000, and this the act proposes to sell for three millions, payable in fifteen annual installments of $200,000 each.

It is not conceivable how the present stockholders can have any claim to the special favor of the Government. The present corporation has enjoyed its monopoly during the period stipulated in the original contract. If we must have such a corporation, why should not the Government sell out the whole stock and thus secure to the people the full market value of the privileges granted? Why should not Congress create and sell twenty-eight millions of stock, incorporating the purchases with all the powers and privileges secured in this act and putting the premium upon the sales into the Treasury?

But this act does not permit competition in the purchase of this monopoly. It seems to be predicated on the erroneous idea that the present stockholders have a prescriptive right not only to the favor but to the bounty of Government. It appears that more than a fourth part of the stock is held by foreigners and the residue is held by a few hundred of our own citizens, chiefly of the richest class. For their benefit does this act exclude the whole American people from competition in the purchase of this monopoly and dispose of it for many millions less than it is worth. This seems the less excusable because some of our citizens not now stockholders petitioned that the door of competition might be opened, and offered to take a charter on terms much more favorable to the Government and country.

But this proposition, although made by men whose aggregate wealth is believed to be equal to all the private stock in the existing bank, has been set aside, and the bounty of our Government is proposed to be again bestowed on the few who have been fortunate enough to secure the stock and at this moment wield the power of the existing institution. I can not perceive the justice or policy of this course. If our Government must sell monopolies, it would seem to be its duty to take nothing less than their full value, and if gratuities must be made once in fifteen or twenty years let them not be bestowed on the subjects of a foreign government nor upon a designated and favored class of men in our own country. It is but justice and good policy as far as the nature of the case will admit, to confine our favors to our own fellow-citizens, and let each in his turn enjoy an opportunity to profit by our bounty. In the bearings of the act before me upon these points I find ample reasons why it should not become a law.

It has been urged as an argument in favor of rechartering the present bank that the calling in its loans will produce great embarrassment and distress. The time allowed to close its concerns is ample, and if it has well managed its pressure will be light, and heavy only in case its management has been bad. If, therefore, it shall produce distress, the fault will be its own, and it would furnish a reason against renewing a power which has been so obviously abused. But will there ever be a time when this reason will be less powerful? To acknowledge its force is to admit that the bank ought to be perpetual, and as a consequence the present stockholders and those inheriting their rights as successors be established a privileged order, clothed both with great political power and enjoying immense pecuniary advantages from their connection with the Government.

The modifications of the existing charter proposed by this act are not such, in my view, as make it consistent with the rights of the States or the liberties of the people. The qualification of the right of the bank to hold real estate, the limitation of its power to establish branches, and the power reserved to Congress to forbid the circulation of small notes are restrictions comparatively of little value or importance. All the objectionable principles of the existing corporation, and most of its odious features, are retained without alleviation. . . .

In another of its bearings this provision is fraught with danger. Of the twenty-five directors of this bank five are chosen by the Government and twenty by the citizen stockholders. From all voice in these elections the foreign stockholders are excluded by the charter. In proportion, therefore,

suffrage in the choice of directors is curtailed. Already is almost a third of the stock in foreign hands and not represented in elections. It is constantly passing out of the country, and this act will accelerate its departure. The entire control of the institution would necessarily fall into the hands of a few citizen stockholders, and the ease with which the object would be accomplished would be a temptation to designing men to secure that control in their own hands by monopolizing the remaining stock. There is danger that a president and directors would then be able to elect themselves from year to year, and without responsibility or control manage the whole concerns of the bank during the existence of its charter. It is easy to conceive that great evils to our country and its institutions might flow from such a concentration of power in the hands of a few men irresponsible to the people.

Is there no danger to our liberty and independence in a bank that in its nature has so little to bind it to our country? The president of the bank has told us that most of the State banks exist by its forbearance. Should its influence become concentered, as it may under the operation of such an act as this, in the hands of a self-elected directory whose interests are identified with those of the foreign stockholders, will there not be cause to tremble for the purity of our elections in peace and for the independence of our country in war? Their power would be great whenever they might choose to exert it; but if this monopoly were regularly renewed every fifteen or twenty years on terms proposed by themselves, they might seldom in peace put forth their strength to influence elections or control the affairs of the nation. But if any private citizen or public functionary should interpose to curtail its powers or prevent a renewal of its privileges, it can not be doubted that he would be made to feel its influence.

Should the stock of the bank principally pass into the hands of the subjects of a foreign country, and we should unfortunately become involved in a war with that country, what would be our condition? Of the course which would be pursued by a bank almost wholly owned by the subjects of a foreign power, and managed by those whose interests, if not affections, would run in the same direction there can be no doubt. All its operations within would be in aid of the hostile fleets and armies without. Controlling our currency, receiving our public moneys, and holding thousands of our citizens in dependence, it would be more formidable and dangerous than the naval and military power of the enemy.

If we must have a bank with private stockholders, every consideration of sound policy and every impulse of American feeling admonishes that it should be *purely American*. Its stockholders should be composed exclusively of our own citizens, who at least ought to be friendly to our Government and willing to support it in times of difficulty and danger. So abundant is domestic capital that competition in subscribing for the stock of local banks has recently led almost to riots. To a bank exclusively of American stockholders, possessing the powers and privileges granted by this act, subscriptions for $200,000,000 could readily be obtained. Instead of sending abroad the stock of the bank in which the Government must deposit its funds and on which it must rely to sustain its credit in times of emergency, it would rather seem to be expedient to prohibit its sale to aliens under penalty of absolute forfeiture.

It is maintained by the advocates of the bank that its constitutionality in all its features ought to be considered as settled by precedent and by the decision of the Supreme Court. To this conclusion I can not assent. Mere precedent is a dangerous source of authority, and should not be regarded as deciding questions of constitutional power except where the acquiescence of the people and the States can be considered as well settled. So far from this being the case on this subject, an argument against the bank might be based on precedent. One

decided against it. One Congress in 1815, decided against a bank; another in 1816, decided in its favor. Prior to the present Congress, therefore, the precedents drawn from that source were equal. If we resort to the States, the expressions of legislative, judicial, and executive opinions against the bank have been probably to those in its favor as 4 to 1. There is nothing in precedent, therefore, which, if its authority were admitted, ought to weigh in favor of the act before me.

If the opinion of the Supreme Court covered the whole ground of this act, it ought not to control the coordinate authorities of this Government. The Congress, the Executive, and the Court must each for itself be guided by its own opinion of the Constitution. Each public officer who takes an oath to support the Constitution swears that he will support it as he understands it, and not as it is understood by others. It is as much the duty of the House of Representatives, of the Senate, and of the President to decide upon the constitutionality of any bill or resolution which may be presented to them for passage or approval as it is of the supreme judges when it may be brought before them for judicial decision. The opinion of the judges has no more authority over Congress than one opinion of Congress has over the judges, and on this point the President is independent of both. The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve. . . .

The bank is professedly established as an agent of the executive branch of the Government, and its constitutionality is maintained on that ground. Neither upon the propriety of present action nor upon the provisions of this act was the Executive consulted. It has had no opportunity to say that it neither needs nor wants an agent clothed with such powers and favored by such exemptions. There is nothing in its legitimate functions which makes it necessary or proper. Whatever interest or influence, whether public or private, has given birth to this act, it can not be found either in the wishes or necessities of the executive department, by which present action is deemed premature, and the powers conferred upon its agent not only unnecessary, but dangerous to the Government and country.

It is to be regretted that the rich and powerful too often bend the acts of government to their selfish purposes. Distinctions in society will always exist under every just government. Equality of talents, of education, or of wealth can not be produced by human institutions. In the full enjoyment of the gifts of Heaven and the fruits of superior industry, economy, and virtue, every man is equally entitled to protection by law; but when the laws undertake to add to these natural and just advantages artificial distinctions, to grant titles, gratuities, and exclusive privileges, to make the rich richer and the potent more powerful, the humble members of society—the farmers, mechanics, and laborers—who have neither the time nor the means of securing like favors to themselves, have a right to complain of the injustice of their Government. There are no necessary evils in government. Its evils exist only in its abuses. If it would confine itself to equal protection, and, as Heaven does its rains, shower its favors alike on the high and the low, the rich and the poor, it would be an unqualified blessing. In the act before me there seems to be a wide and unnecessary departure from these just principles.

Nor is our Government to be maintained or our Union preserved by invasions of the rights and powers of the several States. In thus attempting to make our General Government strong we make it weak. Its true strength consists in leaving individuals and States as much as possible to themselves—in making itself felt, not in its power, but in its beneficence; not in its control, but in its protection; not in binding the States more closely to the center, but leaving each more unobstructed in its proper orbit.

Experience should teach us wisdom. Most of the difficulties our Government now encounters and most of the dangers which impend over our Union have sprung from an abandonment of the legitimate objects of Government by our national legislation, and the adoption of such principles as are embodied in this act. Many of our rich men have not been content with equal protection and equal benefits, but have besought us to make them richer by act of Congress. By attempting to gratify their desires we have in the results of our legislation arrayed section against section, interest against interest, and man against man, in a fearful commotion which threatens to shake the foundations of our Union. It is time to pause in our career to review our principles, and if possible revive that devoted patriotism and spirit of compromise which distinguished the sages of the Revolution and the fathers of our Union. If we can not at once, in justice to interests vested under improvident legislation, make our Government what it ought to be, we can at least take a stand against all new grants of monopolies and exclusive privileges, against any prostitution of our Government to the advancement of the few at the expense of the many, and in favor of compromise and gradual reform in our code of laws and system of political economy.

ANDREW JACKSON

Note:From the Journals and debates of the Constitutional Convention and the ratification debates in the State Legislatures, it was almost universally agreed that the express purpose of their meetings was to put an end to paper money of any and all descriptions as a legal tender and to insure that the obligation of Contract would no longer be impaired or invaded by any Government.

A standard unit of value no longer exists. Paper money is not redeemable in any thing. Contracts between individuals lack integrity. German paper "Fiat" Money after WW 1 depreciated so fast that the employees would not accept their wages once a week. They demanded and spent their wages twice a day and re-negotiated their employment contract after each 1/2 day. If permitted to continue the same thing will happen here.

and herds of the west are protected from the devastations of those destructive and numerous animals; the "crow certificates," the rewards of those who save the fields of the husbandman from the spoils of their worst enemies, are all receivable for taxes, and all are equally obnoxious to the exceptions taken to the certificates issued under the law of Missouri.

The consideration for the note which is the subject of this suit was a good and valuable consideration, and the note is binding on the parties to it by the express terms of the sixteenth section of the law. The note furnished the parties with the means of paying their taxes, and was a benefit to them. All the certificates have been redeemed by the State.

Congress is not authorized to issue bills of credit. The States may do all that is not prohibited, while Congress can do nothing which is not granted by the Constitution. Congress had no express authority to issue treasury notes, but they were issued. These notes were precisely like the Missouri certificates.

The treasury notes were not bills of credit; for they were not made, by the act under which they were issued, a legal tender. They were freely circulated throughout the United States without objections, and they were most useful instruments in the financial operations of the government during the last war.

This court has not jurisdiction of the case. It is not within the requirements of the twenty-fifth section of the Judiciary Act. The validity of the State law was not drawn in question before the courts of Missouri, and no decision was made in those courts upon the validity of the objection now set up under the Constitution of the United States.

The pleadings do not show that the law was drawn in question; they only deny the promise charged in the declaration. Upon the matters thus presented, and on no others, did the courts of Missouri decide.

Mr. Sheffey, in reply. The whole argument on the part of the State of Missouri in founded [*424 on the assumption that the certificates are not bills of credit, because they are not made a legal tender.

The provision of the Constitution was introduced to prevent a mischief; one of the most fatal effects on the property of the citizens of the United States; and thus considered, it is to be construed liberally. A strict construction, and particularly one which would render it inoperative, or feeble in its influence, would not be justifiable.

The evils are the same, and the notes will circulate as freely and as extensively whether they are made a tender or not. Whatever paper promise is circulated on the credit of the State is a bill of credit, and is within the sense of the Constitution.

This provision in the Constitution was introduced to prevent the States from resorting to State necessity as an apology for the issue of paper. The States are not allowed to "coin money," and the object clearly was to prevent anything being made by the States which would serve as a circulating medium.

The word "emit" is a peculiar expression. The States may borrow money and give notes, but that is not coining money, nor is it emitting bills of credit; and so "wolf and crow scalp certificates" are only evidence that the counties in the States which authorize them owe so much money for meritorious and beneficial services.

It is denied that the power of the United States to issue bills of credit is the same which has been claimed by the State of Missouri under this law. It does not follow that because the United States may issue such bills the states may do so. The States are specially prohibited such issues by the Constitution.

The proposition which was made in the convention to give to Congress the power to issue bills of credit may have been rejected because that power had been already given in the power to coin money, and regulate its value. Congress has this power, as an incident, like the power to issue debentures; which is exercised as an incident to the power to regulate commerce.

*Mr. *Chief Justice* MARSHALL deliver- [*425
ed the opinion of the court, *Justices* THOMPSON, JOHNSON, and M'LEAN dissenting:

This is a writ of error to a judgment rendered in the Court of Last Resort in the State of Missouri, affirming a judgment obtained by the State in one of its inferior courts against Hiram Craig and others on a promissory note.

The judgment is in these words: "And afterwards at a court," &c., "the parties came into court by their attorneys, and, neither party desiring a jury, the cause is submitted to the court; therefore, all and singular the matters and things being seen and heard by the court, it is found by them that the said defendants did assume upon themselves, in manner and form, as the plaintiff by her counsel alleged. And the court also find that the consideration for which the writing declared upon and the *assumpsit* was made was for the loan of loan-office certificates, loaned by the State at her loan-office at Chariton; which certificates were issued and the loan made in the manner pointed out by an Act of the Legislature of the said State of Missouri, approved the 27th day of June, 1821, entitled 'An Act for the establishment of loan-offices,' and the acts amendatory and supplementary thereto: and the court do further find that the plaintiff has sustained damages by reason of the nonperformance of the assumptions and undertakings of them, the said defendants, to the sum of two hundred and thirty-seven dollars and seventy-nine cents, and do assess her damages to that sum. Therefore, it is considered," &c.

The first inquiry is into the jurisdiction of the court.

The twenty-fifth section of the Judicial Act declares "that a final judgment or decree in any suit in the highest court of law or equity of a State, in which a decision in the suit could be had, where is drawn in question" "the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of such their validity," "may be re-examined, and reversed or affirmed in the Supreme Court of the United States."

To give jurisdiction to this court, it must appear in the *record, 1. That the valid- [*426
ity of a statute of the State of Missouri was drawn in question on the ground of its being

repugnant to the Constitution of the United States. 2. That the decision was in favor of its validity.

1. To determine whether the validity of a statute of the State was drawn in question, it will be proper to inspect the pleadings in the cause, as well as the judgment of the court.

The declaration is on a promissory note, dated on the 1st day of August, 1822, promising to pay to the State of Missouri on the 1st day of November, 1822, at the loan-office in Chariton, the sum of one hundred and ninety-nine dollars ninety-nine cents, and the two per cent. per annum, the interest accruing on the certificates borrowed from the 1st of October, 1821. This note is obviously given for certificates loaned under the Act "for the establishment of loan-offices." That act directs that loans on personal securities shall be made of sums less than two hundred dollars. This note is for one hundred and ninety-nine dollars ninety-nine cents. The act directs that the certificates issued by the State shall carry two per cent. interest from the date, which interest shall be calculated in the amount of the loan. The note promises to repay the sum, with the two per cent. interest accruing on the certificates borrowed, from the 1st day of October, 1821. It cannot be doubted that the declaration is on a note given in pursuance of the act which has been mentioned.

Neither can it be doubted that the plea of *non assumpsit* allowed the defendants to draw into question at the trial the validity of the consideration on which the note was given. Everything which disaffirms the contract, everything which shows it to be void, may be given in evidence on the general issue in an action of *assumpsit*. The defendants, therefore, were at liberty to question the validity of the consideration which was the foundation of the contract, and the constitutionality of the law in which it originated.

Have they done so?

Had the cause been tried before a jury, the regular course would have been to move the court to instruct the jury that the act of Assembly in pursuance of which the note was given was repugnant to the Constitution of the 427*] United States, *and to except to the charge of the judges if in favor of its validity: or a special verdict might have been found by the jury stating the act of Assembly, the execution of the note in payment of certificates loaned in pursuance of that act, and referring its validity to the court. The one course or the other would have shown that the validity of the act of Assembly was drawn into question on the ground of its repugnancy to the Constitution, and that the decision of the court was in favor of its validity. But the one course or the other would have required both a court and jury. Neither could be pursued where the office of the jury was performed by the court. In such a case, the obvious substitute for an instruction to the jury, or a special verdict, is a statement by the court of the points in controversy, on which its judgment is founded. This may not be the usual mode of proceeding, but it is an obvious mode: and if the court of the State has adopted it, this court cannot give up substance for form.

The arguments of counsel cannot be spread on the record. The points urged in argument cannot appear. But the motives stated by the court on the record for its judgment, and which form a part of the judgment itself, must be considered as exhibiting the points to which those arguments were directed, and the judgment as showing the decision of the court upon those points. There was no jury to find the facts and refer the law to the court; but if the court, which was substituted for the jury, has found the facts on which its judgment was rendered, its finding must be equivalent to the finding of a jury. Has the court, then, substituting itself for a jury, placed facts upon the record which, connected with the pleadings, show that the act in pursuance of which this note was executed was drawn into question on the ground of its repugnancy to the Constitution?

After finding that the defendants did assume upon themselves, &c., the court proceeds to find "that the consideration for which the writing declared upon and the *assumpsit* was made was the loan of loan-office certificates loaned by the State at her loan-office at Chariton; which certificates were issued and the loan made in the manner pointed out *by an [*428 Act of the Legislature of the said State of Missouri, approved the 27th of June, 1821, entitled," &c.

Why did not the court stop immediately after the usual finding that the defendants assumed upon themselves? Why proceed to find that the note was given for loan-office certificates issued under the act contended to be unconstitutional, and loaned in pursuance of that act, if the matter thus found was irrelevant to the question they were to decide?

Suppose the statement made by the court to be contained in the verdict of a jury which concludes with referring to the court the validity of the note thus taken in pursuance of the act; would not such a verdict bring the constitutionality of the act as well as its construction directly before the court? We think it would: such a verdict would find that the consideration of the note was loan-office certificates issued and loaned in the manner prescribed by the act. What could be referred to the court by such a verdict but the obligation of the law? It finds that the certificates for which the note was given were issued in pursuance of the act, and that the contract was made in conformity with it. Admit the obligation of the act, and the verdict is for the plaintiff; deny its obligation, and the verdict is for the defendant. On what ground can its obligation be contested, but its repugnancy to the Constitution of the United States? No other is suggested. At any rate, it is open to that objection. If it be in truth repugnant to the Constitution of the United States, that repugnancy might have been urged in the State, and may consequently be urged in this court; since it is presented by the facts in the record, which were found by the court that tried the cause.

It is impossible to doubt that, in point of fact, the constitutionality of the act under which the certificates were issued that formed the consideration of this note, constituted the only real question made by the parties, and the only real question decided by the court. But the record is to be inspected with judicial eyes; and, as it does not state in express terms that this point was made, it has been contended that this court cannot assume the fact that it was made or determined in the tribunal of the State.

429*] *The record shows distinctly that this point existed, and that no other did exist; the special statement of facts made by the court as exhibiting the foundation of its judgment contains this point and no other. The record shows clearly that the cause did depend, and must depend, on this point alone. If, in such a case, the mere omission of the court of Missouri to say, in terms, that the act of the Legislature was constitutional, withdraws that point from the cause, or must close the judicial eyes of the appellate tribunal upon it, nothing can be more obvious than that the provisions of the Constitution and of an act of Congress may be always evaded; and may be often, as we think they would be in this case, unintentionally defeated.

But this question has frequently occurred, and has, we think, been frequently decided in this court. *Smith* v. *The State of Maryland* (6 Cranch, 286), *Martin* v. *Hunter's Lessee* (1 Wheat., 355), *Miller* v. *Nicholls* (4 Wheat., 311), *Williams* v. *Norris* (12 Wheat., 117), *Wilson et al.* v. *The Black Bird Creek Marsh Company* (2 Peters, 245), and *Harris* v. *Dennie*, in this term, are all, we think, expressly in point. There has been perfect uniformity in the construction given by this court to the twenty-fifth section of the Judicial Act. That construction is, that it is not necessary to state, in terms, on the record, that the Constitution or a treaty or law of the United States has been drawn in question, or the validity of a State law, on the ground of its repugnancy to the Constitution. It is sufficient if the record shows that the Constitution, or a treaty or law of the United States must have been construed, or that the constitutionality of a State law must have been questioned, and the decision has been in favor of the party claiming under such law.

We think, then, that the facts stated on the record presented the question of repugnancy between the Constitution of the United States and the act of Missouri to the court for its decision. If it was presented, we are to inquire,

2. Was the decision of the court in favor of its validity?

The judgment in favor of the plaintiff is a decision in favor of the validity of the contract, 430*] and, consequently, of *the validity of the law by the authority of which the contract was made.

The case is, we think, within the twenty-fifth section of the Judicial Act, and, consequently, within the jurisdiction of this court.

This brings us to the great question in the cause: Is the act of the Legislature of Missouri repugnant to the Constitution of the United States?

The counsel for the plaintiffs in error maintain that it is repugnant to the Constitution, because its object is the emission of bills of credit contrary to the express prohibition contained in the tenth section of the first article.

The Act under the authority of which the certificates loaned to the plaintiffs in error were issued was passed on the 26th of June, 1821, and is entitled "An Act for the establishment of loan-offices." The provisions that are material to the present inquiry are comprehended in the third, thirteenth, fifteenth, sixteenth, twenty-third, and twenty-fourth sections of the act, which are in these words:

Section the third enacts "that the auditor of public accounts and treasurer, under the direction of the governor, shall, and they are hereby required to issue certificates, signed by the said auditor and treasurer, to the amount of two hundred thousand dollars, of denominations not exceeding ten dollars, nor less than fifty cents (to bear such devices as they may deem the most safe), in the following form, to wit: "This certificate shall be receivable at the treasury, or any of the loan-offices of the State of Missouri, in the discharge of taxes or debts due to the State, for the sum of $———, with interest for the same, at the rate of two per centum per annum from this date, the——— day of ——— 182 ."

The thirteenth section declares "that the certificates of the said loan-office shall be receivable at the treasury of the State, and by all tax-gatherers and other public officers, in payment of taxes or other moneys now due to the State or to any county or town therein, and the said certificates shall also be received by all officers, civil and military, in the State, in the discharge of salaries and fees of office."

The fifteenth section provides "that the commissioners *of the said loan-offices [*431 shall have power to make loans of the said certificates to citizens of this State, residing within their respective districts only, and in each district a proportion shall be loaned to the citizens of each county therein, according to the number thereof," &c.

Section sixteenth. "That the said commissioners of each of the said offices are further authorized to make loans on personal securities by them deemed good and sufficient for sums less than two hundred dollars; which securities shall be jointly and severally bound for the payment of the amount so loaned, with interest thereon," &c.

Section twenty-third. "That the General Assembly shall, as soon as may be, cause the salt springs and lands attached thereto, given by Congress to this State, to be leased out, and it shall always be the fundamental condition in such leases that the lessee or lessees shall receive the certificates hereby required to be issued in payment for salt, at a price not exceeding that which may be prescribed by law; and all the proceeds of the said salt springs, the interest accruing to the State, and all estates purchased by officers of the said several offices under the provisions of this act, and all the debts now due or hereafter to be due to this State, are hereby pledged and constituted a fund for the redemption of the certificates hereby required to be issued, and the faith of the State is hereby also pledged for the same purpose."

Section twenty-fourth. "That it shall be the duty of the said auditor and treasurer to withdraw annually from circulation one-tenth part of the certificates which are hereby required to be issued," &c.

The clause in the Constitution which this act is supposed to violate is in these words: "No State shall" "emit bills of credit."

What is a bill of credit? What did the Constitution mean to forbid?

In its enlarged, and perhaps its literal sense, the term "bill of credit" may comprehend any instrument by which a State engages to pay money at a future day; thus including a certificate given for money borrowed. But the lan-432*] guage *of the Constitution itself, and the mischief to be prevented, which we know from the history of our country, equally limit the interpretation of the terms. The word "emit" is never employed in describing those contracts by which a State binds itself to pay money at a future day for services actually received, or for money borrowed for present use; nor are instruments executed for such purposes, in common language, denominated "bills of credit." To "emit bills of credit," conveys to the mind the idea of issuing paper intended to circulate through the community for its ordinary purposes, as money, which paper is redeemable at a future day. This is the sense in which the terms have been always understood.

At a very early period of our colonial history the attempt to supply the want of the precious metals by a paper medium was made to a considerable extent, and the bills emited for this purpose have been frequently denominated bills of credit. During the war of our revolution we were driven to this expedient, and necessity compelled us to use it to a most fearful extent. The term has acquired an appropriate meaning; and "bills of credit" signify a paper medium, intended to circulate between individuals and between government and individuals, for the ordinary purposes of society. Such a medium has been always liable to considerable fluctuation. Its value is continually changing; and these changes, often great and sudden, expose individuals to immense loss, are the sources of ruinous speculations, and destroy all confidence between man and man. To cut up this mischief by the roots, a mischief which was felt through the United States, and which deeply affected the interest and prosperity of all, the people declared in their Constitution that no State should emit bills of credit. If the prohibition means anything, if the words are not empty sounds, it must comprehend the emission of any paper medium by a State government for the purpose of common circulation.

What is the character of the certificates issued by authority of the act under consideration? What office are they to perform? Certificates signed by the auditor and treasurer of the State are to be issued by those officers to 433*] the *amount of two hundred thousand dollars, of denominations not exceeding ten dollars, nor less than fifty cents. The paper purports on its face to be receivable at the treasury, or at any loan-office of the State of Missouri, in discharge of taxes or debts due to the State.

The law makes them receivable in discharge of all taxes or debts due to the State, or any county or town therein; and of all salaries and fees of office to all officers, civil and military, within the State, and for salt sold by the lessees of the public salt-works. It also pledges the faith and funds of the State for their redemption.

It seems impossible to doubt the intention of the Legislature in passing this act, or to mistake the character of these certificates, or the office they were to perform. The denominations of the bills—from ten dollars to fifty cents—fitted them for the purpose of ordinary circulation and their reception in payment of taxes, and debts to the government and to corporations, and of salaries and fees, would give them currency. They were to be put into circulation; that is, emitted, by the government. In addition to all these evidences of an intention to make these certificates the ordinary circulating medium of the country, the law speaks of them in this character, and directs the auditor and treasurer to withdraw annually one-tenth of them from circulation. Had they been termed "bills of credit," instead of "certificates," nothing would have been wanting to bring them within the prohibitory words of the Constitution.

And can this make any real difference? Is the proposition to be maintained that the Constitution meant to prohibit names and not things? That a very important act, big with great and ruinous mischief, which is expressly forbidden by words most appropriate for its description, may be performed by the substitution of a name? That the Constitution, in one of its most important provisions, may be openly evaded by giving a new name to an old thing? We cannot think so. We think the certificates emitted under the authority of this act are as entirely bills of credit as if they had been so denominated in the act itself.

But it is contended that though these certificates should be *deemed bills of credit, [*434 according to the common acceptation of the term, they are not so in the sense of the Constitution, because they are not made a legal tender.

The Constitution itself furnishes no countenance to this distinction. The prohibition is general. It extends to all bills of credit, not to bills of a particular description. That tribunal must be bold indeed, which, without the aid of other explanatory words, could venture on this construction. It is the less admissible in this case, because the same clause of the Constitution contains a substantive prohibition to the enactment of tender laws. The Constitution, therefore, considers the emission of bills of credit and the enactment of tender laws as distinct operations, independent of each other, which may be separately performed. Both are forbidden. To sustain the one because it is not also the other; to say that bills of credit may be emitted if they be not made a tender in payment of debts, is, in effect, to expunge that distinct independent prohibition, and to read the clause as if it had been entirely omitted. We are not at liberty to do this.

The history of paper money has been referred to for the purpose of showing that its great mischief consists in being made a tender, and that, therefore, the general words of the Constitution may be restrained to a particular intent.

Was it even true that the evils of paper money resulted solely from the quality of its being made a tender, this court would not feel itself authorized to disregard the plain meaning of words, in search of a conjectural intent to which we are not conducted by the language of any part of the instrument. But we do not think that the history of our country proves

either, that being made a tender in payment of debts is an essential quality of bills of credit, or the only mischief resulting from them. It may, indeed, be the most pernicious; but that will not authorize a court to convert a general into a particular prohibition.

We learn from Hutchinson's History of Massachusetts (Vol. I., p. 402), that bills of credit were emitted for the first time in that colony in 1690. An army returning unexpectedly from an expedition against Canada (which had proved as disastrous as the plan was magnifi-435*] cent), found the government *totally unprepared to meet their claims. Bills of credit were resorted to for relief from this embarrassment. They do not appear to have been made a tender, but they were not on that account the less bills of credit, nor were they absolutely harmless. The emission, however, not being considerable, and the bills being soon redeemed, the experiment would have been productive of not much mischief had it not been followed by repeated emissions to a much larger amount. The subsequent history of Massachusetts abounds with proofs of the evils with which paper money is fraught, whether it be or be not a legal tender.

Paper money was also issued in other colonies, both in the north and south; and whether made a tender or not, was productive of evils in proportion to the quantity emitted. In the war which commenced in America in 1755, Virginia issued paper money at several successive sessions under the appellation of treasury notes. This was made a tender. Emissions were afterwards made in 1769, in 1771, and in 1773. These were not made a tender, but they circulated together; were equally bills of credit, and were productive of the same effects. In 1775 a considerable emission was made for the purposes of the war. The bills were declared to be current, but were not made a tender. In 1776, an additional emission was made, and the bills were declared to be a tender. The bills of 1775 and 1776 circulated together, were equally bills of credit, and were productive of the same consequences.

Congress emitted bills of credit to a large amount, and did not, perhaps could not, make them a legal tender. This power resided in the States. In May, 1777, the Legislature of Virginia passed an Act for the first time making the bills of credit issued under the authority of Congress a tender so far as to extinguish interest. It was not until March, 1781, that Virginia passed an Act making all the bills of credit which had been emitted by Congress, and all which had been emitted by the State, a legal tender in payment of debts. Yet they were, in every sense of the word, bills of credit previous to that time, and were productive of all the consequences of paper money. We cannot, then, assent to the proposition 436*] *that the history of our country furnishes any just argument in favor of that restricted construction of the Constitution for which the counsel for the defendant in error contends.

The certificates for which this note was given, being in truth "bills of credit" in the sense of the Constitution, we are brought to the inquiry:

Is the note valid of which they form the consideration?

It has been long settled that a promise made in consideration of an act which is forbidden by law is void. It will not be questioned that an act forbidden by the Constitution of the United States, which is the supreme law, is against law. Now, the Constitution forbids a State to "emit bills of credit." The loan of these certificates is the very act which is forbidden. It is not the making of them while they lie in the loan-offices, but the issuing of them, the putting them into circulation, which is the act of emission—the act that is forbidden by the Constitution. The consideration of this note is the emission of bills of credit by the State. The very act which constitutes the consideration is the act of emitting bills of credit in the mode prescribed by the law of Missouri, which act is prohibited by the Constitution of the United States.

Cases which we cannot distinguish from this in principle have been decided in State courts of great respectability, and in this court. In the case of *The Springfield Bank* v. *Merrick et al.* (14 Mass. Rep., 322), a note was made payable in certain bills, the loaning or negotiating of which was prohibited by statute, inflicting a penalty for its violation. The note was held to be void. Had this note been made in consideration of these bills, instead of being made payable in them, it would not have been less repugnant to the statute; and would consequently have been equally void.

In *Hunt* v. *Knickerbocker* (5 Johns. Rep., 327), it was decided that an agreement for the sale of tickets in a lottery not authorized by the Legislature of the State, although instituted under the authority of the government of another State, is contrary to the spirit and policy of the law, and void. The consideration on which the agreement was founded being illegal, the agreement was void. The books, both of *Massachusetts and New York, [*437 abound with cases to the same effect. They turn upon the question whether the particular case is within the principle, not on the principle itself. It has never been doubted that a note given on a consideration which is prohibited by law, is void. Had the issuing or circulation of certificates of this or of any other description been prohibited by a statute of Missouri, could a suit have been sustained in the courts of that State on a note given in consideration of the prohibited certificates? If it could not, are the prohibitions of the Constitution to be held less sacred than those of a State law?

It had been determined, independently of the acts of Congress on that subject, that sailing under the license of an enemy is illegal. *Patton* v. *Nicholson* (3 Wheat., 204) was a suit brought in one of the courts of this district on a note given by Nicholson to Patton, both citizens of the United States, for a British license. The United States were then at war with Great Britian, but the license was procured without any intercourse with the enemy. The judgment of the Circuit Court was in favor of the defendant, and the plaintiff sued out a writ of error. The counsel for the defendant in error was stopped, the court declaring that the use of a license from the enemy being unlawful, one citizen had no right to purchase from or sell to another such

a license, to be used on board an American vessel. The consideration for which the note was given being unlawful, it followed of course that the note was void.

A majority of the court feels constrained to say that the consideration on which the note in this case was given is against the highest law of the land, and that the note itself is utterly void. In rendering judgment for the plaintiff, the court for the State of Missouri decided in favor of the validity of a law which is repugnant to the Constitution of the United States.

In the argument we have been reminded by one side of the dignity of a sovereign state; of the humiliation of her submitting herself to this tribunal; of the dangers which may result from inflicting a wound on that dignity: by the other, of the still superior dignity of the 438*] people of the United States, *who have spoken their will in terms which we cannot misunderstand.

To these admonitions we can only answer, that if the exercise of that jurisdiction which has been imposed upon us by the Constitution and laws of the United States shall be calculated to bring on those dangers which have been indicated, or if it shall be indispensable to the preservation of the Union, and consequently, of the independence and liberty of these States, these are considerations which address themselves to those departments which may with perfect propriety be influenced by them. This department can listen only to the mandates of law, and can tread only that path which is marked out by duty.

The judgment of the Supreme Court of the State of Missouri for the First Judicial District is reversed, and the cause remanded, with directions to enter judgment for the defendants.

Mr. Justice JOHNSON.

This is a case of a new impression and intrinsic difficulty, and brings up questions of the most vital importance to the interests of this Union.

The declaration is in the ordinary form, and the part of the record of the State court which raises the questions before us, is expressed in these words: "At a court, &c., came the parties, &c., and neither party requiring a jury, the cause is submitted to the court; therefore, all and singular, the matters and things, and evidences, being seen and heard by the court, it is found by them that the said defendants did assume upon themselves in the manner and form as the plaintiffs by their counsel allege; and the court also find that the consideration for which the writing declared upon and the *assumpsit* was made, was for the loan of loan-office certificates, loaned by the State at her loan-office at Charlton; which certificates were issued and the loan made in the manner pointed out by an Act of the Legislature of Missouri, approved, &c. And the court do further find that the plaintiff hath sustained damages by reason of the nonperformance of the assumptions and undertakings aforesaid, of them the said de-439*] fendants, *to the sum, &c.; and therefore it is considered that the plaintiff recover," &c.

In order to understand the case, it may be proper to premise that the territory now occupied by the State of Missouri having been subject to its Spanish government, was at the time of its cession governed by the civil law as modified by the Spanish government; that it so continued, subject to certain modifications introduced by act of Congress, until it became a State; when the people incorporated into their institutions as much of the civil law as they thought proper: and hence, their courts of justice now partake of a mixed character, perhaps combining all the advantages of the civil and common law forms. By one of the provisions of this law the trial by jury is forced upon no one; is yet open to all, and when not demanded, the court acts the double part of jury and judge.

It is obvious, therefore, that the matter certified from the record of the State court before recited is in nature of a special verdict, and the judgment of the court is upon that verdict, and in this light it shall be examined.

The purport of the finding is that the vote declared upon was given "for a loan of loan-office certificates loaned by the State under certain State acts, the caption of which is given."

Some doubts were thrown out in the argument whether we could take notice of the State laws thus found without being set out at length; but in this there can be no question; whatever laws that court would take notice of, we must of necessity receive and consider, as if fully set out.

By the acts of the State designated by the court in their finding, the officers of the treasury department of the State were authorized to create certificates of small denominations—from ten dollars down to fifty cents—bearing interest at two per centum per annum, and to loan these certificates to individuals; taking in lieu thereof promissory notes, payable not exceeding one year from the date, with not more than six per cent. interest, and redeemable by installments not exceeding ten per cent. every six months, giving mortgages of landed property for security.

*These certificates were in this form: [*440

"This certificate shall be receivable at the treasury, or any of the loan-offices of the State of Missouri, in the discharge of taxes or debts due the State, for the sum of $———, with interest for the same, at the rate of two per centum per annum from this date, the ——— day of ———, 182 ;" which form is set out in and prescribed by the act designated in the finding of the court.

This writ of error is sued out under the twenty-fifth section of the Judiciary Act, upon the supposition that the State act is in violation of that provision in the Constitution which prohibits the States from emitting bills of credit; and that the note declared on is void, as having been taken for an illegal consideration, or without consideration.

As a preliminary question, it has been argued that the case is not within the provisions of the twenty-fifth section; because it does not appear from anything on the record that this ground of defense was specially set up in the courts of the State. But this we consider no longer an open question; it has repeatedly

ADDITIONAL MEMORANDUM

At the trial on December 7,1968 John R. Elsom's Book, "LIGHTNING OVER THE TREASURY" was recieved in evidence. See included herein pages 11 thru 15 for the origin of this Bank racket. Also included is Jefferson's objection to the First Bank of the United States and his reasons and also Andrew Jackson's Veto of the Second Bank of the United States.

Whether it is Constitutional for the Gov. of the U.S. to incorporate a Bank, this Court need not pass upon, for it is immaterial to the issues here involved. Such a Corporation certainly cannot have any more rights than a natural person. The emission of Bills of Credit upon their Books, without consideration and the Issuance of Federal Reserve Notes without consideration to circulate as a legal tender for the payment of debts is not permitted, expressly or impliedly by the Constitution of the United States. Paper, whether money or not, is always illegal unless it is fully representative of some material commodity.

The issuance of a paper money without backing by the Banks is the same as if a grain warehouseman were to issue Warehouse Receipts for grain that he did not have. There must be a full representative consideration behind the paper or it is void as premised in fraud. No rights can be acquired by fraud. The law does not sanction an intentional wrong to the Citizen either in War or in Peace.

February 6,1969

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