ket available to the plaintiff for the gold coin to which he claims to have been entitled. Plaintiff insists that gold had an intrinsic value and was bought and sold in the world markets. But plaintiff had no right to resort to such markets. By reason of the quality of gold coin, " as a legal tender and as a medium of exchange," limitations attached to its ownership, and the Congress could prohibit its exportation and regulate its use. *Ling Su Fan* v. *United States, supra.*

The first question submitted by the Court of Claims is answered in the negative. It is unnecessary to answer the second question. And, in the circumstances shown, the third question is academic and also need not be answered.

Question No. 1 is answered " No."

MR. JUSTICE MCREYNOLDS, MR. JUSTICE VAN DEVANTER, MR. JUSTICE SUTHERLAND, and MR. JUSTICE BUTLER dissent. See *post*, p. 361.

PERRY *v.* UNITED STATES.*

CERTIFICATE FROM THE COURT OF CLAIMS.

No. 532. Argued January 10, 11, 1935.—Decided February 18, 1935.

1. A provision in a Government bond for payment of principal and interest " in United States gold coin of the present standard of value " must be fairly construed; and its reasonable import is an assurance by the Government that the bondholder will not suffer loss through depreciation of the medium of payment. P. 348.
2. The Joint Resolution of June 5, 1933, insofar as it undertakes to nullify such gold clauses in obligations of the United States and provides that such obligations shall be discharged by payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts, is unconstitutional. P. 349.
3. Congress cannot use its power to regulate the value of money so as to invalidate the obligations which the Government has there-

* See note, p. 240.

tofore issued in the exercise of the power to borrow money on the credit of the United States. Pp. 350 *et seq.*

4. There is a clear distinction between the power of Congress to control or interdict the contracts of private parties, when they interfere with the exercise of its constitutional authority, and a power in Congress to alter or repudiate the substance of its own engagements when it has borrowed money under its constitutional authority. P. 350.

5. By virtue of the power to borrow money "*on the credit of the United States,*" Congress is authorized to pledge that credit as assurance of payment as stipulated,—as the highest assurance the Government can give, its plighted faith. To say that Congress may withdraw or ignore that pledge, is to assume that the Constitution contemplates a vain promise, a pledge having no other sanction than the pleasure and convenience of the pledgor. P. 351.

6. When the United States, with constitutional authority, makes contracts, it has rights and incurs responsibilities similar to those of individuals who are parties to such instruments. P. 352.

7. The right to make binding obligations is a power of sovereignty. P. 353.

8. The sovereignty of the United States resides in the people; and Congress cannot invoke the sovereignty of the people to override their will as declared in the Constitution. P. 353.

9. The power given Congress to borrow money on the credit of the United States is unqualified and vital to the Government; and the binding quality of the promise of the United States is of the essence of the credit pledged. P. 353.

10. The fact that the United States may not be sued without its consent, is a matter of procedure which does not affect the legality and binding character of its contracts. P. 354.

11. Section 4 of the Fourteenth Amendment, declaring that "The validity of the public debt of the United States, authorized by law, . . . shall not be questioned," is confirmatory of a fundamental principle, applying as well to bonds issued after, as to those issued before, the adoption of the Amendment; and the expression "validity of the public debt" embraces whatever concerns the integrity of the public obligations. P. 354.

12. The holder of a Liberty Bond, which was issued when gold was in circulation and when the standard of value was the gold dollar of 25.8 grains, nine-tenths fine, and which promised payment in gold of that standard, claimed payment after the Government, pursuant to legislative authority, had withdrawn all gold coin

from circulation, had prohibited its export or its use in foreign exchange, except for limited purposes under license, and had reduced the weight of gold representing the standard dollar to 15-5/21 grains and placed all forms of money on a parity with that standard. The Joint Resolution of June 5, 1933, had enacted that such bonds should be discharged by payment, dollar for dollar, in any coin or currency which, at time of payment, was legal tender for public and private debts. The bondholder, having been refused payment in gold coin of the former standard or in an equal weight of gold, demanded currency in an amount exceeding the face of the bond in the same ratio as that borne by the number of grains in the former gold dollar to the number in the existing one,—or $1.69 of currency for every dollar of the bond. The Treasury declined to pay him more than the face of the bond in currency, and he sued in the Court of Claims. *Held:*

(a) The fact that the Government's repudiation of the gold clause of the bond is unconstitutional does not entitle the plaintiff to recover more than the loss he has actually suffered and of which he may rightfully complain. P. 354.

(b) The Court of Claims has no authority to entertain an action for nominal damages. P. 355.

(c) The question of actual loss cannot be determined without considering the economic condition at the time when the Government offered to pay the face of the bond in legal tender currency. P. 355.

(d) Congress, by virtue of its power to deal with gold coin, as a medium of exchange, was authorized to prohibit its export and limit its use in foreign exchange; and the restraint thus imposed upon holders of such coin was incident to their ownership of it and gave them no cause of action. P. 356.

(e) The Court cannot say that the exercise of this power was arbitrary or capricious. P. 356.

(f) The holder of a bond of the United States, payable in gold coin of the former standard, so far as concerns the restraint upon the right to export the gold coin or to engage in transactions of foreign exchange, is in no better case than the holder of gold coin itself. P. 356.

(g) In assessing plaintiff's damages, if any, the equivalent in currency of the gold coin promised can be no more than the amount of money which the gold coin would be worth to the plaintiff for the purposes for which it could legally be used. P. 357.

(h) Foreign dealing being forbidden, save under license, and the domestic market being, not free, but lawfully restricted by Congress, valuation of the gold coin would necessarily have regard to its use as legal tender and as a medium of exchange under a single monetary system with an established parity of all currency and coins; and this would involve a consideration of the purchasing power of the currency dollars. P. 357.

(i) Plaintiff has not attempted to show that, in relation to buying power, he has sustained any loss; on the contrary, in view of the adjustment of the internal economy to the single measure of value as established by the legislation of the Congress, and the universal availability and use throughout the country of the legal tender currency in meeting all engagements, the payment to the plaintiff of the amount which he demands, would appear to constitute not a recoupment of loss in any proper sense, but an unjustified enrichment. P. 357.

Question answered "No."

RESPONSE to questions certified by the Court of Claims in an action on a Liberty Loan Gold Bond.

Mr. John M. Perry, pro se. Mr. Hersey Egginton was with him on the brief.

The gold clause prescribes, not the method of payment but the measure of the obligation.

The Joint Resolution of June 5, 1933, is a direct violation of § 4 of the Fourteenth Amendment, expressly limiting the delegated powers of Congress, and making the public debt of the United States inviolable at the hands of Congress.

A legislative interpretation of this provision was adopted by the first Congress meeting after its ratification, in the Act of March 18, 1869 (16 Stat. 1). It has never been necessary to apply the prohibition of this portion of § 4, for the reason that, since its adoption and until recently, no attempt has ever been made by Congress to attack the validity of the public debt. The Joint Resolution of June 5, 1933, is a complete repudiation of the gold clause in some 18 billion dollars of outstanding bonds of the United States, and is necessarily a direct violation of § 4.

The history of this part of the Amendment shows that it was inserted for the specific purpose of protecting for all time the public debt, intended to be payable in gold coin or its equivalent, from being made payable, dollar for dollar, in legal tender currency. See, Phanor J. Elder, Cornell Law Quarterly, Dec. 1933, pp. 1–19; Thorpe, Const. Hist., U. S., vol. 3, p. 297; Cong. Globe, May 23, 1866, pp. 2768, 2769; May 29, 1866, p. 2869; June 4, 1866, pp. 2938, 2940, 2941; June 8, 1866, pp. 3040, 3042; June 13, 1866, pp. 3148, 3149; Kendrick, Journal of the Joint Committee of Fifteen on Reconstruction (1914), pp. 315, 316; Dunning, Political History of the U. S. During Reconstruction (1880), pp. 93, 99, 109.

Under the rule of *Shreveport* v. *Cole,* 129 U. S. 36, the Amendment must be construed to operate prospectively.

No provision of the Federal Constitution authorizes Congress to enact that portion of the Joint Resolution of June 5, 1933, which purports to abrogate the gold clause in the claimant's Liberty Bond.

Every federal power must be express, or implied from some power or group of powers; and any attempted exercise of power not delegated violates the Tenth Amendment. *Martin* v. *Hunter's Lessee,* 1 Wheat. 304, 326. The doctrine of inherent sovereignty does not apply to the Federal Government. *Kansas* v. *Colorado,* 206 U. S. 46. Nor does the Constitution specifically authorize the Federal Government to alleviate national emergencies. *Jacobson* v. *Massachusetts,* 197 U. S. 11; *Ward* v. *Maryland,* 12 Wall. 418; The Federalist, No. 41. While a general scaling down of public indebtedness by making "gold clauses" inoperative and allowing the United States to pay in inflated currency might be a means of relieving the financial burden of the Government, neither the appropriateness of, nor the necessity for, federal action can create a federal power. *Kansas* v. *Colorado,* 206 U. S. 46; *Jacobson* v. *Massachusetts,* 197 U. S. 11; *Ward* v. *Maryland,* 12 Wall.

418; *Keller* v. *United States,* 213 U. S. 138; *Linder* v. *United States,* 268 U. S. 5; *Lynch* v. *United States,* 292 U. S. 571. Furthermore, it is constitutional heresy to claim that an Act unconstitutional in normal times becomes constitutional because Congress deems that an emergency exists. The reverse of this doctrine has been firmly established ever since the Civil War. *Ex parte Milligan,* 4 Wall. 2; *Home Bldg. & Loan Assn.* v. *Blaisdell,* 290 U. S. 398; *Lynch* v. *United States,* 292 U. S. 571.

No provision in the Constitution authorizes Congress to provide for the general relief of debtors. The power to establish "uniform laws on the subject of bankruptcies" cannot be said to authorize all measures for the relief of debtors. That power is limited to laws "for the benefit and relief of creditors and their debtors, in cases in which the latter are unwilling or unable to pay their debts." Story, Const., § 1102 *et seq.; United States* v. *Fox,* 95 U. S. 670; *United States* v. *Pusey,* Fed. Cas. No. 16,098; *In re Reiman,* Fed. Cas. No. 11,673.

The attempted abrogation of the gold clause is not an exercise of the power "to borrow money on the credit of the United States." Here, if nowhere else, lies a fundamental distinction between the present statute and the Legal Tender Acts of 1862 and 1863. Those Acts were finally sustained as an exercise of the borrowing and currency powers on the theory that the Government was borrowing on the legal tender currency. At the same time a medium of exchange was provided. These powers were, therefore, used in direct support of each other. See, *Knox* v. *Lee,* 12 Wall. 457; *Juilliard* v. *Greenman,* 110 U. S. 421. If this Joint Resolution had only invalidated the gold clauses contained in the obligations of private persons, corporations, States, and municipalities, it might have been argued that Congress was exercising authority necessarily incident to the borrowing power in that it was destroying obligations which affected or interfered with that power.

See, *Veazie Bank* v. *Fenno,* 8 Wall. 533. Even this argument is necessarily refuted by the fact that Congress has included in the Joint Resolution "obligations of the United States."

The attempted abrogation does not come within the scope of the power "to coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures." The three cases which have in some measure defined the extent of the coinage power, hold in general that it authorizes the establishment of a sound and uniform national currency. *Veazie Bank* v. *Fenno,* 8 Wall. 533; *Knox* v. *Lee,* 12 Wall. 457; *Juilliard* v. *Greenman,* 110 U. S. 421. These cases, however, do not decide that Congress may control obligations which are not currency.

Nor has it ever been decided that Congress may control obligations not currency on the theory that such obligations affect the value of money. The power is limited to the issuance and the direct regulation of the kind, amount and value of currency. Congress has no general power to regulate and control the kind, quality, amount, production, or prices of all property. Contract obligations, including obligations to pay money, have always been recognized to be property within the meaning of this rule. It has never even been suggested that the currency power gives Congress authority to fix the value of any obligation that does not circulate as money, on the theory that the value of money is regulated thereby.

The fact that the currency power must be held to be limited to the direct regulation of the media of exchange becomes more apparent when § 10 of Art. I is considered. This clause has been held merely to prevent the States from issuing currency and not to prevent the issuance of "Bills of Credit" which do not circulate as media of exchange. Its purpose has uniformly been said to be that of making effective the affirmative power over currency granted to Congress. *Ogden* v. *Saunders,* 12 Wheat. 213;

Craig v. *Missouri,* 4 Pet. 410; *Briscoe* v. *Kentucky Bank,* 11 Pet. 257; *Darrington* v. *Alabama Bank,* 13 How. 12; *Poindexter* v. *Greenhow,* 114 U. S. 270; *Houston & T. C. R. Co.* v. *Texas,* 177 U. S. 66.

The abrogation would deprive the claimant of his property without due process of law. That part of the Resolution is unreasonable, arbitrary and capricious; it is not reasonably appropriate to any legitimate legislative end; the purpose of its enactment is not comprehended within the objectives of the powers delegated to Congress.

Congress itself has left no doubt that the enactment was intended as an exercise of the currency power. The preamble of the Joint Resolution must be considered as an official statement of the facts upon which the specific exercise of power is based and as a declaration of the objects sought to be attained thereby.

The purpose of the gold clause was to provide a measure of the obligation, and its only possible effect is to fix the amount of legal tender currency payable in satisfaction thereof. How such provisions "obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar," and how their abrogation will "assure a uniform value to the coins and currencies of the United States," is difficult to comprehend. There was not then, nor can there be under existing circumstances, any disparity between the value of the kinds of currency lawfully in circulation, and Congress was untrammeled in its power to issue other forms of currency, to increase or decrease the amount of money in circulation, to change the standard, to declare what is and what shall be legal tender, to prohibit the circulation of unauthorized forms of currency, or otherwise regulate the value of money.

Furthermore, the second paragraph of the preamble of the Joint Resolution is misleading. It is there inferred that this statute is a regulation of the "holding of or dealing in gold," which, it is stated, "affect the public interest and are therefore subject to proper regulation and restriction; . . ." We do not deny that the " holding of or dealing in gold " may " affect the public interest " and for that reason be " subject to proper regulation and restriction." *Ling Su Fan* v. *United States,* 218 U. S. 302. But the " holding of or dealing in gold " had already been prohibited. A further regulation, not abrogating or in some measure altering the former prohibitions, could be of no effect and could only have been intended to disguise the real purpose of the Joint Resolution.

Insofar as it purports to abrogate the gold clause in claimant's bond, the Joint Resolution cannot be considered a regulation of the value of money. The ordinary means by which the value of the currency may be, and has been, regulated is by changing the base at which it had previously been stabilized, or by issuing more currency, thus creating a greater supply. Congress has also issued a new form of currency stabilized at a new base, different from preëxisting standards. The present statute does not and did not, at the time of its enactment, do any of these things. Gold payments were then, and have since remained, suspended. The outstanding currencies, thus, if stabilized at all at that time, must be considered to have been stabilized in terms of one dollar obligations, and these currencies were and are legal tender, dollar for dollar, in the payment of dollar obligations. The Joint Resolution stated, in effect, that both gold and gold-value obligations were payable, dollar for dollar, in this same currency. This Resolution, therefore, purported simultaneously to standardize the unit of currency in terms of dollar, gold dollar, and gold-value obligations. That this is unreasonable, arbitrary, and capricious and cannot be considered to be a regulation of the value of currency may easily be shown.

Claimant's bond by its tenor may be satisfied by the payment of legal tender money in a sum equal to the gold-value of its face amount. Ordinarily the gold-value in legal tender currency is no greater than the face amount of the instrument. When, however, gold payments have been suspended, gold-value obligations, although they may still be satisfied by payment in legal tender currency, remain at par with gold, but, ordinarily, are at a premium in terms of irredeemable currency. This was the situation when the Joint Resolution was enacted. See index of wholesale commodity prices on a gold basis, contained in The Annalist Weekly, Dec. 14, 1934, p. 817. If this statute were given effect, an ordinary one dollar obligation and a similar gold-value obligation could both be satisfied by the payment of the same unit of currency. This Joint Resolution was, therefore, an attempt simultaneously to stabilize the unit of currency at two obligations for the payment of money, which obligations were definitely different in value. Manifestly this cannot be considered to be a regulation of the value of money within the currency power. Gold-value contracts do not affect the value of money in any greater measure than do other money obligations or commodity contracts. Any regulation increasing or decreasing the amount that obligees may recover from the obligors of gold-value contracts, has no more effect on the value of the medium of exchange than would a regulation increasing or decreasing the rights of obligees of any other classes of contracts to pay money, or for that matter, the rights of promisees of agreements for the delivery of commodities. No one would contend that Congress has the power to lessen the obligation of all contracts on the theory that it is thereby regulating the value of money.

The only possible effect that gold-value contracts may have on the value of money is by affecting the demand for money. It is undoubtedly true that if the supply of currency and the rate of circulation were constant, then the value of money would fluctuate directly as the demand. The effect upon that demand of the payment in gold-value of federal obligations upon the retirement of such obligations, spread over the years of their respective maturities, would, however, be negligible.

In every contract to be performed in the future, one or the other of the parties thereto must bear the risk of loss due to fluctuation in value of the subject of the contract. In the ordinary contract for the payment of money, the risk of loss arising from an increase in the value of money rests upon the debtor; that resulting from its decrease upon the creditor. Yet it is not to be contended that Congress has power to shift these risks on the theory that it is regulating the value of money. The logical extension of this doctrine would be to hold that Congress could forbid persons from protecting themselves against risk of loss in any situation, an obvious impossibility; and further, since this risk must fall on someone, that Congress could, *ex post facto,* choose the person upon whom it should fall. The Federal Government, by its own insertion of the gold clause in claimant's Liberty Bond, has voluntarily assumed the risk ordinarily borne by the creditor. It now seeks to transfer to its creditor the loss caused by its own act of devaluation, the very contingency which it itself contemplated when it issued the bond.

Claimant further contends that the Joint Resolution, insofar as it purports to abrogate the gold clause in the Liberty Bond, will not accomplish, or have a reasonable relation to, any proper legislative object.

The purpose of the Joint Resolution, in this respect, was not to execute or make effective any of the powers granted to Congress, but, under the guise of an exercise of the currency power, to commit an act of repudiation. This practice was condemned in *McCulloch* v. *Maryland,* 4 Wheat. 316, 423; dissenting opinion, *Sinking-Fund Cases,* 99 U. S. 700, 739.

Even if that part of the Joint Resolution which purports to abrogate existing gold clause obligations might in any way be considered to be an exercise of the power "to coin money, regulate the value thereof," it must, to the extent that the gold clause in claimant's Liberty Bond is affected, deprive him of his property without due process of law and be a violation of the Fifth Amendment.

The claimant in any event is entitled to recover just compensation for the taking of his property for public use.

That part of the Resolution which attempts to fix the just compensation for such taking at "dollar for dollar" in legal tender would in any event be utterly void, as an attempted exercise of judicial power by the legislature. The judicial measure of that just compensation is the value of the property as of the date of taking.

The value of the property on the date of taking is the same as the damages claimed for the breach of the express contract, for the date of breach of contract and the date of taking is the same. In any case, neither the breach of the express contract nor the taking and appropriation by defendant of claimant's property were complete until the claimant's bond had been called for redemption and defendant had refused to pay according to the tenor of the bond. Both of these events happened on May 24, 1934, when the bond was presented to the Treasury Department for payment. The just compensation is, therefore, equal in amount to the relief asked for in the petition.

The Court of Claims has jurisdiction.

Mr. Angus MacLean, Assistant Solicitor General, opened the argument for the United States in this case. *Attorney General Cummings* made a closing argument for this and the two preceding cases. Those who were with them on the Government's brief were *Solicitor General Biggs, Assistant Attorney General Sweeney,* and *Messrs. Alexander Holtzoff* and *Harry LeRoy Jones.* The brief is here summarized:

Justification of the gold clause was removed when the dual monetary system was ended by the parity provisions. *Bronson* v. *Rodes,* 7 Wall. 229, 251–253.

The gold clause is an obstruction to the power of Congress to maintain the parity of all coins and currencies of the United States. Besides the holders of some $20,000,-000,000 of gold-clause, interest-bearing obligations of the Federal Government, there were holders of more than $5,000,000,000 of currency issued or guaranteed by the United States; gold clauses were contained in or made with respect to all of this currency. When the Government found it necessary to suspend redemption of currency in gold, one group of creditors would have been preferred to another if gold-clause creditors had been allowed to enforce the asserted obligation of their bonds.

The gold clause is an obstruction to the power of Congress to regulate the value of money. If the gold clause had not been abrogated in Government as well as private obligations, investments like those of the claimant would have reaped a harvest by the artificial demand created for Government bonds. If the gold clause in Government bonds were sustained and construed to entitle the holders to $1.69 on every dollar face amount of the bond, a ten-thousand-dollar gold-clause bond would in 1934 purchase 2.87 times as much as the $10,000 invested in such bond in 1918.

The gold clause is an obstruction to the power of Congress to borrow money. Bonds in which the gold clause was allowed to remain would adversely affect the market for other types of bonds and thereby impair the borrowing power of the Government.

The gold clause is an interference with the powers of the Federal Government over international relations, foreign exchange transactions, and foreign commerce.

There does not appear to be any serious doubt as to the power of Congress to prohibit gold clauses in future obligations. *Hepburn* v. *Griswold,* 8 Wall. 603, 615.

The Joint Resolution, in its application to outstanding Government bonds, does not violate the due process clause of the Fifth Amendment. On June 5, 1933, there was no disparity in value in the United States between the gold dollar and other coins and currency of the United States. That being true, the claimant's argument fails.

The Legal Tender Cases are conclusive that §§ 1 and 2 of the Joint Resolution do not violate the Fifth Amendment. The decision in those cases was understood by the Court, and has since been understood, to sustain the constitutionality of the Legal Tender Acts as applied to public as well as private debts. 12 Wall. 529, 530, 539, 540, 635; and *Savage's Case,* 8 Ct. Cl. 545, affirmed 92 U. S. 382.

Public as well as private obligations may be affected as a result of action taken within the Federal police power or some other paramount power. *Lynch* v. *U. S.,* 292 U. S. 571, 579; *Home Bldg. & Loan Assn.* v. *Blaisdell,* 290 U. S. 398, 435; and *Horowitz* v. *U. S.,* 267 U. S. 458. The cases which have upheld such action by the State Legislatures, as applied to state obligations, go far to establish the propriety of similar action by Congress. *Atlantic Coast Line R. Co.* v. *Goldsboro,* 232 U. S. 548; *Chicago, B. & Q. R. Co.* v. *Nebraska,* 170 U. S. 57; *Stone* v. *Mississippi,* 101 U. S. 814; *Butchers Union Co.* v. *Crescent City,* 111 U. S. 746; *C., B. & Q. R. Co.* v. *Drainage Commr's,* 200 U. S. 561, 592; and *Chicago & Alton R. Co.* v. *Tranbarger,* 238 U. S. 67. Legislative powers cannot be expressly contracted away. *Newton* v. *Commr's,* 100 U. S. 548; *Illinois Central Ry.* v. *Illinois,* 146 U. S. 387; *Home Building & Loan Assn.* v. *Blaisdell,* 290 U. S. 398, 436; *Denver & R. G. R. Co.* v. *Denver,* 250 U. S. 241; *Stone* v. *Mississippi,* 101 U. S. 814; *N. Y. & N. E. R. Co.* v. *Bristol,* 151 U. S. 556; *Boyd* v. *Alabama,* 94 U. S. 645; *Straus* v. *American Publishers' Assn.,* 231 U. S. 222, 243; *United Shoe Machinery Co.* v. *United States,* 258 U. S. 451, 463; *North American Co.* v. *United States,* 171 U. S.

110, 137; James Parker Hall, in American Law and Procedure, Volume XII, Constitutional Law, pages 242, 243.

One Congress can no more convey or contract away the legislative powers entrusted by the Constitution so as to restrict the exercise of those powers by a subsequent Congress than can a State Legislature. *Lynch* v. *United States,* 292 U. S. 571, 579; *North American Co.* v. *United States,* 171 U. S. 110, 137; *United Shoe Machinery Co.* v. *United States,* 258 U. S. 451, 463.

From the point of view of justice and equity, claimant is receiving for his bond all that he is entitled to receive from the Government. The purchasing power of the dollar on June 5, 1933, and on April 15, 1934, when claimant's bond was called, and at the present time, is far greater than the purchasing power of the dollar that the Government received when it issued the Liberty Bonds. The Annalist, Weekly Index of Wholesale Commodity Prices, December 14, 1934.

The Joint Resolution does not violate § 4 of the Fourteenth Amendment. The word "validity" in § 4 refers to the essential existence of the obligation, as is shown by the legislative history. Nowhere in the cases involving the Legal Tender Acts as applied to public or private obligations is any reference made to this section. The word "debt," as used in the section, is not to be construed as including every provision contained in, or made with respect to, an obligation of the United States. The gold clause is a provision aside from the basic "debt." *Bronson* v. *Rodes,* 7 Wall. 229; *Butler* v. *Horwitz,* 7 Wall. 258; *Dewing* v. *Sears,* 11 Wall. 379; and *Maryland* v. *Railroad Co.,* 22 Wall. 105, 108. Historians who have considered § 4 limit its concept of public debt to that public debt existing at the time of the adoption of the Amendment. Burdick, The Law of the American Constitution, § 228; Dunning, Essays on the Civil War and Reconstruction (1931), 118; Eriksson & Rowe, American Constitutional

History (1933), 301; Flack, The Adoption of the Fourteenth Amendment (1908), 133; Magruder, The Constitution (1933), 328; Story, Constitution, 5th ed., § 1965; Watson, The Constitution of the United States (1910), 1657; 2 Blaine, "Twenty Years of Congress," 190; Guthrie, The Fourteenth Amendment (1898), 17; 44 Yale L. J., 53, 85. In any event, it can scarcely be contended that the limitation placed upon Congress by § 4 of the Fourteenth Amendment is more stringent than the limitation placed upon the States in the impairment-of-contracts clause.

The Joint Resolution may not be attacked as a taking of private property without just compensation. The claimant confuses the due process and the just compensation clauses of the Fifth Amendment. To frustrate a contract is not to appropriate it. *Omnia Commercial Co.* v. *U. S.*, 261 U. S. 502, 508, 513. Even if there was a taking, it was accomplished by the Joint Resolution on June 5, 1933. There was no drop in the market price of the claimant's bond upon the passage of the Resolution. There is no allegation that the bond depreciated in value either on that date or thereafter. The Government has provided just compensation if any is due; the claimant is entitled to be put in as good a position pecuniarily as if his property had not been taken, but is not entitled to more. *Olson* v. *U. S.*, 292 U. S. 246, 255. The relative market value of gold-clause and non-gold-clause obligations was not affected by the Joint Resolution. Moreover, if the claimant had, on June 5, 1933, received gold coin for his bond, he would have been required by the Orders then in force to deliver the coin to the United States in exchange for other coin or the currency of an equivalent amount. The claimant was in no position to secure any asserted "world price" for any gold held or received by him in the United States, since the Executive Orders promulgated under the Act of March 9, 1933, prohibited the export of gold coin from the United States. Such prohibition is constitutional. *Ling Su Fan* v. *U. S.*, 218 U. S. 302. There is no basis for the contention that compensation must be made for the increased value of property accruing after the taking. *Olson* v. *U. S.*, 292 U. S. 246; *Brooks-Scanlon Corp.* v. *U. S.*, 265 U. S. 106, 123.

The United States, as a contractor, is not liable to respond in damages in the Court of Claims for any breach of its proprietary and corporate contracts due to its public and general acts as a sovereign. *United States* v. *State Bank,* 96 U. S. 30, 36; and *Horowitz* v. *U. S.*, 267 U. S. 458.

Section 1 of the Joint Resolution has the effect of withdrawing the consent of the United States to be sued on gold clauses. *Lynch* v. *U. S.*, 292 U. S. 571, 580.

Annulment of the gold clause in Government bonds is no more repudiation than in private obligations. In both it is regulation rather than repudiation, and as such is an attribute of sovereignty. Whatever power there is over the currency is vested in Congress. If the power to declare what is money is not in Congress, it is annihilated. *Legal Tender Cases, supra.*

By leave of Court, *Messrs. Edward E. Gann* and *George C. Johnson* filed a brief as *amici curiae* in support of the contentions of the United States.

Mr. Chief Justice Hughes delivered the opinion of the Court.

The certificate from the Court of Claims shows the following facts:

Plaintiff brought suit as the owner of an obligation of the United States for $10,000, known as "Fourth Liberty Loan 4¼% Gold Bond of 1933–1938." This bond was issued pursuant to the Act of September 24, 1917 (40 Stat. 288), as amended, and Treasury Department circular No. 121, dated September 28, 1918. The bond provided: "The principal and interest hereof are payable in United States gold coin of the present standard of value."

Plaintiff alleged in his petition that at the time the bond was issued, and when he acquired it, a dollar in gold consisted of 25.8 grains of gold .9 fine"; that the bond was called for redemption on April 15, 1934, and, on May 24, 1934, was presented for payment; that plaintiff demanded its redemption "by the payment of 10,000 gold dollars each containing 25.8 grains of gold .9 fine"; that defendant refused to comply with that demand, and that plaintiff then demanded "258,000 grains of gold .9 fine, or gold of equivalent value of any fineness, or 16,931.25 gold dollars each containing 15 5/21 grains of gold .9 fine, or 16,931.25 dollars in legal tender currency"; that defendant refused to redeem the bond "except by the payment of 10,000 dollars in legal tender currency"; that these refusals were based on the Joint Resolution of the Congress of June 5, 1933 (48 Stat. 113), but that this enactment was unconstitutional as it operated to deprive plaintiff of his property without due process of law; and that, by this action of defendant, he was damaged "in the sum of $16,931.25, the value of defendant's obligation," for which, with interest, plaintiff demanded judgment.

Defendant demurred upon the ground that the petition did not state a cause of action against the United States.

The Court of Claims has certified the following questions:

"1. Is the claimant, being the holder and owner of a Fourth Liberty Loan 4¼% bond of the United States, of the principal amount of $10,000, issued in 1918, which was payable on and after April 15, 1934, and which bond contained a clause that the principal is 'payable in United States gold coin of the present standard of value,' entitled to receive from the United States an amount in legal tender currency in excess of the face amount of the bond?

"2. Is the United States, as obligor in a Fourth Liberty Loan 4¼% gold bond, Series of 1933–1938, as stated in Question One, liable to respond in damages in a suit in the Court of Claims on such bond as an express contract, by reason of the change in or impossibility of performance in accordance with the tenor thereof, due to the provisions of Public Resolution No. 10, 73rd Congress, abrogating the gold clause in all obligations?"

First. The import of the obligation. The bond in suit differs from an obligation of private parties, or of States or municipalities, whose contracts are necessarily made in subjection to the dominant power of the Congress. *Norman* v. *Baltimore & Ohio R. Co.*, decided this day, *ante*, p. 240. The bond now before us is an obligation of the United States. The terms of the bond are explicit. They were not only expressed in the bond itself, but they were definitely prescribed by the Congress. The Act of September 24, 1917, both in its original and amended form, authorized the moneys to be borrowed, and the bonds to be issued, "on the credit of the United States" in order to meet expenditures needed "for the national security and defense and other public purposes authorized by law." 40 Stat. 288, 503. The circular of the Treasury Department of September 28, 1918, to which the bond refers "for a statement of the further rights of the holders of bonds of said series," also provided that the principal and interest "are payable in United States gold coin of the present standard of value."

This obligation must be fairly construed. The "*present* standard of value" stood in contradistinction to a *lower* standard of value. The promise obviously was intended to afford protection against loss. That protection was sought to be secured by setting up a standard or measure of the Government's obligation. We think that the reasonable import of the promise is that it was intended to assure one who lent his money to the Government and took its bond that he would not suffer loss through depreciation in the medium of payment.

The Government states in its brief that the total unmatured interest-bearing obligations of the United States outstanding on May 31, 1933, (which it is understood contained a " gold clause " substantially the same as that of the bond in suit,) amounted to about twenty-one billions of dollars. From statements at the bar, it appears that this amount has been reduced to approximately twelve billions at the present time, and that during the intervening period the public debt of the United States has risen some seven billions (making a total of approximately twenty-eight billions five hundred millions) by the issue of some sixteen billions five hundred millions of dollars " of non-gold-clause obligations."

Second. The binding quality of the obligation. The question is necessarily presented whether the Joint Resolution of June 5, 1933 (48 Stat. 113) is a valid enactment so far as it applies to the obligations of the United States. The Resolution declared that provisions requiring " payment in gold or a particular kind of coin or currency " were " against public policy," and provided that " every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein," shall be discharged " upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts." This enactment was expressly extended to obligations of the United States, and provisions for payment in gold, " contained in any law authorizing obligations to be issued by or under authority of the United States," were repealed.[1]

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[1] And subdivision (b) of § 1 of the Joint Resolution of June 5, 1933, provided: "As used in this resolution, the term ' obligation ' means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States;

There is no question as to the power of the Congress to regulate the value of money, that is, to establish a monetary system and thus to determine the currency of the country. The question is whether the Congress can use that power so as to invalidate the terms of the obligations which the Government has theretofore issued in the exercise of the power to borrow money on the credit of the United States. In attempted justification of the Joint Resolution in relation to the outstanding bonds of the United States, the Government argues that "earlier Congresses could not validly restrict the 73rd Congress from exercising its constitutional powers to regulate the value of money, borrow money, or regulate foreign and interstate commerce"; and, from this premise, the Government seems to deduce the proposition that when, with adequate authority, the Government borrows money and pledges the credit of the United States, it is free to ignore that pledge and alter the terms of its obligations in case a later Congress finds their fulfillment inconvenient. The Government's contention thus raises a question of far greater importance than the particular claim of the plaintiff. On that reasoning, if the terms of the Government's bond as to the standard of payment can be repudiated, it inevitably follows that the obligation as to the amount to be paid may also be repudiated. The contention necessarily imports that the Congress can disregard the obligations of the Government at its discretion and that, when the Government borrows money, the credit of the United States is an illusory pledge.

We do not so read the Constitution. There is a clear distinction between the power of the Congress to control or interdict the contracts of private parties when they interfere with the exercise of its constitutional authority,

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and the term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations."

and the power of the Congress to alter or repudiate the substance of its own engagements when it has borrowed money under the authority which the Constitution confers. In authorizing the Congress to borrow money, the Constitution empowers the Congress to fix the amount to be borrowed and the terms of payment. By virtue of the power to borrow money "*on the credit of the United States,*" the Congress is authorized to pledge that credit as an assurance of payment as stipulated,—as the highest assurance the Government can give, its plighted faith. To say that the Congress may withdraw or ignore that pledge, is to assume that the Constitution contemplates a vain promise, a pledge having no other sanction than the pleasure and convenience of the pledgor. This Court has given no sanction to such a conception of the obligations of our Government.

The binding quality of the obligations of the Government was considered in the *Sinking-Fund Cases,* 99 U. S. 700, 718, 719. The question before the Court in those cases was whether certain action was warranted by a reservation to the Congress of the right to amend the charter of a railroad company. While the particular action was sustained under this right of amendment, the Court took occasion to state emphatically the obligatory character of the contracts of the United States. The Court said: "The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citizen." [2]

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[2] Mr. Justice Strong, who had written the opinion of the majority of the Court in the legal tender cases (*Knox* v. *Lee,* 12 Wall. 457), dissented in the *Sinking-Fund Cases,* 99 U. S. p. 731, because he thought that the action of the Congress was not consistent with the Government's engagement and hence was a transgression of legislative

When the United States, with constitutional authority, makes contracts, it has rights and incurs responsibilities similar to those of individuals who are parties to such instruments. There is no difference, said the Court in *United States* v. *Bank of the Metropolis,* 15 Pet. 377, 392, except that the United States cannot be sued without its consent. See, also, *The Floyd Acceptances,* 7 Wall. 666, 675; *Cooke* v. *United States,* 91 U. S. 389, 396. In *Lynch* v. *United States,* 292 U. S. 571, 580, with respect to an attempted abrogation by the Act of March 20, 1933 (48 Stat. 8, 11) of certain outstanding war risk insurance policies, which were contracts of the United States, the Court quoted with approval the statement in the *Sinking-Fund Cases, supra,* and said: "Punctilious fulfillment of contractual obligations is essential to the maintenance of the credit of public as well as private debtors. No doubt there was in March, 1933, great need of economy. In the administration of all government business economy had become urgent because of lessened revenues and the heavy obligations to be issued in the hope of relieving widespread distress. Congress was free to reduce gratuities deemed excessive. But Congress was without power to reduce expenditures by abrogating contractual obligations of the United States. To abrogate contracts, in the attempt to lessen government expenditure, would

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power. And with respect to the sanctity of the contracts of the Government, he quoted, with approval, the opinion of Mr. Hamilton in his communication to the Senate of January 20, 1795 (citing 3 Hamilton's Works, 518, 519), that "when a government enters into a contract with an individual, it deposes, as to the matter of the contract, its constitutional authority, and exchanges the character of legislator for that of a moral agent, with the same rights and obligations as an individual. Its promises may be justly considered as excepted out of its power to legislate unless in aid of them. It is in theory impossible to reconcile the idea of a promise which obliges, with the power to make a law which can vary the effect of it."

be not the practice of economy, but an act of repudiation."

The argument in favor of the Joint Resolution, as applied to government bonds, is in substance that the Government cannot by contract restrict the exercise of a sovereign power. But the right to make binding obligations is a competence attaching to sovereignty.[3] In the United States, sovereignty resides in the people, who act through the organs established by the Constitution. *Chisholm* v. *Georgia,* 2 Dall. 419, 471; *Penhallow* v. *Doane's Administrators,* 3 Dall. 54, 93; *McCulloch* v. *Maryland,* 4 Wheat. 316, 404, 405; *Yick Wo* v. *Hopkins,* 118 U. S. 356, 370. The Congress as the instrumentality of sovereignty is endowed with certain powers to be exerted on behalf of the people in the manner and with the effect the Constitution ordains. The Congress cannot invoke the sovereign power of the people to override their will as thus declared. The powers conferred upon the Congress are harmonious. The Constitution gives to the Congress the power to borrow money on the credit of the United States, an unqualified power, a power vital to the Government,— upon which in an extremity its very life may depend. The binding quality of the promise of the United States is of the essence of the credit which is so pledged. Having this power to authorize the issue of definite obligations for the payment of money borrowed, the Congress has not been vested with authority to alter or destroy those obli-

[3] Oppenheim, International Law, 4th ed., vol. 1, §§ 493, 494. This is recognized in the field of international engagements. Although there may be no judicial procedure by which such contracts may be enforced in the absence of the consent of the sovereign to be sued, the engagement validly made by a sovereign state is not without legal force, as readily appears if the jurisdiction to entertain a controversy with respect to the performance of the engagement is conferred upon an international tribunal. Hall, International Law, 8th ed., § 107; Oppenheim, *loc. cit.;* Hyde, International Law, vol. 2, § 489.

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gations. The fact that the United States may not be sued without its consent is a matter of procedure which does not affect the legal and binding character of its contracts. While the Congress is under no duty to provide remedies through the courts, the contractual obligation still exists and, despite infirmities of procedure, remains binding upon the conscience of the sovereign. *Lynch* v. *United States, supra,* pp. 580, 582.

The Fourteenth Amendment, in its fourth section, explicitly declares: "The validity of the public debt of the United States, authorized by law, . . . shall not be questioned." While this provision was undoubtedly inspired by the desire to put beyond question the obligations of the Government issued during the Civil War, its language indicates a broader connotation. We regard it as confirmatory of a fundamental principle, which applies as well to the government bonds in question, and to others duly authorized by the Congress, as to those issued before the Amendment was adopted. Nor can we perceive any reason for not considering the expression "the *validity* of the public debt" as embracing whatever concerns the integrity of the public obligations.

We conclude that the Joint Resolution of June 5, 1933, in so far as it attempted to override the obligation created by the bond in suit, went beyond the congressional power.

Third. The question of damages. In this view of the binding quality of the Government's obligations, we come to the question as to the plaintiff's right to recover damages. That is a distinct question. Because the Government is not at liberty to alter or repudiate its obligations, it does not follow that the claim advanced by the plaintiff should be sustained. The action is for breach of contract. As a remedy for breach, plaintiff can recover no more than the loss he has suffered and of which he may rightfully complain. He is not entitled to be enriched. Plaintiff seeks judgment for $16,931.25, in present legal tender currency, on his bond for $10,000. The question is whether he has shown damage to that extent, or any actual damage, as the Court of Claims has no authority to entertain an action for nominal damages. *Grant* v. *United States,* 7 Wall. 331, 338; *Marion & R. V. Ry. Co.* v. *United States,* 270 U. S. 280, 282; *Nortz* v. *United States,* decided this day, *ante,* p. 317.

Plaintiff computes his claim for $16,931.25 by taking the weight of the gold dollar as fixed by the President's proclamation of January 31, 1934, under the Act of May 12, 1933 (48 Stat. 52, 53), as amended by the Act of January 30, 1934 (48 Stat. 342), that is, at 15 5/21 grains nine-tenths fine, as compared with the weight fixed by the Act of March 14, 1900 (31 Stat. 45), or 25.8 grains nine-tenths fine. But the change in the weight of the gold dollar did not necessarily cause loss to the plaintiff of the amount claimed. The question of actual loss cannot fairly be determined without considering the economic situation at the time the Government offered to pay him the $10,000, the face of his bond, in legal tender currency. The case is not the same as if gold coin had remained in circulation. That was the situation at the time of the decisions under the legal tender acts of 1862 and 1863. *Bronson* v. *Rodes,* 7 Wall. 229, 251; *Trebilcock* v. *Wilson,* 12 Wall. 687, 695; *Thompson* v. *Butler,* 95 U. S. 694, 696, 697. Before the change in the weight of the gold dollar in 1934, gold coin had been withdrawn from circulation.[4] The Congress had authorized the prohibition of the exportation of gold coin and the placing of restrictions upon transactions in foreign exchange. Acts of March 9, 1933,

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[4] In its Report of May 27, 1933, it was stated by the Senate Committee on Banking and Currency: "By the Emergency Banking Act and the existing Executive Orders gold is not now paid, or obtainable for payment, on obligations public or private." Sen. Rep. No. 99, 73d Cong., 1st sess.

48 Stat. 1; January 30, 1934, 48 Stat. 337. Such dealings could be had only for limited purposes and under license. Executive Orders of April 20, 1933, August 28, 1933, and January 15, 1934; Regulations of the Secretary of the Treasury, January 30 and 31, 1934. That action the Congress was entitled to take by virtue of its authority to deal with gold coin as a medium of exchange. And the restraint thus imposed upon holders of gold coin was incident to the limitations which inhered in their ownership of that coin and gave them no right of action. *Ling Su Fan* v. *United States,* 218 U. S. 302, 310, 311. The Court said in that case: "Conceding the title of the owner of such coins, yet there is attached to such ownership those limitations which public policy may require by reason of their quality as a legal tender and as a medium of exchange. These limitations are due to the fact that public law gives to such coinage a value which does not attach as a mere consequence of intrinsic value. Their quality as a legal tender is an attribute of law aside from their bullion value. They bear, therefore, the impress of sovereign power which fixes value and authorizes their use and exchange. . . . However unwise a law may be, aimed at the exportation of such coins, in the face of the axioms against obstructing the free flow of commerce, there can be no serious doubt that the power to coin money includes the power to prevent its outflow from the country of its origin." The same reasoning is applicable to the imposition of restraints upon transactions in foreign exchange. We cannot say, in view of the conditions that existed, that the Congress, having this power, exercised it arbitrarily or capriciously. And the holder of an obligation, or bond, of the United States, payable in gold coin of the former standard, so far as the restraint upon the right to export gold coin or to engage in transactions in foreign exchange is concerned, was in no better case than the holder of gold coin itself.

In considering what damages, if any, the plaintiff has sustained by the alleged breach of his bond, it is hence inadmissible to assume that he was entitled to obtain gold coin for recourse to foreign markets, or for dealings in foreign exchange, or for other purposes contrary to the control over gold coin which the Congress had the power to exert, and had exerted, in its monetary regulation. Plaintiff's damages could not be assessed without regard to the internal economy of the country at the time the alleged breach occurred. The discontinuance of gold payments and the establishment of legal tender currency on a standard unit of value with which "all forms of money" of the United States were to be "maintained at a parity," had a controlling influence upon the domestic economy. It was adjusted to the new basis. A free domestic market for gold was non-existent.

Plaintiff demands the "equivalent" in currency of the gold coin promised. But "equivalent" cannot mean more than the amount of money which the promised gold coin would be worth to the bondholder for the purposes for which it could legally be used. That equivalence or worth could not properly be ascertained save in the light of the domestic and restricted market which the Congress had lawfully established. In the domestic transactions to which the plaintiff was limited, in the absence of special license, determination of the value of the gold coin would necessarily have regard to its use as legal tender and as a medium of exchange under a single monetary system with an established parity of all currency and coins. And in view of the control of export and foreign exchange, and the restricted domestic use, the question of value, in relation to transactions legally available to the plaintiff, would require a consideration of the purchasing power of the dollars which the plaintiff could have received. Plaintiff has not shown, or attempted to show, that in relation to buying power he has sustained any loss whatever. On the contrary, in view of the adjustment of the internal economy to the single measure of value as established by the legislation of the Congress, and the universal availability and use throughout the country of the legal tender currency in meeting all engagements, the payment to the plaintiff of the amount which he demands would appear to constitute not a recoupment of loss in any proper sense but an unjustified enrichment.

Plaintiff seeks to make his case solely upon the theory that by reason of the change in the weight of the dollar he is entitled to one dollar and sixty-nine cents in the present currency for every dollar promised by the bond, regardless of any actual loss he has suffered with respect to any transaction in which his dollars may be used. We think that position is untenable.

In the view that the facts alleged by the petition fail to show a cause of action for actual damages, the first question submitted by the Court of Claims is answered in the negative. It is not necessary to answer the second question.

Question No. 1 is answered "No."

MR. JUSTICE STONE, concurring.

I agree that the answer to the first question is "No," but I think our opinion should be confined to answering that question and that it should essay an answer to no other.

I do not doubt that the gold clause in the Government bonds, like that in the private contracts just considered, calls for the payment of value in money, measured by a stated number of gold dollars of the standard defined in the clause, *Feist* v. *Société Intercommunale Belge d'Electricité,* [1934] A. C. 161, 170–173; *Serbian and Brazilian Bond Cases,* P. C. I. J., series A., Nos. 20–21, pp. 32–34, 109–119. In the absence of any further exertion of governmental power, that obligation plainly could not be satisfied by payment of the same number of dollars, either specie or paper, measured by a gold dollar of lesser weight, regardless of their purchasing power or the state of our internal economy at the due date.

I do not understand the Government to contend that it is any the less bound by the obligation than a private individual would be, or that it is free to disregard it except in the exercise of the constitutional power "to coin money" and "regulate the value thereof." In any case, there is before us no question of default apart from the regulation by Congress of the use of gold as currency.

While the Government's refusal to make the stipulated payment is a measure taken in the exercise of that power, this does not disguise the fact that its action is to that extent a repudiation of its undertaking. As much as I deplore this refusal to fulfill the solemn promise of bonds of the United States, I cannot escape the conclusion, announced for the Court, that in the situation now presented, the Government, through the exercise of its sovereign power to regulate the value of money, has rendered itself immune from liability for its action. To that extent it has relieved itself of the obligation of its domestic bonds, precisely as it has relieved the obligors of private bonds in *Norman* v. *Baltimore & Ohio R. Co.*, decided this day, *ante*, p. 240.

In this posture of the case it is unnecessary, and I think undesirable, for the Court to undertake to say that the obligation of the gold clause in Government bonds is greater than in the bonds of private individuals, or that in some situation not described, and in some manner and in some measure undefined, it has imposed restrictions upon the future exercise of the power to regulate the currency. I am not persuaded that we should needlessly intimate any opinion which implies that the obligation may so operate, for example, as to interpose a serious obstacle to the adoption of measures for stabilization of the dollar, should Congress think it wise to accomplish that purpose by resumption of gold payments, in dollars of the present or any other gold content less than that specified in the gold clause, and by the re-establishment of a free market for gold and its free exportation.

There is no occasion now to resolve doubts, which I entertain, with respect to these questions. At present they are academic. Concededly they may be transferred wholly to the realm of speculation by the exercise of the undoubted power of the Government to withdraw the privilege of suit upon its gold clause obligations. We have just held that the Court of Claims was without power to entertain the suit in *Nortz* v. *United States, ante,* p. 317, because, regardless of the nature of the obligation of the gold certificates, there was no damage. Here it is declared that there is no damage because Congress, by the exercise of its power to regulate the currency, has made it impossible for the plaintiff to enjoy the benefits of gold payments promised by the Government. It would seem that this would suffice to dispose of the present case, without attempting to prejudge the rights of other bondholders and of the Government under other conditions which may never occur. It will not benefit this plaintiff, to whom we deny any remedy, to be assured that he has an inviolable right to performance of the gold clause.

Moreover, if the gold clause be viewed as a gold value contract, as it is in *Norman* v. *Baltimore & Ohio R. Co., supra,* it is to be noted that the Government has not prohibited the free use by the bondholder of the paper money equivalent of the gold clause obligation; it is the prohibition, by the Joint Resolution of Congress, of payment of the increased number of depreciated dollars required to make up the full equivalent, which alone bars recovery.