

STATE OF MINNESOTA
COUNTY OF SCOTT

IN DISTRICT COURT
FIRST JUDICIAL DISTRICT

First National Bank of Montgomery,

Plaintiff

-vs-

COUNTER-AFFIDAVIT

Jerome Daly,

Defendant

Theodore R. Mellby, being duly sworn, on oath, deposes and states:

I.

Judgment for Defendant was entered in Justice Court on December 9, 1968. On December 12, 1968, Plaintiff complied with Minnesota Statutes Chapter 566, by depositing the necessary funds with the Clerk of District Court, Scott County, Minnesota. Copies of Plaintiff's correspondence and cancelled check are attached hereto.

II.

A Justice Court does not have jurisdiction to determine the validity of Federal Reserve Notes. Such a determination involves a question of constitutional law which is outside the subject matter jurisdiction of a Justice Court. The subject matter jurisdiction of the Justice Court is established by the Legislature. In Minnesota Statutes Sec. 530.05, the Legislature has provided that Justice Courts have jurisdiction in only six (6) specific cases, none of which encompass constitutional law subject matter.

III, IV, V, VII.

Plaintiff has duly appealed the decision of the lower Court to the District Court for trial de novo. Defendant, with the assistance of the Justice of the Lower Court, has unreasonably denied Plaintiff's legal right. Through this motion, Defendant now seeks to adjudicate his position before the District Court without allowing Plaintiff to proceed with the trial de novo. Defendant should be

denied the right to a hearing on his motion until such time as the Lower Court makes its return on appeal.

The position asserted by Defendant that Federal Reserve Notes do not constitute legal tender is without any merit whatsoever. For the Court's information, the Plaintiff submits the following authority to substantiate its position that Federal Reserve Notes constitute legal tender:

MONITORY DECISIONS OF THE SUPREME COURT, Gerald T. Dunne, Rutgers University Press (1960). A synopsis of cases appears on pages 104-108 thereof. The following appear therein:

MIXED MONEYS, THE CASE OF THE (1604), 80 Eng. Rept. 507 ("law" French); Sir John Davies Irish Reports 48 (English). Suit to recover standard English sterling promised in contract made prior to royal enactment setting coin of lower bullion value for Ireland. Judgment for debtor on ground that royal prerogatives over coinage supersede contrary provisions for payment in pre-existing private contracts.

MCCULLOUGH v. MARYLAND (1819), 17 U.S. (4 Wheaton), 316. Suit for state bank note taxes. Judgment for taxpayer on ground that the Bank of the United States was a legitimate exercise of the implied powers of Congress and that such institution and its notes were exempt from state taxes.

KNOX v. LEE and PARKER v. DAVIS (1871), Legal Tender II, 79 U.S. (12 Wall), 457. Suit demanding coin payment of debts contracted both before and after the Civil War currency acts. Judgment for debtors, reversing HEPBURN v. GRISWOLD, on the ground that Congress has constitutional power to issue paper currency and make it legal tender for debts contracted before and after such issuance.

JULLIARD v. GREENMAN (1884), Legal Tender III, 110 U.S. 421. Suit demanding coin payment on a note and rejecting previously tendered greenbacks therefor. Judgment for debtor on ground that Congress could constitutionally make paper money a legal tender for payment of debt in time of both peace and war.

LING SU FAN v. UNITED STATES (1910), 218 U.S. 302. Prosecution for unlawful export of coin from Philippine Islands. Judgment for the government on the ground that prohibitory statute did not deprive the coin-holder of property rights without due process of law.

PERRY v. UNITED STATES (1935), 294 U.S. 330. Suit on stipulated gold coin interest payment of Liberty Bond and involving rejection of devalued paper currency. Judgment for government on ground that no damage in terms of domestic purchasing power had been shown and Court of Claims had no jurisdiction for any other type of recovery.

NORMAN v. BALTIMORE & O. R. Co. (1935), 294 U.S. 240. Suit to recover value of stipulated gold coin payment of bond interest after Congress devalued gold content of dollar and made paper money standard for all debt payments. Judgment for debtor railroad on ground that congressional power over money superseded private contracts concerning methods of payment.

NORTZ v. UNITED STATES (1935), 294 U.S. 317. Suit to recover bullion value of gold coin previously deposited with Treasury and rejecting post-devaluation paper money settlement. Judgment for government on grounds that no damages in terms of domestic purchasing power had been shown to result from Treasury's failure to surrender gold coin.

HOLYOKE WATER POWER COMPANY v. AMERICAN WRITING PAPER COMPANY (1937), 300 U.S. 324. Suit for rent which was fixed at the number of dollars required currently to buy gold worth \$1,500 of U.S. Coinage of 1894. Judgment for tenant on grounds that both direct and indirect gold clauses had been outlawed by Congress and that rent could be paid by \$1,500 in paper currency.

VEAZIE BANK v. FENNO (1869), 75 U.S. (8 Wall), 533. Suit to collect a federal tax on state bank notes. Judgment for government on ground that notwithstanding discriminatory effect of tax, the power of Congress to establish national currency included power to prohibit competitive media.

The Veazie Bank case contains the following quotation: "... it is settled ... that Congress may constitutionally authorize the emission of bills of credit ... there can be no question of the power of the government to emit them ... to make them a currency, uniform in value and description, and convenient and useful

for circulation. These powers, until recently, were only partially and occasionally exercised. Lately, however, they have been called into full activity, and Congress has undertaken to supply a currency for the whole country.

Having thus, in the exercise of its undisputed constitutional powers, undertaken to provide a currency for the whole country, it cannot be questioned that Congress may, constitutionally, secure the benefit of it to the people To (this) end, Congress may restrain, by suitable enactments, the circulation as money of any notes not issued under its own authority. Without this power, indeed, its attempts to secure a sound and uniform currency for the country must be futile." *VEAZIE BANK v. FINNO* (1869), 75 U.S. (8 Wall), 533, 548-549.

VI. & VIII

On January 8, 1969, Honorable Harold E. Flynn, Judge of District Court, Scott County, Minnesota, issued an Order requiring Justice Martin V. Mahoney to Show Cause before his Court on January 17, 1969, why he should not make a return on appeal.

On January 15, 1969, Defendant filed an affidavit of prejudice against the Honorable Harold E. Flynn with the Clerk of District Court, Scott County, Minnesota. On January 16, 1969, Honorable Harold E. Flynn issued ORDER TRANSFERRING TRIAL to the Honorable Arlo E. Haering, the Chief Judge of the First Judicial District. Hearing on the Order to Show Cause was noticed for January 24, 1969.

On January 20, 1969, Defendant obtained an ex-parte order from Justice Martin V. Mahoney ordering Plaintiff to appear before said Justice on January 22, 1969, to show cause why the Justice Courts notice of refusal to allow appeal therein should not be made absolute. Plaintiff did not appear for the reason that said Court had no jurisdiction to pass on a constitutional question.

Hearing on the District Court order to show cause was duly held on January 24, 1969. On January 30, 1969, Honorable Arloe E. Haering, Judge of District Court, McLeod County, ordered Martin V. Mahoney, Justice of the Peace, Credit River Township, County of Scott, State of Minnesota, to make return on the appeal to the Clerk of District Court in and for the County of Scott, State of Minnesota.

On February 25, 1969, Defendant appealed to the Minnesota Supreme Court. Defendant did not comply with Rule 107 Civil Appellate Procedure. On March 26, 1969, Plaintiff made application to the Minnesota Supreme Court for an Order dismissing Defendant's appeal.

On April 15, 1969, the Minnesota Supreme Court dismissed Defendant's appeal.

On May 5, 1969, the Honorable Arlo E. Haering ordered that Martin V. Mahoney appear in person before his Court on May 9, 1969, to show cause why he should not be held in contempt of the Order of said Court dated, January 30, 1969. Defendant contacted the Court by telephone on May 9, 1969, and indicated that the Order dated, January 30, 1969, had not been personally served upon Justice Martin V. Mahoney. On May 14, 1969, said Order to make return on appeal dated January 30, 1969, was personally served upon Justice Martin V. Mahoney.

On June 24, 1969, Honorable Arlo E. Haering ordered that Martin V. Mahoney appear on June 27, 1969, to show cause why he should not be held in contempt of the Order of said Court, dated, Jan. 30, 1969. Justice Martin V. Mahoney did not appear on said date. Jerome Daly appeared as counsel for Martin V. Mahoney. Said Court has the matter under advisement at the present time.

On July 22, 1969, the Honorable Arloe E. Haering ordered that a Writ of Attachment issue against Jerome Daly, Martin V. Mahoney, and Wm. E. Drexler, for the transcript of all entries made in the docket of the Justice Court, Credit River Township, Scott County, Minnesota, together with all process and other papers relating to the above action and filed in said Justice Court.

The Sheriff's returns therein indicate that the file of said Justice Court is in the possession of Jerome Daly. A letter accompanying the return of the Sheriff of Scott County is attached hereto.

Affiant is presently informed by the Honorable Arlo E. Haering that said Court, on its own initiative, will issue and Order in the very near future.

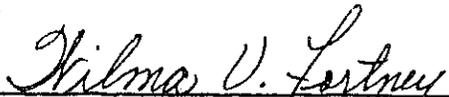
These events are set forth in order to indicate that the Defendant has used every possible legal maneuver designed to delay ^{the} trial de novo of this matter

in District Court.

Further Affiant Sayeth Not

Subscribed and sworn to
before me this 28th day of
August, 1969.


Theodore R. Mellby


Wilma V. Fortney, Notary Public
Le Sueur County, Minnesota
My Commission Expires November 23, 1971

State of Minnesota, } ss.

County of Le Sueur

First National Bank of Montgomery,

Plaintiff

-vs-

Jerome Daly,

Defendant

DISTRICT COURT

First Judicial District

Affidavit of Service by Mail

State of Minnesota, } ss.

County of LeSueur

Wilma V. Fortney of the City of Montgomery

County of LeSueur in the State of Minnesota, being duly sworn, says that on the

29th day of August, 1969, she served the annexed

COUNTER-AFFIDAVIT

on Jerome Daly

the Defendant in this action, by mailing to

Him a copy thereof, inclosed in an envelope, postage prepaid, and directed to said

Jerome Daly at

Wilma V. Fortney

Subscribed and sworn to before me, this 29th day of August, 1969

Ralph G. Kendrickson

RALPH G. KENDRICKSON

Notary Public, Le Sueur County, Minn.

My Commission Expires December 13, 1974