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July 1, 1969

Honorable Arlo E. Haering
Judge of District Court
Glencoe, Minnesota

In re: First National Bank of Montgomery -vs- Jerome Daly

Dear Judge Haering:

Upon returning to the office I researched the issues raised by opposing counsel on June 27, 1969

The authority cited by opposing counsel did not support his position that the District Court had no jurisdiction. M.S.A. Sections 532.43 and 532.44 were neither material nor relevant to the courts jurisdiction. M.S.A. 532.37 states, "This chapter shall not apply to actions of forcible entry and detainer."

Opposing counsel objected on the grounds that the court had no jurisdiction over the person of Justice Mahoney. Justice Mahoney and Jerome Daly made a general appearance when plaintiff moved for the order compelling the return and they did not object to the jurisdiction of the court at that time. As a result of said silence an objection based on no jurisdiction over the person was waived R.C.P. 12.08 (1).

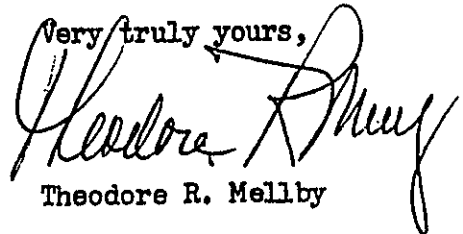
Opposing counsel also objected to the proceedings on the basis that the court had no jurisdiction of the subject matter. The subject matter involved the failure of a justice to make his return on appeal to the District Court. M.S.A. 566.14, in addition to being the statute opposing counsel should have cited, indicates the District Court has jurisdiction of both the subject matter and the justice when he refused to make a return on appeal. The reason for the refusal and the improper conduct of an inferior tribunal were at issue.

M.S.A. 566.14 states, "The court may compel the justice, by attachment, to make or amend any return which is withheld or improperly or insufficiently made. Plaintiff did not proceed by attachment, but it is essential to note that the statute does not make attachment the sole and exclusive manner in which to compel a justice to make or amend any return. Interpretation of this or any other appeal statute must be governed by the courts comment in City of St. Paul v. Sutherland, 132 N.W. 2d 280,281 (1964) that "These statutes

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are remedial in nature and should be liberally construed to avoid forfeiting the appeal rights they purport to confer.

Statutory authority for the order of the District Court compelling Justice Mahoney to make his return on appeal can also be found the Minnesota Statutes, Chap. 588. The provisions of M.S.A. 588.01 Subdivision 3 (1), (3), (10), and 588.02 provide the court with jurisdiction over a justice who misbehaves in office or violates his duty. Justice Mahoney's conduct amounts to nothing less than neglect or violation of his duty to make return on appeal.

Very truly yours,

Theodore R. Mellby

TRM:avt