

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

considered these words to be used in the sense they bore in this country and not in that which they had in England. The Act gives exclusive admiralty and maritime jurisdiction to the **district court**. As a court of the law of nations,

THE HUNTRESS, 12 Fed.Case 984 @ 992 & 989, (Case No. 6,914) (D.Me. 1840):

2. As further evidence that the action before the court is in fact an Admiralty action we find in UNITED STATES of America v. \$3,976.62 in currency, One 1960 Ford Station Wagon Serial No. OC66W145329,

"Although, presumably for purposes of obtaining jurisdiction, action for forfeiture under Internal Revenue Laws is commenced as **Proceeding in admiralty**, after jurisdiction is obtained proceeding takes on character of civil action at law, and at least at such stage of proceedings, Rules of Civil Procedures control.

3. The Petitioner/Claimant (herein referred to as Claimant) refers the court to 1 Benedict [6th Edition] § 17, p. 28: which reads in pertinent part: "As no court other than a court of admiralty can enforce maritime liens, no other court can displace, discharge or subordinate them. Neither the State courts nor the United States courts on their common law, equity and bankruptcy sides can divest, transfer to proceeds or adjudicate the maritime liens unless the maritime lienor voluntarily submit themselves to the jurisdiction." Emphasis added.

4. Pursuant to 28 USC § 2463 "All property taken or detained **under any revenue law** of the United States..... shall be deemed in the custody of the law and subject only to the orders and decrees of the courts of the United States having jurisdiction thereof." Emphasis added. Had the United States been a party to the original action, the United States would have observe the law and notified

1

2 the court of the libel action, at the very least.

3 See 26 U.S.C. 7401. However since the United States did not
4 commence the action against this Claimant as demonstrated by this
5 courts own record (see Certificate of Search Exhibit D),
6 Claimants' position is dispositive. Under Federal Rules of Civil
7 Procedure (FRCP) rule 4(i) the court would lack in personam
8 jurisdiction over this Claimant (defendant in the original) for
9 failure of service and could not render judgement. But a foreign
10 power hiding under a grant of judicial immunity would not refrain
11 from violating Constitutional safeguards as long as it felt it was
12 safe to do so.

13

14 5. As a further indication that the issue before the court is a
15 matter of admiralty, Petitioners refer the court again to
16 **"Benedict's Admiralty, " 7th ed., Vol. 2 Chapter IV § 51 footnote**
17 **7.** "....[I]t is now generally held that government tax claims
18 under 26 U.S.C. § 6321 'upon all property and rights of property
19 whether real or personal' **rank below all other maritime liens...**"

20

21 6. "A cardinal principle, in which the practice of admiralty
22 courts differs from that of courts of common law, permits the
23 parties to a suit to prosecute and defend upon their rights as such
24 rights exist at the institution of the action; the assignment of a
25 right of action being deemed to vest in the assignee all the
26 privileges and remedies possessed by the assignor. According to
27 the rule of the common law, **the injured party alone is permitted to**

28

1
2 **sue for a trespass, the damages being deemed not legally**
3 **assignable;** and if there be an equitable claimant, he may sue only
4 in the name of the injured party. In admiralty, however, the common
5 practice is to have the suit conducted in the names of the real
6 parties IN INTEREST." 1 R.C.L. § 33, pg. 424 (1914); "...and when a
7 statute of the United States so provides, an action for the use or
8 benefit of another shall be brought in the name of the United
9 States." F.R.Civ.P. 17 The district courts are prohibited from
10 granting venue where the United States has less than "one-half of
11 its capital stock...." of the Respondents/Libelants Principal, the
12 Fund and Bank. 28 U.S.C. § 1349; The government by becoming a
13 corporator, (See: 22 U.S.C.A, 286e) lays down its sovereignty and
14 takes on that of a private citizen 28 USC § 3002(15)(A)-(C). It
15 can exercise no power which is not derived from the corporate
16 charter. (See: The Bank of the United States vs. Planters Bank of
17 Georgia, 6 L.Ed. (9 Wheat) 244; U.S. vs BURR, 309 U.S. 242).

18
19 7. The **REAL PARTY IN INTEREST** is not the de jure "United States
20 of America" or "State," but "The Bank" and "The Fund." (**22**
21 **U.S.C.A. 286,** et seq.). The acts committed under fraud, force and
22 seizures are many times done under "Letters of Marque and Reprisal"
23 i.e., "recapture." (See **31 U.S.C.A. 5323**). such principles as
24 "Fraud and Justice never dwell together", Wingate's Maxims 680, and
25 "A right of action cannot arise out of fraud." Broom's Maxims 297,
26 729. The IMF, the real party in interest, has waived its immunity
27 in this instant action by the act of taking with out just cause.

28

1

2 See United States Constitution 5th Amendment and Principles of
3 International Law Recognized in the Charter and Judgment of the
4 Nuremberg Tribunal(crimes against the peace). The taking of
5 property without just cause exceeds the Executive grant of immunity
6 pursuant to Executive Order # 9751, executed on the 11 day of July
7 1946 and the Bretton Woods Agreements Act of July 1945. Although,
8 the United States turned over some of its debt collection activity
9 to the IMF the Constitution of the United States remains the
10 Supreme Law of the land even though the agents for the IMF may come
11 in the name of the United States. The IMF is not the United
12 States.

13

14 8. "According to international law it has long been established
15 that, although a person who claims to be the owner of a ship is
16 bound by the character fastened upon her by the flag, under which
17 he has chosen to let her pass, captors are not affected by the
18 flag, but are entitled to go behind it, and to show the true
19 character of the ship by reference to the substantial interest in
20 it, the effective control over it, and the real proprietorship of
21 it." Prize Law During the World War, James Wilford Garner,
22 MacMillian Co., (1927) § 284 pgs. 378, 379, quote of Sir Samuel in
23 the "Kankakee, Hoching and Genesee," British Prize Court 1918. See
24 2 Benedict [6th Edition] § 400, pgs. 92 & 93. 254 U.S. 671 @ P.
25 689 Admiralty Rules of Practice - Claim-How Verified-Rule 25.

26

27 9. This court lacks jurisdiction over the Claimant who is

28

1

2 appearing specially and not generally. Although in most courts
3 special appearance has been abolished and in this instant case
4 since the issue before the court is **admiralty** the Claimant points
5 out: "While the modern version of Federal Rule of Civil Procedure
6 12 (h) (1) has abolished the distinction between general and
7 special appearances for virtually all suits brought under those
8 rules the **Supplemental Rules for Certain Admiralty and Maritime**
9 **Claims has preserved two forms of restricted appearance**..... Rule
10 E(5)(a)...and Rule E(8)...The rule was fashioned in order to avoid
11 subjecting an in rem party [James H. Ayres] to the jurisdiction of
12 the court with reference to other claims for which 'such process is
13 not available or **has not been served**....'"**U.S. v. Republic**
14 **Marine, Inc.**, 829 F.2d. 1399 @ p. 1402., FRCP Rule 4(i).

15

16 10. Claimant draws attention to 2 Benedict [6th Edition] § 275,
17 pg. 119, 120: "But where a party discovers that ...he has had no
18 proper notice... and has thereby been deprived of property; or
19 where there has been fraud of any kind...so that no regular remedy
20 is left him, he may obtain redress by filing a **libel of review**.
21 The subsequent proceedings will be the same as in any suit and the
22 decree of the court will be such as equity demands. There is no
23 corresponding provision in the Civil Rules." Emphasis added.

24

25 11. The Claimant prays the indulgence of the court in reviewing 26
26 USC § 7323 JUDICIAL ACTION TO ENFORCE FORFEITURE. § 7323(a) reads:
27 Nature and Venue. - The proceedings to enforce such forfeitures

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

shall be in the nature of a proceeding in rem in the United States District Court for the district where such seizure is made. See Claimant Exhibit D. No action was brought against James H. Ayres in the District Court of the United States. This position is dispositive.

12. The Claimant again directs the attention of the court to 26 USC § 7401 - AUTHORIZATION --No civil action for the collection or recovery of taxes, or of any fine, penalty, or **forfeiture**, shall be commenced unless the Secretary authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced. A review of the record maintained by the Attorney General failed to show any authorization. It is noted that any action brought at this time would be an attempt to conceal the truth from the court and be in fact a construction on the record. See 18 U.S.C. 201 in as much as the public record, this court, and this Claimants are witness to the facts in a Federal action.

13. As a matter of public record contained in the GAO audit of 1993 the Internal Revenue Service falsifies documents routinely in order to meet its goals. See pg. 5 of audit results.

14. Since the statutes themselves declare that seizures and forfeitures are admiralty operations, the property is held by the law and cannot be conveyed unless by court order. 28 U.S.C.2463 covers all Revenue Laws of the United States and at the direction

1

2 of Congress places such under the supervision of the Court. A
3 question arises based upon the actions of the
4 Respondents/Libelants. Evidently no court of competent
5 jurisdiction has been notified, served or engaged in any fashion or
6 manor. Again see Claimants Exhibit D. This is a clear
7 violation/failure of due process circumventing the 4th and 5th
8 Amendments to the Constitution for the United States of America
9 (taking without just compensation). FRCP Rule 4(i)

10

11 15. Through the testimony of witnesses, evidence at hand and to
12 be discovered, evidence of a systematic scheme or enterprise is
13 visible which are predicated acts under R.I.C.O. statutes 18 USC §
14 1961 et. seq. to wit: three or more parties engaged in an unlawful
15 activity to deprive American citizens of their property without
16 just compensation or due process of law over an extended period of
17 time pursuant to 18 USC §§ 2, 3, 4, and 241.

18

19 16. Under 26 USC § 6902(a) burden of proof. "...burden of proof
20 shall be upon the secretary to show that the Claimant [James H.
21 Ayres] is libel as a transferee [or back up withholding agent of
22 tax payer] of property of tax payer, but not show that the tax
23 payer [United States] was libel for the tax. Emphasis added.
24 NOTE: Claimant is not claiming any rights to tax court implied or
25 otherwise.

26

27 17. In the above statement the court will note that the term

28

1

2 United States was inserted after tax payer. The association
3 between the International Monetary Fund and it's contractual member
4 the United States (for definition see 28 USC § 3002 (15) (A) (B)
5 (C)) present a fortior which demands an examination of the
6 contractual arrangement/agreement that in any way hold the Claimant
7 responsible as co-signor to such instrument. This simply precludes
8 the cavalier use of the term tax payer and demands a narrow
9 interpretation of same. The term tax payer for the purposes of
10 this document is not those associated with the common English
11 language. Very simply put, the term tax payer does not apply to
12 Mr. Ayres in this instant action but refers to the United States in
13 it's corporate capacity in all instances. Pursuant to the Internal
14 Revenue Code monies collected by the IRS are to be deposited into
15 the Treasury of the United States daily, however no record of the
16 deposit of "income taxes" was discovered by the Government
17 Accounting Office. See GAO audit supra. At Sec. 6 of the Bretton
18 Woods Agreements Act of 1945, the United States has allowed the
19 deposit of funds collected by the IRS in the service of the IMF to
20 be deposited to any (private) Federal Reserve Bank. It can be
21 noted on the back of the checks deposited to the Bank the
22 following:

23 PAY ANY FEDERAL RESERVE BANK AGAINST US OBLIGATIONS.

24

25 18. No indication of any bond or surety has been made by the
26 International Monetary Fund or it's agents. As a matter of fact,
27 no action has been filed before any court of competent
28 jurisdiction. See Exhibit D. The Attorney General (A.G.) for the
United States as indicated in the documents before this court is
unaware of any action civil, criminal or otherwise, pending
pursuant to 26 USC § 7401. See Exhibit D. A possibility exists

1
2 that property may be concealed, converted or destroyed to preclude
3 the intervention of this Honorable Court. In such instances the
4 prohibitions contained in 26 USC § 7421 do not apply. It was not
5 the intention of Congress to circumvent the safe guards contained
6 in the 4th and 5th Amendments of the Constitution for the United
7 States of America and therefore, enacted 5 USC § 706 for the
8 purposes of review of administrative agencies. Pursuant to the
9 United States Attorney's Manual (USAM) § 6-5.330 INJUNCTION
10 ACTIONS: Section 7421(a), provides, generally that no suit for the
11 purpose of restraining the assessment of any tax shall be
12 maintained by any person in any court, whether or not such person
13 is the person against whom such tax was assessed. In light of 26
14 U.S.C. § 7421, injunctive relief may be had only upon satisfaction
15 of the twofold test laid down in Enochs v. Williams Packing &
16 Navigation Co., 370 U.S. 1 (1962).

17
18 19. It is interesting to note that the term **BY ANY PERSON IN**
19 **ANY COURT** is used in the above cite. The law is dispositive in
20 directing that, "**ALL Property** taken or detained **UNDER ANY REVENUE**
21 **LAW** of the United States ... shall be deemed in the custody of the
22 law and subject only to the orders and decrees of the court of the
23 United States having jurisdiction thereof." Emphasis added. Since
24 no court order issuing from a court of competent jurisdiction is
25 evident a question is raised, who receives the property and where
26 did the money go that was in the custody of the law? See 28 USC §
27 2463. Did the governor of the International Monetary Fund or any
28 of his agents post a bond (28 USC § 2464) in order to protect the
interest of the United States of America? Is it reasonable to
assume that this court is barred by the Anti-injunction Act 26 USC
§ 7421 in protecting the property that is placed in it's custody
by the agents of the International Monetary Fund pursuant to the
revenue laws of the corporate United States? This Claimant thinks
not. In simple words, the much over used Section 26 USC 7421 is
inappropriate as generally applied by the Internal Revenue Service.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

This is not a tax being deposited to the Treasury but part of the obligations to the Fund to defer the quota imposed by the IMF on the United States by agreement. Injunction against this type of transfer of property taken without just cause is proper and falls outside the prohibition pursuant to IRC 7421.

20. Upon review of the Unification Act of 1964 and interesting comment was made which bares light on this instant case. This following is not a direct quotation but is simply paraphrased:

Most attorneys and for that matter most courts are singularly lacking expertise in Admiralty/Maritime Law.

Judicial Canon #1 is extremely important. Due diligence and a complete review of the merits of the case are necessary in the interest of justice. These Pro se litigant is not knowledgeable in the law and relays upon the discretion of the court to apply justice fairly and evenly pursuant to 28 USC § 471, Federal Rules of Civil Procedure -- Rule 81 and rights and safe guards paid for in the highest premium, the blood of patriots, for the people of the United States of America and their posterity.

Respectfully,

James H. Ayres Pro se

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

On _____ day of _____ 1995 in the State of _____
in the county of _____;
_____ did appear before me with
sufficient identification and signed in my presence the above
document.

Notary

seal

My commission expires