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Legal Tender Cases

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Legal Tender Cases - 110 U.S. 421 (1884)
U.S. Supreme Court Legal Tender Cases, 110 U.S. 421 (1884)

Legal Tender Cases

Submitted January 22, 1884

Decided March 3, 1884

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I N ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

Congress has the constitutional power to make the Treasury notes of the United States a legal tender in payment of private debts, in time of peace as well as in time of war.

Under the Act of May 31, 1878, c. 146, which enacts that when any United States legal tender notes may be redeemed or received into the Treasury, and shall belong to the United States, they shall be reissued and paid out again, and kept in circulation, notes so reissued are a legal tender.

Juilliard, a citizen of New York, brought an action against Greenman, a citizen of Connecticut, in the Circuit Court of the United States for the Southern District of New York, alleging that the plaintiff sold and delivered to the defendant at his special instance and request, 100 bales of cotton, of the value and for the agreed price of $5,122.90, and that the defendant agreed to pay that sum in cash on the delivery of the cotton, and had not paid the same or any part thereof, except that he had paid the sum of $22.90 on account, and was now justly indebted to the plaintiff therefor in the sum of $5,100, and demanding judgment for this sum, with interest and costs.

The defendant in his answer admitted the citizenship of the parties, the purchase and delivery of the cotton, and the agreement to pay therefor, as alleged, and averred that, after the delivery of the cotton, he offered and tendered to the plaintiff, in full payment, $22.50 in gold coin of the United States, forty cents in silver coin of the United States, and two United States notes, one of the denomination of $5,000 and the other of the denomination of $100, of the description known as United States legal tender notes, purporting by recital thereon to be

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legal tender at their respective face values, for all debts, public and private, except duties on imports and interest on the public debt, and which, after having been presented for payment, and redeemed and paid in gold coin, since January 1, 1879, at the United States Sub-Treasury in New York, had been reissued and kept

in circulation under and in pursuance of the Act of Congress of May 31, 1878, c. 146; that at the time of offering and tendering these notes, and coin to the plaintiff the sum of $5,122.90 was the entire amount due and owing in payment for the cotton, but the plaintiff declined to receive the notes in payment of $5,100 thereof, and that the defendant had ever since remained, and still was, ready and willing to pay to the plaintiff the sum of $5,100 in these notes, and brought these notes into court, ready to be paid to the plaintiff, if he would accept them.

The plaintiff demurred to the answer upon the grounds that the defense, consisting of new matter, was insufficient in law upon its face, and that the facts stated in the answer did not constitute any defense to the cause of action alleged.

The circuit court overruled the demurrer and gave judgment for the defendant, and the plaintiff sued out this writ of error.

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MR. JUSTICE GRAY delivered the opinion of the Court.

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The amount which the plaintiff seeks to recover, and which, if the tender pleaded is insufficient in law, he is entitled to recover, is $5,100. There can therefore be no doubt of the jurisdiction of this Court to revise the judgment of the circuit court. Act of February 16, 1875, c. 77, 3, 18 Stat. 315.

The notes of the United States, tendered in payment of the defendant's debt to the plaintiff, were originally issued under the Acts of Congress of February 25, 1862, c. 33; July 11, 1862, c. 142, and March 3, 1863, c. 73, passed during the war of the rebellion, and enacting that these notes should "be lawful money and a legal tender in payment of all debts, public and private, within the United States," except for duties on imports and interest on the public debt. 12 Stat. 345, 532, 709.

The provisions of the earlier acts of Congress, so far as it is necessary for the understanding of the recent statutes to quote them are reenacted in the following provisions of the Revised Statutes:

"SEC. 3579. When any United States notes are returned to the Treasury, they may be reissued, from time to time, as the exigencies of the public interest may require."

"SEC. 3580. When any United States notes returned to the Treasury are so mutilated or otherwise injured as to be unfit for use, the Secretary of the Treasury is authorized to replace the same with others of the same character and amounts."

"SEC. 3581. Mutilated United States notes, when replaced according to law, and all other notes which by law are required to be taken up and not reissued, when taken up shall be destroyed in such manner and under such regulations as the Secretary of the Treasury may prescribe."

"SEC. 3582. The authority given to the Secretary of the Treasury to make any reduction of the currency by retiring and canceling United States notes is suspended."

"SEC. 3588. United States notes shall be lawful money, and a legal tender in payment of all debts, public and private, within the United States, except for duties on imports and interest on the public debt."

The Act of January 14, 1875, c. 15, "to provide for the resumption

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of specie payments," enacted that on and after January 1, 1879,

"the Secretary of the Treasury shall redeem in coin the United States legal tender notes then outstanding on their presentation for redemption at the office of the Assistant Treasurer of the United States in the City of New York, in sums of not less than fifty dollars,"

and authorized him to use for that purpose any surplus revenues in the Treasury and the proceeds of the sales of certain bonds of the United States. 18 Stat. 296.

The Act of May 31, 1878, c. 146, under which the notes in question were reissued, is entitled "An act to forbid the further retirement of United States legal tender notes," and enacts as follows:

"From and after the passage of this act, it shall not be lawful for the Secretary of the Treasury or other officer under him to cancel or retire any more of the United States legal tender notes. And when any of said notes may be redeemed or be received into the Treasury under any law, from any source whatever, and shall belong to the United States, they shall not be retired, cancelled, or destroyed, but they shall be reissued and paid out again and kept in circulation, *provided* that nothing herein shall prohibit the cancellation and destruction of mutilated notes and the issue of other notes of like denomination in their stead, as now provided by law. All acts and parts of acts in conflict herewith are hereby repealed."

20 Stat. 87.

The manifest intention of this act is that the notes which it directs, after having been redeemed, to be reissued and kept in circulation, shall retain their original quality of being a legal tender.

The single question therefore to be considered, and upon the answer to which the judgment to be rendered between these parties depends, is whether notes of the United States, issued in time of war, under acts of Congress declaring them to be a legal tender in payment of private debts, and afterwards in time of peace redeemed and paid in gold coin at the Treasury, and then reissued under the act of 1878, can, under the

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Constitution of the United States, be a legal tender in payment of such debts.

Upon full consideration of the case, the court is unanimously of opinion that it cannot be distinguished in principle from the cases heretofore determined,

reported under the names of the *Legal Tender Cases,* 12 Wall. 457; *Dooley v. Smith,* 13 Wall. 604; *Railroad Company v. Johnson,* 15 Wall. 195, and *Maryland v. Railroad Company,* 22 Wall. 105, and all the judges, except MR. JUSTICE FIELD, who adheres to the views expressed in his dissenting opinions in those cases, are of opinion that they were rightly decided.

The elaborate printed briefs submitted by counsel in this case, and the opinions delivered in the *Legal Tender Cases,* and in the earlier case of *Hepburn v. Griswold,* 8 Wall. 603, which those cases overruled, forcibly present the arguments on either side of the question of the power of Congress to make the notes of the United States a legal tender in payment of private debts. Without undertaking to deal with all those arguments, the court has though it fit that the grounds of its judgment in the case at bar should be fully stated.

#No question of the scope and extent of the implied powers of Congress under the Constitution can be satisfactorily discussed without repeating much of the reasoning of Chief Justice Marshall in the great judgment in *McCulloch v. Maryland,* 4 Wheat. 316, by which the power of Congress to incorporate a bank was demonstrated and affirmed, notwithstanding the Constitution does not enumerate, among the powers granted, that of establishing a bank or creating a corporation.

The people of the United States by the Constitution established a national government, with sovereign powers, legislative, executive, and judicial. "The government of the Union," said Chief Justice Marshall,

"though limited in its powers, is supreme within its sphere of action . . . and its laws, when made in pursuance of the Constitution, form the supreme law of the land. . . . Among the enumerated powers of government, we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war, and to raise and support armies and navies. The sword and

the purse, all the external relations, and no inconsiderable portion of the industry of the nation, are entrusted to its government."

4 Wheat. 17 U. S. 405 -407.

A Constitution, establishing a frame of government, declaring fundamental principles, and creating a national sovereignty, and intended to endure for ages, and to be adapted to the various crises of human affairs, is not to be interpreted with the strictness of a private contract. The Constitution of the United States, by apt words of designation or general description, marks the outlines of the powers granted to the national legislature; but it does not undertake, with the precision and detail of a code of laws, to enumerate the subdivisions of those powers, or to specify all the means by which they may be carried into execution. Chief Justice Marshall, after dwelling upon this view, as required by the very nature of the Constitution, by the language in which it is framed, by the limitations upon the general powers of Congress introduced in the ninth section of the first article, and by the omission to use any restrictive term which might prevent its receiving a fair and just interpretation, added these emphatic words: "In considering this question, then, we must never forget that it is a *constitution* we are expounding." 4 Wheat. 17 U. S. 407 . *See also* page 17 U. S. 415 .

The breadth and comprehensiveness of the words of the Constitution are nowhere more strikingly exhibited than in regard to the powers over the subjects of revenue, finance, and currency, of which there is no other express grant than may be found in these few brief clauses:

"The Congress shall have power:"

"To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

"To borrow money on the credit of the United States."

"To regulate commerce with foreign nations and among the several states and with the Indian tribes."

"To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures. "

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The section which contains the grant of these and other principal legislative powers concludes by declaring that the Congress shall have power

"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

By the settled construction and the only reasonable interpretation of this clause, the words "necessary and proper" are not limited to such measures as are absolutely and indispensably necessary, without which the powers granted must fail of execution, but they include all appropriate means which are conducive or adapted to the end to be accomplished, and which, in the judgment of Congress, will most advantageously effect it.

That clause of the Constitution which declares that

"The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States"

either embodies a grant of power to pay the debts of the United States or presupposes and assumes that power as inherent in the United States as a sovereign government. But in whichever aspect it be considered, neither this nor any other clause of the Constitution makes any mention of priority or preference of the United States as a creditor over other creditors of an individual debtor. Yet this Court, in the early case of *United States v. Fisher,* 2 Cranch 358, held that under the power to pay the debts of the United States, Congress had the power to enact that debts due to the United States should have that priority of payment out of the

estate of an insolvent debtor which the law of England gave to debts due to the Crown.

In delivering judgment in that case, Chief Justice Marshall expounded the clause giving Congress power to make all necessary and proper laws as follows:

"In construing this clause, it would be incorrect and would produce endless difficulties if the opinion should be maintained that no law was authorized

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which was not indispensably necessary to give effect to a specified power. Where various systems might be adopted for that purpose, it might be said with respect to each that it was not necessary, because the end might be obtained by other means. Congress must possess the choice of means, and must be empowered to use any means which are in fact conducive to the exercise of a power granted by the Constitution. The government is to pay the debt of the Union, and must be authorized to use the means which appear to itself the most eligible to effect that object."

2 Cranch 6 U. S. 396 .

In *McCulloch v. Maryland,* he more fully developed the same view, concluding thus:

"We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional."

4 Wheat. 17 U. S. 421 .

The rule of interpretation thus laid down has been constantly adhered to and acted on by this Court, and was accepted as expressing the true test by all the judges who took part in the former discussions of the power of Congress to make the Treasury notes of the United States a legal tender in payment of private debts. The other judgments delivered by Chief Justice Marshall contain nothing adverse to the power of Congress to issue legal tender notes.

By the Articles of Confederation of 1777, the United States, in Congress assembled, were authorized "to borrow money or emit bills on the credit of the United States;" but it was declared that

"Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is

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not by this confederation expressly delegated to the United States in Congress assembled."

Art. 2; art. 9, 5; 1 Stat. 4, 7. Yet, upon the question whether, under those articles, Congress, by virtue of the power to emit bills on the credit of the United States, had the power to make bills so emitted a legal tender, Chief Justice Marshall spoke very guardedly, saying: "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." *Craig v. Missouri,* 4 Pet. 410, 29 U. S. 435 . But in the Constitution, as he had before observed in *McCulloch v. Maryland,*

"there is no phrase which, like the Articles of Confederation, excludes incidental or implied powers and which requires that everything granted shall be expressly and minutely described. Even the Tenth Amendment, which was framed for the purpose of quieting the excessive jealousies which had been excited, omits the word 'expressly' and declares only that the powers 'not delegated to the United States nor prohibited to the states are reserved to the states or to the people,' thus leaving the question whether the particular power which may become the subject of contest has been delegated to the one government or prohibited to the other to

depend on a fair construction of the whole instrument. The men who drew and adopted this amendment had experienced the embarrassments resulting from the insertion of this word in the Articles of Confederation, and probably omitted it to avoid those embarrassments."

4 Wheat. 17 U. S. 405 -406. The sentence sometimes quoted from his opinion in *Sturges v. Crowninshield* had exclusive relation to the restrictions imposed by the Constitution on the powers of the states, and especial reference to the effect of the clause prohibiting the states from passing laws impairing the obligation of contracts, as will clearly appear by quoting the whole paragraph:

"Was this general prohibition intended to prevent paper money? We are not allowed to say so, because it is expressly provided that no state shall 'emit bills of credit;' neither could these words be intended to restrain the states from enabling debtors to discharge their debts by the tender of property of no real value to the creditor, because for that subject also particular provision

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is made. Nothing but gold and silver coin can be made a tender in payment of debts."

4 Wheat. 17 U. S. 122 , 17 U. S. 204 .

Such reports as have come down to us of the debates in the convention that framed the Constitution afford no proof of any general concurrence of opinion upon the subject before us. The adoption of the motion to strike out the words "and emit bills" from the clause "to borrow money and emit bills on the credit of the United States" is quite inconclusive. The philippic delivered before the Assembly of Maryland by Mr. Martin, one of the delegates from that state, who voted against the motion and who declined to sign the Constitution, can hardly be accepted as satisfactory evidence of the reasons or the motives of the majority of the convention. *See* 1 Elliot's Debates 345, 370, 376. Some of the members of the convention, indeed, as appears by Mr. Madison's minutes of the debates, expressed the strongest opposition to paper money. And Mr. Madison has

disclosed the grounds of his own action by recording that

"this vote in the affirmative by Virginia was occasioned by the acquiescence of Mr. Madison, who became satisfied that striking out the words would not disable the government from the use of public notes, so far as they could be safe and proper, and would only cut off the pretext for a paper currency, and particularly for making the bills a tender, either for public or private debts."

But he has not explained why he thought that striking out the words "and emit bills" would leave the power to emit bills, and deny the power to make them a tender in payment of debts. And it cannot be known how many of the other delegates, by whose vote the motion was adopted, intended neither to proclaim nor to deny the power to emit paper money, and were influenced by the argument of Mr. Gorham, who "was for striking out, without inserting any prohibition," and who said: "If the words stand, they may suggest and lead to the emission." "The power, so far as it will be necessary or safe, will be involved in that of borrowing." 5 Elliot's Debates 434, 435, and note. And after the first clause of the tenth section of the first article had been reported in the form in which it now stands, forbidding the states to make anything but gold or silver coin a tender in payment of debts or to pass

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any law impairing the obligation of contracts, when Mr. Gerry, as reported by Mr. Madison,

"entered into observations inculcating the importance of public faith, and the propriety of the restraint put on the states from impairing the obligation of contracts, alleging that Congress ought to be laid under the like prohibitions,"

and made a motion to that effect, he was not seconded. *Ib.,* 546. As an illustration of the danger of giving too much weight upon such a question to the debates and the votes in the convention, it may also be observed that propositions to authorize Congress to grant charters of incorporation for national objects were strongly opposed, especially as regarded banks, and defeated. *Ib.,* 440, 543-544. The power of Congress to emit bills of credit as well as to incorporate national

banks is now clearly established by decisions to which we shall presently refer.

The words "to borrow money," as used in the Constitution to designate a power vested in the national government for the safety and welfare of the whole people, are not to receive that limited and restricted interpretation and meaning which they would have in a penal statute, or in an authority conferred, by law or by contract, upon trustees or agents for private purposes. The power "to borrow money on the credit of the United States" is the power to raise money for the public use on a pledge of the public credit, and may be exercised to meet either present or anticipated expenses and liabilities of the government. It includes the power to issue, in return for the money borrowed, the obligations of the United States in any appropriate form, of stock, bonds, bills or notes, and in whatever form they are issued, being instruments of the national government, they are exempt from taxation by the governments of the several states. *Weston v. Charleston City Council,* 2 Pet. 449; *Banks v. Mayor,* 7 Wall. 16; *Bank v. Supervisors,* 7 Wall. 26. Congress has authority to issue these obligations in a form adapted to circulation from hand to hand in the ordinary transactions of commerce and business. In order to promote and facilitate such circulation, to adapt them to use as currency, and to make them more current in the market, it may

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provide for their redemption in coin or bonds and may make them receivable in payment of debts to the government. So much is settled beyond doubt, and was asserted or distinctly admitted by the judges who dissented from the decision in the *Legal Tender Cases* as well as by those who concurred in that decision. *Veazie Bank v. Fenno,* 8 Wall. 533, 75 U. S. 548 ; *Hepburn v. Griswold,* 8 Wall. 616, 75 U. S. 636 ; *Legal Tender Cases,* 12 Wall. 543, 79 U. S. 544 , 79 U. S. 560 , 79 U. S. 582 , 79 U. S. 610 , 79 U. S. 613 , 79 U. S. 637 .

It is equally well settled that Congress has the power to incorporate national banks, with the capacity, for their own profit as well as for the use of the government in its money transactions, of issuing bills which, under ordinary circumstances, pass from hand to hand as money at their nominal value, and

which, when so current, the law has always recognized as a good tender in payment of money debts unless specifically objected to at the time of the tender. *United States Bank v. Bank of Georgia,* 10 Wheat. 333, 23 U. S. 347 ; *Ward v. Smith,* 7 Wall. 447, 74 U. S. 451 . The power of Congress to charter a bank was maintained in *McCulloch v. Maryland,* 4 Wheat. 316, and in *Osborn v. United States Bank,* 9 Wheat. 738, chiefly upon the ground that it was an appropriate means for carrying on the money transactions of the government. But Chief Justice Marshall said:

"The currency which it circulates, by means of its trade with individuals, is believed to make it a more fit instrument for the purposes of government than it could otherwise be, and if this be true, the capacity to carry on this trade is a faculty indispensable to the character and objects of the institution."

9 Wheat. 22 U. S. 864 . And Mr. Justice Johnson, who concurred with the rest of the Court in upholding the power to incorporate a bank, gave the further reason that it tended to give effect to "that power over the currency of the country which the framers of the Constitution evidently intended to give to Congress alone." *Ib.,* 22 U. S. 873 .

The constitutional authority of Congress to provide a currency for the whole country is now firmly established. In *Veazie Bank v. Fenno,* 8 Wall. 533, 75 U. S. 548 , Chief Justice Chase, in delivering the opinion of the Court, said:

"It cannot be doubted that under the Constitution the power to provide a

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circulation of coin is given to Congress. And it is settled by the uniform practice of the government, and by repeated decisions, that Congress may constitutionally authorize the emission of bills of credit."

Congress, having undertaken to supply a national currency, consisting of coin, of Treasury notes of the United States, and of the bills of national banks, is authorized to impose on all state banks, or national banks, or private bankers,

paying out the notes of individuals or of state banks, a tax of ten percent upon the amount of such notes so paid out. *Veazie Bank v. Fenno, supra; National Bank v. United States,* 101 U. S. 1 . The reason for this conclusion was stated by Chief Justice Chase and repeated by the present CHIEF JUSTICE, in these words:

"Having thus, in the exercise of 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 by appropriate legislation. To this end, Congress has denied the quality of legal tender to foreign coins, and has provided by law against the imposition of counterfeit and base coin on the community. To the same 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."

8 Wall. 75 U. S. 549 ; 101 U.S. 101 U. S. 6 .

By the Constitution of the United States, the several states are prohibited from coining money, emitting bills of credit, or making anything but gold and silver coin a tender in payment of debts. But no intention can be inferred from this to deny to Congress either of these powers. Most of the powers granted to Congress are described in the eighth section of the first article; the limitations intended to be set to its powers, so as to exclude certain things which might otherwise be taken to be included in the general grant, are defined in the ninth section; the tenth section is addressed to the states only. This section prohibits the states from doing some things which the United States are expressly prohibited from doing, as well as from doing some things which the United States are expressly authorized to do, and from doing some things which are

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neither expressly granted nor expressly denied to the United States. Congress and the states equally are expressly prohibited from passing any bill of attainder or *ex post facto* law or granting any title of nobility. The states are forbidden, while the

President and Senate are expressly authorized, to make the treaties. The states are forbidden, but Congress is expressly authorized, to coin money. The states are prohibited from emitting bills of credit, but Congress, which is neither expressly authorized nor expressly forbidden to do so, has, as we have already seen, been held to have the power of emitting bills of credit, and of making every provision for their circulation as currency short of giving them the quality of legal tender for private debts, even by those who have denied its authority to give them this quality.

It appears to us to follow as a logical and necessary consequence that Congress has the power to issue the obligations of the United States in such form, and to impress upon them such qualities as currency for the purchase of merchandise and the payment of debts, as accord with the usage of sovereign governments. The power, as incident to the power of borrowing money, and issuing bills or notes of the government for money borrowed, of impressing upon those bills or notes the quality of being a legal tender for the payment of private debts was a power universally understood to belong to sovereignty, in Europe and America at the time of the framing and adopting of the Constitution of the United States. The governments of Europe, acting through the monarch or the legislature, according to the distribution of powers under their respective constitutions, had and have as sovereign a power of issuing paper money as of stamping coin. This power has been distinctly recognized in an important modern case, ably argued and fully considered, in which the Emperor of Austria, as King of Hungary, obtained from the English Court of Chancery an injunction against the issue in England, without his license, of notes purporting to be public paper money of Hungary. *Austria v. Day,* 2 Giff. 628, and 3 D. F. & J. 217. The power of issuing bills of credit, and making them at the discretion of the legislature, a tender in payment of private debts, had long been exercised in this country

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by the several colonies and states, and during the Revolutionary War, the states, upon the recommendation of the Congress of the Confederation, had made the bills issued by Congress a legal tender. *See* *Craig v. Missouri,* 4 Pet. 435, 29 U.

S. 453 ; *Briscoe v. Bank of Kentucky,* 11 Pet. 257, 36 U. S. 313 , 36 U. S. 334 -336; *Legal Tender Cases,* 12 Wall. 557, 79 U. S. 558 , 79 U. S. 622 ; Phillipps on American Paper Currency, *passim.* The exercise of this power not being prohibited to Congress by the Constitution, it is included in the power expressly granted to borrow money on the credit of the United States.

This position is fortified by the fact that Congress is vested with the exclusive exercise of the analogous power of coining money and regulating the value of domestic and foreign coin, and also with the paramount power of regulating foreign and interstate commerce. Under the power to borrow money on the credit of the United States and to issue circulating notes for the money borrowed, its power to define the quality and force of those notes as currency is as broad as the like power over a metallic currency under the power to coin money and to regulate the value thereof. Under the two powers, taken together, Congress is authorized to establish a national currency, either in coin or in paper, and to make that currency lawful money for all purposes, as regards the nation government or private individuals.

The power of making the notes of the United States a legal tender in payment of private debts, being included in the power to borrow money and to provide a national currency, is not defeated or restricted by the fact that its exercise may affect the value of private contracts. If, upon a just and fair interpretation of the whole Constitution, a particular power or authority appears to be vested in Congress, it is no constitutional objection to its existence, or to its exercise, that the property or the contracts of individuals may be incidentally affected. The decisions of this Court, already cited, afford several examples of this.

Upon the issue of stock, bonds, bills, or notes of the United States, the states are deprived of their power of taxation to the extent of the property invested by individuals in such obligations,

and the burden of state taxation upon other private property is correspondingly increased. The ten percent tax, imposed by Congress on notes of state banks and of private bankers, not only lessens the value of such notes, but tends to drive them and all state banks of issue out of existence. The priority given to debts due to the United States over the private debts of an insolvent debtor diminishes the value of these debts, and the amount which their holders may receive out of the debtor's estate.

So, under the power to coin money and to regulate its value, Congress may (as it did with regard to gold by the Act of June 28, 1834, c. 95, and with regard to silver by the Act of February 28, 1878, c. 20) 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 less real value. A contract to pay a certain sum in money, without any stipulation as to the kind of money in which it shall be paid, may always be satisfied by payment of that sum in any currency which is lawful money at the place and time at which payment is to be made. 1 Hale, P.C. 192-194; Bac.Abr. "Tender, B. 2;" Pothier, Contract of Sale, No. 416; Pardessus Droit Commercial, Nos. 204, 205; *Searight v. Calbraith,* 4 Dall. 324 [omitted]. As observed by Mr. Justice Strong in delivering the opinion of the Court in the *Legal Tender Cases,*

"Every contract for the payment of money simply is necessarily subject to the constitutional power of the government over the currency, whatever that power may be, and the obligation of the parties is therefore assumed with reference to that power."

12 Wall. 79 U. S. 549 .

Congress, as the legislature of a sovereign nation, being expressly empowered by the Constitution "to lay and collect taxes, to pay the debts and provide for the common defense and general welfare of the United States," and "to borrow money on the credit of the United States," and "to coin money and regulate the value thereof and of foreign coin," and being clearly authorized, as incidental to the

exercise of those great powers, to emit bills of credit to charter national banks and

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to provide a national currency for the whole people in the form of coin, Treasury notes, and national bank bills, and the power to make the notes of the government a legal tender in payment of private debts being one of the powers belonging to sovereignty in other civilized nations, and not expressly withheld from Congress by the Constitution; we are irresistibly impelled to the conclusion that the impressing upon the Treasury notes of the United States the quality of being a legal tender in payment of private debts is an appropriate means, conducive and plainly adapted to the execution of the undoubted powers of Congress, consistent with the letter and spirit of the Constitution, and therefore within the meaning of that instrument, "necessary and proper for carrying into execution the powers vested by this Constitution in the government of the United States."

Such being our conclusion in matter of law, the question whether at any particular time, in war or in peace, the exigency is such, by reason of unusual and pressing demands on the resources of the government or of the inadequacy of the supply of gold and silver coin to furnish the currency needed for the uses of the government and of the people, that it is as matter of fact wise and expedient to resort to this means is a political question, to be determined by Congress when the question of exigency arises, and not a judicial question, to be afterwards passed upon by the courts. To quote once more from the judgment in *McCulloch v. Maryland:*

"Where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department, and to tread on legislative ground."

4 Wheat. 17 U. S. 423 .

It follows that the Act of May 31, 1878, c. 146, is constitutional and valid, and that the circuit court rightly held that the tender in Treasury notes, reissued and kept in circulation under that act, was a tender of lawful money in payment of the

defendant's debt to the plaintiff.

Judgment affirmed.

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MR. JUSTICE FIELD, dissenting.

From the judgment of the Court in this case and from all the positions advanced in its support I dissent. The question of the power of Congress to impart the quality of legal tender to the notes of the United States, and thus make them money and a standard of value, is not new here. Unfortunately, it has been too frequently before the Court, and its latest decision previous to this one has never been entirely accepted and approved by the country. Nor should this excite surprise, for whenever it is declared that this government, ordained to establish justice, has the power to alter the condition of contracts between private parties and authorize their payment or discharge in something different from that which the parties stipulated, thus disturbing the relations of commerce and the business of the community generally, the doctrine will not and ought not to be readily accepted. There will be many who will adhere to the teachings and abide by the faith of their fathers. So the question has come again, and will continue to come until it is settled so as to uphold, and not impair, the contracts of parties, to promote and not defeat justice.

If there be anything in the history of the Constitution which can be established with moral certainty, it is that the framers of that instrument intended to prohibit the issue of legal tender notes both by the general government and by the states, and thus prevent interference with the contracts of private parties. During the Revolution and the period of the old Confederation, the Continental Congress issued bills of credit, and upon its recommendation the states made them a legal tender, and the refusal to receive them an extinguishment of the debts for which they were offered. They also enacted severe penalties against those who refused to accept them at their nominal value, as equal to coin, in exchange for commodities. And previously, as early as January, 1776, Congress had declared

that if any person should be "so lost to all virtue and regard for his country" as to refuse to receive in payment the bills then issued, he should, on conviction thereof, be "deemed, published, and treated as an enemy of his county, and precluded

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from all trade and intercourse with the inhabitants of the colonies."

Yet this legislation proved ineffectual; the universal law of currency prevailed which makes promises of money valuable only as they are convertible into coin. The notes depreciated until they became valueless in the hands of their possessors. So it always will be; legislative declaration cannot make the promise of a thing the equivalent of the thing itself.

The legislation to which the states were thus induced to resort was not confined to the attempt to make paper money a legal tender for debts, but the principle that private contracts could be legally impaired and their obligation disregarded being once established, other measures equally dishonest and destructive of good faith between parties were adopted. What followed is thus stated by Mr. Justice Story in his Commentaries:

"The history, indeed," he says,

"of the various laws which were passed by the states, in their colonial and independent character, upon this subject is startling at once to our morals, to our patriotism, and to our sense of justice. Not only was paper money issued and declared to be a tender in payment of debts, but laws of another character, well known under the appellation of tender laws, appraisement laws, installment laws, and suspension laws, were from time to time enacted, which prostrated all private credit and all private morals. By some of these laws the due payment of debts was suspended; debts were, in violation of the very terms of the contract, authorized to be paid by installments at different periods; property of any sort, however worthless, either real or personal, might be tendered by the debtor in payment of his debts, and the creditor was compelled to take the property of the debtor, which he might seize on execution at an appraisement wholly disproportionate to its

known value. Such grievances and oppressions and others of a like nature were the ordinary results of legislation during the Revolutionary War and the intermediate period down to the formation of the Constitution. They entailed the most enormous evils on the country, and introduced a system of fraud, chicanery, and profligacy which destroyed all private confidence and all industry and enterprise."

2 Story on the Constitution 1371.

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To put an end to this vicious system of legislation which only encouraged fraud, thus graphically described by Story, the clauses which forbid the states from emitting bills of credit or making anything but gold and silver a tender in payment of debts, or passing any law impairing the obligation of contracts, were inserted in the Constitution.

"The attention of the convention therefore" says Chief Justice Marshall,

"was particularly directed to paper money and to acts which enable the debtor to discharge his debt otherwise than was stipulated in the contract. Had nothing more been intended, nothing more would have been expressed, but, in the opinion of the convention, much more remained to be done. The same mischief might be effected by other means. To restore public confidence completely, it was necessary not only to prohibit the use of particular means by which it might be effected, but to prohibit the use of any means by which the same mischief might be produced. The convention appears to have intended to establish a great principle that contracts should be inviolable."

Sturges v. Crowninshield, 4 Wheat. 122, 17 U. S. 206 . It would be difficult to believe even in the absence of the historical evidence we have on the subject that the framers of the Constitution, profoundly impressed by the evils resulting from this kind of legislation, ever intended that the new government, ordained to establish justice, should possess the power of making its bills a legal tender, which

they were unwilling should remain with the states, and in which the past had proved so dangerous to the peace of the community, so disturbing to the business of the people and so destructive of their morality.

The great historian of our country has recently given to the world a history of the convention, the result of years of labor in the examination of all public documents relating to its formation and of the recorded opinions of its framers, and thus he writes:

"With the full recollection of the need or seeming need of paper money in the Revolution, with the menace of danger in future time of war from its prohibition, authority to issue bills of

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credit that should be legal tender was refused to the general government by the vote of nine states against New Jersey and Maryland. It was Madison who decided the vote of Virginia, and he has left his testimony that 'the pretext for paper currency, and particularly for making the bills a tender either for public or private debts, was cut off.' This is the interpretation of the clause made at the time of its adoption, alike by its authors and by its opponents, accepted by all the statesmen of that age, not open to dispute because too clear for argument, and never disputed so long as anyone man who took part in framing the Constitution remained alive. History cannot name a man who has gained enduring honor by causing the issue of paper money. Wherever such paper has been employed it has in every case thrown upon its authors the burden of exculpation under the plea of pressing necessity."

Bancroft's History of the formation of the Constitution of the United States, vol. 2, p. 134.

And when the convention came to the prohibition upon the states, the historian says that the clause "No state shall make anything but gold and silver a tender in payment of debts" was accepted without a dissentient state. "So the adoption of the Constitution," he adds,

"is to be the end forever of paper money, whether issued by the several states or by the United States, if the Constitution shall be rightly interpreted and honestly obeyed."

Id., 137.

For nearly three-quarters of a century after the adoption of the Constitution and until the legislation during the recent civil war, no jurist and no statesman of any position in the country ever pretended that a power to impart the quality of legal tender to its notes was vested in the general government. There is no recorded word of even one in favor of its possessing the power. All conceded, as an axiom of constitutional law, that the power did not exist.

Mr. Webster, from his first entrance into public life in 1812, gave great consideration to the subject of the currency, and in an elaborate speech on that subject, made in the Senate in 1836, then sitting in this room, he said:

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"Currency, in a large and perhaps just sense, includes not only gold and silver and bank bills, but bills of exchange also. It may include all that adjusts exchanges and settles balances in the operations of trade and business; but if we understand by currency the legal money of the country, and that which constitutes a legal tender for debts, and is the standard measure of value, then undoubtedly nothing is included but gold and silver. Most unquestionably there is no legal tender, and there can be no legal tender in this country, under the authority of this government or any other, but gold and silver, either the coinage of our own mints or foreign coins at rates regulated by Congress. This is a constitutional principle, perfectly plain and of the highest importance. The states are expressly prohibited from making anything but gold and silver a legal tender in payment of debts, and although no such express prohibition is applied to Congress, yet as Congress has no power granted to it in this respect but to coin money and to regulate the value of foreign coins, it clearly has no power to substitute paper or anything else for coin as a tender in payment of debts and in discharge of contracts. Congress has

exercised this power fully in both its branches; it has coined money and still coins it; it has regulated the value of foreign coins, and still regulates their value. The legal tender, therefore, the constitutional standard of value, is established and cannot be overthrown. To overthrow it would shake the whole system."

4 Webster's Works 271.

When the idea of imparting the legal tender quality to the notes of the United States, issued under the first act of 1862, was first broached, the advocates of the measure rested their support of it on the ground that it was a war measure, to which the country was compelled to resort by the exigencies of its condition, being then sorely pressed by the Confederate forces, and requiring the daily expenditure of enormous sums to maintain its army and navy and to carry on the government. The representative who introduced the bill in the House declared that it was a measure of that nature, "one of necessity and not of choice;" that the times were extraordinary, and that extraordinary measures must be resorted to in order to save our government and preserve our nationality. Speech of Spaulding

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of New York; Cong.Globe, 1861-62, pt. 1, 523. Other members of the house frankly confessed their doubt as to its constitutionality, but yielded their support of it under the pressure of this supposed necessity.

In the Senate also, the measure was pressed for the same reasons. When the act was reported by the committee on finance, its chairman, while opposing the legal tender provision, said:

"It is put on the ground of absolute overwhelming necessity; that the government has now arrived at that point when it must have funds, and those funds are not to be obtained from ordinary sources, or from any of the expedients to which we have heretofore had recourse, and therefore this new, anomalous, and remarkable provision must be resorted to in order to enable the government to pay off the debt that it now owes and afford circulation which will be available for other purposes."

Cong.Globe, 1861-62, pt. 1, 764.

And upon that ground, the provision was adopted, some of the senators stating that in the exigency then existing money must be had, and they therefore sustained the measure although they apprehended danger from the experiment. "The medicine of the Constitution," said Senator Summer, "must not become its daily food." *Id.,* 800. A similar necessity was urged upon the state tribunals and this Court in justification of the measure when its validity was questioned. The dissenting opinion in *Hepburn v. Griswold* referred to the pressure that was upon the government at the time to enable it to raise and support an army, and to provide and maintain a navy. Chief Justice Chase, who gave the prevailing opinion in that case, also spoke of the existence of the feeling when the bill was passed that the provision was necessary. He favored the provision on that ground when Secretary of the Treasury, although he had come to that conclusion with reluctance, and recommended its adoption by Congress. When the question as to its validity reached this Court, this expression of favor was referred to, and by many it was supposed that it would control his judicial action. But after long pondering upon the

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subject, after listening to repeated arguments by able counsel, he decided against the constitutionality of the provision and, holding in his hands the casting vote, he determined the judgment of the Court. He thus preferred to preserve his integrity as a judicial officer, rather than his consistency as a statesman. In his opinion, he thus referred to his previous views:

"It is not surprising that amid the tumult of the late civil war, and under the influence of apprehensions for the safety of the republic almost universal, different views, never before entertained by American statesmen or jurists, were adopted by many. The time was not favorable to considerate reflection upon the constitutional limits of legislative or executive authority. If power was assumed from patriotic motives, the assumption found ready justification in patriotic hearts.

Many who doubted yielded their doubts; many who did not doubt were silent. Some who were strongly averse to making government notes a legal tender felt themselves constrained to acquiesce in the views of the advocates of the measure. Not a few who then insisted upon its necessity or acquiesced in that view have, since the return of peace and under the influence of the calmer time, reconsidered their conclusions, and now concur in those which we have just announced. These conclusions seem to us to be fully sanctioned by the letter and spirit of the Constitution."

8 Wall. 75 U. S. 625 .

It must be evident, however, upon reflection that if there were any power in the government of the United States to impart the quality of legal tender to its promissory notes, it was for Congress to determine when the necessity for its exercise existed; that war merely increased the urgency for money; it did not add to the powers of the government nor change their nature; that if the power existed, it might be equally exercised when a loan was made to meet ordinary expenses in time of peace, as when vast sums were needed to support an army or a navy in time of war. The wants of the government could never be the measure of its powers. But in the excitement and apprehensions of the war, these considerations were unheeded; the measure was passed as one of overruling

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necessity in a perilous crisis of the country. Now it is no longer advocated as one of necessity, but as one that may be adopted at any time. Never before was it contended by any jurist or commentator on the Constitution that the government, in full receipt of ample income, with a Treasury overflowing, with more money on hand than it knows what to do with, could issue paper money as a legal tender. What was in 1862 called the "medicine of the Constitution" has now become its daily bread. So it always happens that whenever a wrong principle of conduct, political or personal, is adopted on a plea of necessity, it will be afterwards followed on a plea of convenience.

The advocates of the measure have not been consistent in the designation of the power upon which they have supported its validity, some placing it on the power to borrow money, some on the coining power, and some have claimed it as an incident to the general powers of the government. In the present case, it is placed by the Court upon the power to borrow money, and the alleged sovereignty of the United States over the currency. It is assumed that this power, when exercised by the government, is something different from what it is when exercised by corporations or individuals, and that the government has, by the legal tender provision, the power to enforce loans of money because the sovereign governments of European countries have claimed and exercised such power.

The words "to borrow money," says the Court,

"are not to receive that limited and restricted interpretation and meaning which they would have in a penal statute or in an authority conferred by law or by contract upon trustees or agents for private purposes."

And it adds that

"The power, as incident to the power of borrowing money and issuing bills or notes of the government for money borrowed, of impressing upon those bills or notes the quality of being a legal tender for the payment of private debts, was a power universally understood to belong to sovereignty, in Europe and America at the time of the framing and adoption of the Constitution of the United States. The governments

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of Europe, acting through the monarch or the legislature, according to the distribution of powers under their respective constitutions, had and have as sovereign a power of issuing paper money as of stamping coin,"

and that

"the exercise of this power not being prohibited to Congress by the Constitution, it is included in the power expressly granted to borrow money on the credit of the

United States."

As to the terms "to borrow money," where, I would ask, does the Court find any authority for giving to them a different interpretation in the Constitution from what they receive when used in other instruments, as in the charters of municipal bodies or of private corporations, or in the contracts of individuals? They are not ambiguous; they have a well settled meaning in other instruments. If the Court may change that in the Constitution, so it may the meaning of all other clauses, and the powers which the government may exercise will be found declared not by plain words in the organic law, but by words of a new significance resting in the minds of the judges. Until some authority beyond the alleged claim and practice of the sovereign governments of Europe be produced, I must believe that the terms have the same meaning in all instruments, wherever they are used; that they mean a power only to contract for a loan of money upon considerations to be agreed between the parties. The conditions of the loan, or whether any particular security shall be given to the lender, are matters of arrangement between the parties; they do not concern anyone else. They do not imply that the borrower can give to his promise to refund the money any security to the lender outside of property or rights which he possesses. The transaction is completed when the lender parts with his money and the borrower gives his promise to pay at the time and in the manner and with the securities agreed upon. Whatever stipulations may be made to add to the value of the promise or to secure its fulfillment must necessarily be limited to the property, rights, and privileges, which the borrower possesses. Whether he can add to his promises any element which will induce others

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to receive them beyond the security which he gives for their payment depends upon his power to control such element. If he has a right to put a limitation upon the use of other persons' property or to enforce an exaction of some benefit from them, he may give such privilege to the lender; but if he has no right thus to interfere with the property or possession of others, of course, he can give none. It will hardly be pretended that the government of the United States has any power

to enter into an engagement that, as security for its notes, the lender shall have special privileges with respect to the visible property of others, shall be able to occupy a portion of their lands or their houses, and thus interfere with the possession and use of their property. If the government cannot do that, how can it step in and say, as a condition of loaning money, that the lender shall have a right to interfere with contracts between private parties? A large proportion of the property of the world exists in contracts, and the government has no more right to deprive one of their value by legislation operating directly upon them than it has a right to deprive one of the value of any visible and tangible property. No one, I think, will pretend that individuals or corporations possess the power to impart to their evidences of indebtedness any quality by which the holder will be able to affect the contracts of other parties, strangers to the loan; nor would anyone pretend that Congress possesses the power to impart any such quality to the notes of the United States, except from the clause authorizing it to make laws necessary and proper to the execution of its powers. That clause, however, does not enlarge the expressly designated powers; it merely states what Congress could have done without its insertion in the Constitution. Without it, Congress could have adopted any appropriate means to borrow, but that can only be appropriate for that purpose which has some relation of fitness to the end, which has respect to the terms essential to the contract, or to the securities which the borrower may furnish for the repayment of the loan. The quality of legal tender does not touch the terms of the contract; that is complete without it; nor does it stand as a security for the loan, for

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a security is a thing pledged, over which the borrower has some control, or in which he holds some interest.

The argument presented by the advocates of legal tender is in substance this: the object of borrowing is to raise funds, the addition of the quality of legal tender to the notes of the government will induce parties to take them, and funds will thereby be more readily loaned. But the same thing may be said of the addition of any other quality which would give to the holder of the notes some advantage over

the property of others -- as, for instance, that the notes should serve as a pass on the public conveyances of the country, or as a ticket to places of amusement, or should exempt his property from state and municipal taxation, or entitle him to the free use of the telegraph lines, or to a percentage from the revenues of private corporations. The same consequence -- a ready acceptance of the notes -- would follow, and yet no one would pretend that the addition of privileges of this kind with respect to the property of others, over which the borrower has no control, would be in any sense an appropriate measure to the execution of the power to borrow.

Undoubtedly the power to borrow includes the power to give evidences of the loan in bonds, Treasury notes, or in such other form as may be agreed between the parties. These may be issued in such amounts as will fit them for circulation, and for that purpose may be made payable to bearer, and transferable by delivery. Experience has shown that the form best fitted to secure their ready acceptance is that of notes payable to bearer, in such amounts as may suit the ability of the lender. The government, in substance, says to parties with whom it deals: lend us your money, or furnish us with your products or your labor, and we will ultimately pay you, and as evidence of it we will give you our notes, in such form and amount as may suit your convenience, and enable you to transfer them; we will also receive them for certain demands due to us. In all this matter there is only a dealing between the government and the individuals who trust it. The transaction concerns no others. The power which authorizes it is a very different one from a

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power to deal between parties to private contracts in which the government is not interested, and to compel the receipt of these promises to pay in place of the money for which the contracts stipulated. This latter power is not an incident to the former; it is a distinct and far greater power. There is no legal connection between the two -- between the power to borrow from those willing to lend and the power to interfere with the independent contracts of others. The possession of this latter power would justify the interference of the government with any rights of property of other parties, under the pretense that its allowance to the holders of the notes would lead to their more ready acceptance, and thus furnish the needed means.

The power vested in Congress to coin money does not, in my judgment, fortify the position of the Court, as its opinion affirms. So far from deducing from that power any authority to impress the notes of the government with the quality of legal tender, its existence seems to me inconsistent with a power to make anything but coin a legal tender. The meaning of the terms "to coin money" is not at all doubtful. It is to mould metallic substances into forms convenient for circulation and to stamp them with the impress of the government authority indicating their value with reference to the unit of value established by law. Coins are pieces of metal of definite weight and value, stamped such by the authority of the government. If any doubt could exist that the power has reference to metallic substances only it would be removed by the language which immediately follows, authorizing Congress to regulate the value of money thus coined and of foreign coin, and also by clauses making a distinction between coin and the obligations of the general government and of the states. Thus, in the clause authorizing Congress "to provide for the punishment of counterfeiting the securities and current coin of the United States," a distinction is made between the obligations and the coin of the government.

Money is not only a medium of exchange, but it is a standard of value. Nothing can be such standard which has not intrinsic

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value, or which is subject to frequent changes in value. From the earliest period in the history of civilized nations we find pieces of gold and silver used as money. These metals are scattered over the world in small quantities; they are susceptible of division, capable of easy impression, have more value in proportion to weight and size, and are less subject to loss by wear and abrasion than any other material possessing these qualities. It requires labor to obtain them; they are not dependent upon legislation or the caprices of the multitude; they cannot be manufactured or decreed into existence, and they do not perish by lapse of time. They have, therefore, naturally, if not necessarily, become throughout the world a standard of value. In exchange for pieces of them, products requiring an equal amount of labor are readily given. When the product and the piece of metal represent the same labor, or an approximation to it, they are freely exchanged.

There can be no adequate substitute for these metals. Says Mr. Webster, in a speech made in the House of Representatives in 1815:

"The circulating medium of a commercial community must be that which is also the circulating medium of other commercial communities, or must be capable of being converted into that medium without loss. It must also be able not only to pass in payments and receipts among individuals of the same society and nation, but to adjust and discharge the balance of exchanges between different nations. It must be something which has a value abroad as well as at home, by which foreign as well as domestic debts can be satisfied. The precious metals alone answer these purposes. They alone therefore are money, and whatever else is to perform the functions of money must be their representative, and capable of being turned into them at will. So long as bank paper retains this quality it is a substitute for money; divested of this, nothing can give it that character."

3 Webster's Works 41.

The clause to coin money must be read in connection with the prohibition upon the states to make anything but gold and silver coin a tender in payment of debts. The two taken together

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clearly show that the coins to be fabricated under the authority of the general government, and as such to be a legal tender for debts, are to be composed principally, if not entirely, of the metals of gold and silver. Coins of such metals are necessarily a legal tender to the amount of their respective values, without any legislative enactment, and the statute of the United States providing that they shall be such tender is only declaratory of their effect when offered in payment. When the Constitution says, therefore, that Congress shall have the power to coin money, interpreting that clause with the prohibition upon the states, it says it shall have the power to make coins of the precious metals a legal tender, for that alone which is money can be a legal tender. If this be the true import of the language, nothing else can be made a legal tender. We all know that the value of the notes

of the government in the market, and in the commercial world generally, depends upon their convertibility on demand into coin, and as confidence in such convertibility increases or diminishes, so does the exchangeable value of the notes vary. So far from becoming themselves standards of value by reason of the legislative declaration to that effect, their own value is measured by the facility with which they can be exchanged into that which alone is regarded as money by the commercial world. They are promises of money, but they are not money in the sense of the Constitution. The term "money" is used in that instrument in several clauses -- in the one authorizing Congress "to borrow money;" in the one authorizing Congress "to coin money;" in the one declaring that "no money" shall be drawn from the Treasury, but in consequence of appropriations made by law, and in the one declaring that no state shall "coin money." And it is a settled rule of interpretation that the same term occurring in different parts of the same instrument shall be taken in the same sense unless there is something in the context indicating that a different meaning was intended. Now to coin money is, as I have said, to make coins out of metallic substances, and the only money the value of which Congress can regulate is coined money, either of our mints or of foreign

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countries. It should seem, therefore, that to borrow money is to obtain a loan of coin money -- that is, money composed of the precious metals, representing value in the purchase of property and payment of debts. Between the promises of the government, designated as its securities, and this money the Constitution draws a distinction which disappears in the opinion of the Court.

The opinion not only declares that it is in the power of Congress to make the notes of the government a legal tender and a standard of value, but that under the power to coin money and regulate the value thereof, Congress may issue coins of the same denominations as those now already current, but of less intrinsic value by reason of containing a less weight of the precious metals, and thereby enable debtors to discharge their debts by payment of coins of less real value. This doctrine is put forth as in some way a justification of the legislation authorizing the

tender of nominal money in place of real money in payment of debts. Undoubtedly Congress has power to alter the value of coins issued, either by increasing or diminishing the alloy they contain; so it may alter at its pleasure, their denominations; it may hereafter call a dollar an eagle, and it may call an eagle a dollar. But if it be intended to assert that Congress can make the coins changed the equivalent of those having a greater value in their previous condition, and compel parties contracting for the latter to receive coins with diminished value, I must be permitted to deny any such authority. Any such declaration on its part would be not only utterly inoperative in fact, but a shameful disregard of its constitutional duty. As I said on a former occasion:

"The power to coin money, as declared by this Court, is a great trust devolved upon Congress, carrying with it the duty of creating and maintaining a uniform standard of value throughout the Union, and it would be a manifest abuse of this trust to give to the coins issued by its authority any other than their real value. By debasing the coins, when once the standard is fixed, is meant giving to the coins by their form and impress a certificate of their having a relation to that standard different from that which in truth

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they possess -- in other words, giving to the coins a false certificate of their value. Arbitrary and profligate governments have often resorted to this miserable scheme of robbery, which Mill designates as a shallow and impudent artifice, the"

"least covert of all modes of knavery, which consists in calling a shilling a pound, that a debt of one hundred pounds may be cancelled by the payment of one hundred shillings."

No such debasement has ever been attempted in this country, and none ever will be so long as any sentiment of honor influences the governing power of the nation. The changes from time to time in the quantity of alloy in the different coins has been made to preserve the proper relative value between gold and silver, or to prevent exportation, and not with a view of debasing them. Whatever power may

be vested in the government of the United States, it has none to perpetrate such monstrous iniquity. One of the great purposes of its creation, as expressed in the preamble of the Constitution, was the establishment of justice, and not a line nor a word is found in that instrument which sanctions any intentional wrong to the citizen, either in war or in peace.

But beyond and above all the objections which I have stated to the decision recognizing a power in Congress to impart the legal tender quality to the notes of the government is my objection to the rule of construction, adopted by the Court to reach its conclusions -- a rule which, fully carried out, would change the whole nature of our Constitution and break down the barriers which separate a government of limited from one of unlimited powers. When the Constitution came before the conventions of the several states for adoption, apprehension existed that other powers than those designated might be claimed, and it led to the first ten amendments. When these were presented to the states, they were preceded by a preamble stating that the conventions of a number of the states had at the time of adopting the Constitution, expressed a desire, "in order to prevent misconception or abuse of its powers, that further declaratory and restrictive clauses should be added." One of them is found in the Tenth Amendment, which declares

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that

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

The framers of the Constitution, as I have said, were profoundly impressed with the evils which had resulted from the vicious legislation of the states making notes a legal tender, and they determined that such a power should not exist any longer. They therefore prohibited the states from exercising it, and they refused to grant it to the new government which they created. Of what purpose is it then to refer to the exercise of the power by the absolute or the limited governments of Europe, or

by the states previous to our constitution? Congress can exercise no power by virtue of any supposed inherent sovereignty in the general government. Indeed it may be doubted whether the power can be correctly said to appertain to sovereignty in any proper sense, as an attribute of an independent political community. The power to commit violence, perpetrate injustice, take private property by force without compensation to the owner, and compel the receipt of promises to pay in place of money, may be exercised, as it often has been, by irresponsible authority, but it cannot be considered as belonging to a government founded upon law. But be that as it may, there is no such thing as a power of inherent sovereignty in the government of the United States. It is a government of delegated powers, supreme within its prescribed sphere but powerless outside of it. In this country, sovereignty resides in the people, and Congress can exercise no power which they have not, by their Constitution, entrusted to it; all else is withheld. It seems, however, to be supposed that as the power was taken from the states, it could not have been intended that it should disappear entirely, and therefore it must in some way adhere to the general government notwithstanding the Tenth Amendment and the nature of the Constitution. The doctrine that a power not expressly forbidden may be exercised would, as I have observed, change the character of our government. If I have read the Constitution aright, if there is any weight to be given to the uniform teachings of our great jurists and of commentators

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previous to the late civil war, the true doctrine is the very opposite of this. If the power is not in terms granted, and is not necessary and proper for the exercise of a power which is thus granted, it does not exist. And in determining what measures may be adopted in executing the powers granted, Chief Justice Marshall declares that they must be appropriate, plainly adapted to the end, not prohibited, and *consistent with the letter and spirit of the Constitution.* Now all through that instrument we find limitations upon the power both of the general government and the state governments so as to prevent oppression and injustice. No legislation, therefore, tending to promote either can consist with the letter and

spirit of the Constitution. A law which interferes with the contracts of others and compels one of the parties to receive in satisfaction something different from that stipulated, without reference to its actual value in the market, necessarily works such injustice and wrong.

There is, it is true, no provision in the Constitution of the United States forbidding in direct terms the passing of laws by Congress impairing the obligation of contracts, and there are many express powers conferred, such as the power to declare war, levy duties, and regulate commerce, the exercise of which affects more or less the value of contracts. Thus, war necessarily suspends intercourse between the citizens or subjects of belligerent nations, and the performance during its continuance of previous contracts. The imposition of duties upon goods may affect the prices of articles imported or manufactured, so as to materially alter the value of previous contracts respecting them. But these incidental consequences arising from the exercise of such powers were contemplated in the grant of them. As there can be no solid objection to legislation under them, no just complaint can be made of such consequences. But far different is the case when the impairment of the contract does not follow incidentally, but is directly and in terms allowed and enacted. Legislation operating directly upon private contracts, changing their conditions, is forbidden to the states, and no power to alter the stipulations of such contracts by direct legislation

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is conferred upon Congress. There are also many considerations, outside of the fact that there is no grant of the power, which show that the framers of the Constitution never intended that such power should be exercised. One of the great objects of the Constitution, as already observed, was to establish justice, and what was meant by that in its relations to contracts, as said by the late Chief Justice in his opinion in *Hepburn v. Griswold,* was not left to interference or conjecture. And in support of this statement he refers to the fact that when the Constitution was undergoing discussion in the convention, the Congress of the Confederation was engaged in framing the ordinance for the government of the Northwest Territory, in which certain articles of compact were established between the people of the

original states and the people of the territory "for the purposes," as expressed in the instrument,

"of extending the fundamental principles of civil and religious liberty, whereon these republics [the states united under the Confederation], their laws and constitutions, are erected."

That Congress was also alive to the evils which the loose legislation of the states had created by interfering with the obligation of private contracts and making notes a legal tender for debts, and the ordinance declared that in the just preservation of rights and property, no law

"ought ever to be made or have force in the said territory that shall in any manner whatever interfere with or affect private contracts or engagements *bona fide* and without fraud previously formed."

This principle, said the Chief Justice, found more condensed expression in the prohibition upon the states against impairing the obligation of contracts, which has always been recognized "as an efficient safeguard against injustice," and the Court was then of opinion that

"It is clear that those who framed and those who adopted the Constitution intended that the spirit of this prohibition should pervade the entire body of legislation, and that the justice which the Constitution was ordained to establish was not thought by them to be compatible with legislation of an opposite tendency."

Soon after the Constitution was adopted, the case of *Calder v. Bull* came before this Court, and it was

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there said that there were acts which the federal and state legislatures could not do without exceeding their authority, and among them was mentioned a law which punished a citizen for an innocent act, and a law which destroyed or impaired the lawful private contracts of citizens. "It is against all reason and justice," it was added, "for a people to entrust a legislature with such powers, and therefore it

cannot be presumed that they have done it." 3 Dall. 3 U. S. 388 . And Mr. Madison, in one of the articles in the Federalist, declared that laws impairing the obligation of contracts were contrary to the first principles of the social compact and to every principle of sound legislation. Yet this Court holds that a measure directly operating upon and necessarily impairing private contracts may be adopted in the execution of powers specifically granted for other purposes because it is not in terms prohibited, and that it is consistent with the letter and spirit of the Constitution.

From the decision of the Court I see only evil likely to follow. There have been times within the memory of all of us when the legal tender notes of the United States were not exchangeable for more than one-half of their nominal value. The possibility of such depreciation will always attend paper money. This inborn infirmity no mere legislative declaration can cure. If Congress has the power to make the notes a legal tender and to pass as money or its equivalent, why should not a sufficient amount be issued to pay the bonds of the United States as they nature? Why pay interest on the millions of dollars of bonds now due when Congress can in one day make the money to pay the principal? And why should there be any restraint upon unlimited appropriations by the government for all imaginary schemes of public improvement if the printing press can furnish the money that is needed for them?

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