

LEXSEE

Jerome Daly v. Savage State Bank and Another

No. 42157

Supreme Court of Minnesota

285 Minn. 503; 171 N.W.2d 218; 1969 Minn. LEXIS 996

November 14, 1969

PRIOR HISTORY: [**1]

Petition in this court for a writ of prohibition by Savage State Bank to compel Martin V. Mahoney, justice of the peace of Credit River Township, Scott County, to refrain from enforcing certain orders and from further proceedings in an action brought by one Jerome Daly against petitioner and Eugene T. Kearney, postmaster at Savage, Minnesota.

DISPOSITION:

Application dismissed.

HEADNOTES:

Courts — justice of peace court — demand for removal — effect.

COUNSEL:

Fredrikson, Byron & Colborn, Ltd., James L. Baillie, and Keith Libbey, for petitioner.

OPINIONBY:

PER CURIAM

OPINION:

[*503] Petition for a writ of prohibition in the above-entitled matter instituted before Martin V. Mahoney, Justice of the Peace of Credit River Township, Scott County, Minnesota.

The death of Mr. Mahoney on August 22, 1969, makes these proceedings moot as to him.

However, to avoid the necessity of further proceedings to vacate and set aside any action taken herein by Mr. Mahoney or by any successor in office (see, 42 Am. Jur., Prohibition, § 47), we declare all proceedings in this matter in the justice court subsequent to relator's demand for removal of August 15, 1969, a nullity. Minn. St. 531.115 provides [**2] for removal as a matter of right from a justice of the peace court to a court presided over by a salaried judge, and it requires the justice of the peace to transmit the file of such action "forthwith." See, *Smith v. Tuman*, 262 Minn. 149, 114 N.W. (2d) 73.

The application for the writ of prohibition is dismissed.