twelve, thirteen, and fourteen per cent. It resulted that in some instances a teacher receiving the lowest salary in a given bracket would have his compensation reduced to a figure lower than the reduced compensation of one receiving the highest salary in the next lower bracket. From this circumstance it is argued that the board's action arbitrarily discriminated between the employes and so denied them the equal protection of the laws guaranteed by the Fourteenth Amendment.

We think it was reasonable and proper that the teachers employed by the board should be divided into classes for the application of the percentage reduction. All in a given class were treated alike. Incidental individual inequality resulting in some instances from the operation of the plan does not condemn it as an unreasonable or arbitrary method of dealing with the problem of general salary reductions or deny the equality guaranteed by the Fourteenth Amendment.

Judgments affirmed.

HOLYOKE WATER POWER CO. *v.* AMERICAN WRITING PAPER CO.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

No. 180. Argued December 11, 1936.—Decided March 1, 1937.

Leases of water-power rights to be enjoyed in perpetuity provided that the grantee should pay as rent "a quantity of gold which shall be equal in amount to" a stated number of "dollars of the gold coin of the United States of the standard of weight and fineness of the year 1894, or the equivalent of this commodity in United States currency." In 1894, and continuously thereafter till January 31, 1934, the statutory gold content of the dollar was twenty-five and eight-tenths grains of gold, nine-tenths fine. Since January 31, 1934, by force of the Gold Reserve Act of that year and the order of the President thereunder, the gold content of the dollar has been fixed to consist of fifteen and five twenty-firsts

grains of gold, nine-tenths fine. The Joint Resolution of June 5, 1933, had declared that every obligation payable in money of the United States, whether theretofore or thereafter incurred, should be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment was legal tender for public or private debts, irrespective of any provision contained therein whereby the obligee was given a right to require payment in gold or in a particular kind of coin or currency, or in an amount in money of the United States measured thereby. *Held:*

1. The lessee's obligation under the contract was for the payment of money, and not for the delivery of gold as upon sale of a commodity. P. 335.

2. A contract for the payment of gold as the equivalent of money, and *a fortiori* a contract for the payment of money measurable in gold, is within the letter of the Joint Resolution of June 5, 1933, and equally within its spirit, *Norman* v. *Baltimore & Ohio R. Co.*, 294 U. S. 240. P. 337.

An obligation to make delivery upon a *bona fide* sale is not fairly to be classified as an obligation "payable in money," within the meaning of the Joint Resolution, or so it may be assumed for the purpose of this case. But the evil aimed at by the Resolution does include transactions whereby gold, coined or uncoined, is to be delivered in satisfaction of a debt expressed in terms of dollars, payment, not sale, being then the end to be achieved, and transactions whereby a debt is to be discharged, not in bullion, but in dollars, if the number of the dollars is to be increased or diminished in proportion to the diminution or the increase of the gold basis of the currency.

83 F. (2d) 398, affirmed.

CERTIORARI, 299 U. S. 526, to review a judgment of the Circuit Court of Appeals affirming an order of the District Court made in a proceeding for reorganization of the Paper Company under § 77B of the Bankruptcy Act. The order fixed the amounts due from that company to a Water Power Company, the present petitioner, under several leases. 11 F. Supp. 518. See 9 *id.* 451.

Mr. Bentley Wirt Warren, with whom *Messrs. Nathan P. Avery, James M. Healy,* and *Donald C. Starr* were on the brief, for petitioner.

The question for determination is the measure of the debtor's liability, on three certain dates after the devaluation of the dollar, under an obligation in the alternative, to pay either a specified quantity of gold as a commodity or its equivalent in currency, at the option of the debtor.

The provision for payment in gold was impossible of performance according to its terms, and no provision for its discharge other than according to its terms was provided by law (more particularly, by the Joint Resolution of June 5, 1933).

The purpose of the parties in drawing the rental provisions in the form in dispute was to provide against the effect of an appreciation or depreciation of the currency by adopting gold bullion as a medium of payment, or, at the option of the lessee, as a measure of an indeterminate amount of currency according to the ratio of equivalence between gold bullion and currency on the various rental dates. According to the ordinary meaning of "equivalence," with respect to this relation, and as evident from various legislative enactments and executive acts, the currency equivalent of gold bullion on July 1 and October 1, 1934, and on January 1, 1935, according to the intent of the remaining alternative provision, was one dollar for each $15\frac{5}{21}$ grains of gold nine-tenths fine, or $35 an ounce.

The debtor's duty to perform this contractual provision according to its terms has not been modified by law (more particularly, by the said Joint Resolution), for the following reasons:

1. The provision of the Joint Resolution for the discharge of certain contracts "dollar for dollar" applies only to obligations to pay sums certain in money. This is apparent from the terms of the Resolution itself, whether read by themselves or in connection with relevant external evidence of their meaning.

The historic fact that gold has from time to time been the metallic base of the money of the United States has not the effect of constituting uncoined gold bullion "money." The terms of the express power given to Congress to "coin money" indicate the necessity of coinage to give to bullion the quality of legal tender attributed by the law, aside from its bullion value (see *Norman* v. *Baltimore & Ohio R. Co.,* 294 U. S. 240, 304).

The terms of the provision for the discharge of certain money obligations "dollar for dollar" themselves necessarily restrict the operation of the Resolution to obligations payable in dollars.

Nor is the question affected by the inclusion in the rental provision of the words "fifteen hundred ($1500) dollars of the gold coin of the United States." It was plainly the function of this phrase simply to render the magnitude of the quantity of gold being stipulated for more readily comprehensible to the contracting parties. If the parties had foregone the ready means of visual comprehension afforded by the reference to gold coins, and had calculated in the beginning (as must eventually have been done before payment in any case) the number of ounces or grains of gold being contracted for, and had written the stipulation in terms for "80.625 ounces of gold .9 fine, or 72.5625 ounces of gold 1000 fine," the substance of the undertaking would have been in no respect different. *Holyoke Water Power Co.* v. *American Writing Paper Co.,* 9 F. Supp. 451, 453; *Emery Bird Thayer Dry Goods Co.* v. *Williams,* 15 F. Supp. 938, 941.

2. Even if the terms of the Resolution be equivocal in this respect, they are to be construed as not referring to contracts payable in money measured by gold as a commodity, because interference by Congress with such contracts would be subject to grave doubts as to its constitutionality. Contracts employing a commodity as a

standard of value are not within the field of the currency power of Congress; although, even if they be within that field, they do not exist to such extent as to obstruct the monetary policy of Congress.

3. The obligation of the particular contracts in question may not be impaired, as decreed by the Circuit Court of Appeals, for the additional reason that they provide for payment for the supply of the power of artificially impounded water which your petitioner is contractually bound to furnish, in fixed amounts, in perpetuity. Payment of the currency equivalent according to the intent of the undertakings will not constitute an unjust burden upon the debtor, and so will not create a dislocation of the domestic economy to any degree whatever. By the same token, the tendency of the result which it was the design of the Congress, in enacting the Joint Resolution, to produce, must be, if the decree be affirmed, inevitably to require the Water Power Company to perform that which is economically impossible.

For these reasons, interference with the performance of these indentures would deprive your petitioner of property and would bear no reasonable relation to any legitimate exercise of power by the Congress and would constitute violation of the Fifth and Tenth Amendments to the Constitution.

If the currency equivalent for which the petitioner contends may not be recovered, it is submitted that in no event should that equivalent be determined according to the decree of the Circuit Court of Appeals, but that the decree be modified so as not to preclude recovery by the petitioner according to the actual value of the water power furnished during the rental periods in question, and to be furnished in the future.

Mr. Charles P. Curtis, Jr., with whom *Messrs. John L. Hall, Claude R. Branch,* and *Russell L. Davenport* were on the brief, for respondent.

The rental provisions in these indentures are not really commodity contracts. They do not require the obligor to deliver a commodity. They are gold value contracts, because they provide for payment either in gold or in the equivalent of gold in currency at the option of the obligor. Since the performance of either alternative is a full performance of the contract, the contract may be fully satisfied by the payment of money without the delivery of a single ounce of any commodity at any time. If this were a commodity contract, the money payment would be damages for the breach of a contract to deliver the gold, not, as it is, the performance of the contract in accordance with its very terms. Plainly it imposes no obligation upon the obligor to deliver gold as a commodity or otherwise. The obligation is to deliver the value of gold, either by the delivery of the gold itself or of its equivalent in money. Simply calling the measure of the equivalent money a commodity does not make the contract a commodity contract.

We have, therefor, not a gold contract, but a gold value contract.

The recent gold legislation of 1933–1934, which must be taken as a legislative unit, and of which the Joint Resolution of 1933 was only one part, did two things: (1) It eliminated the alternative of gold by making it impossible to pay in gold; and (2) it rendered the remaining alternative of money dischargeable dollar for dollar. For that was an obligation to pay an amount of money measured by gold, and expressly covered by the Joint Resolution. Congress banned gold as well as gold coins, and took action to put all gold value contracts on a uniform basis of parity.

The Joint Resolution declares to be against public policy any obligation purporting "to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount of money of the United

States measured thereby." This language embraces the present contract, since it expressly calls for gold or an amount of currency measured thereby. Under the terms of the Resolution, therefore, this contract is dischargeable dollar for dollar in currency.

The petitioner contends that the Joint Resolution was not intended to apply to the present contract because the formula prescribed for the discharge of contracts—i. e., by payment "dollar for dollar"—is not adapted to a contract which refers to dollars only for the purpose of fixing a quantity of gold which, in turn, is to be taken as the measure of payment in currency. The petitioner argues that the reference to dollars in this indenture was merely incidental and fortuitous; that the parties could have achieved the same result by providing for a certain number of ounces of gold with no mention of dollars whatever; and that a formula discharging the contract "dollar for dollar" does not apply where the contract contained no reference at all to dollars.

This argument is based on a practical inconvenience which does not exist in this case. For here there is an express reference to a fixed amount of dollars and here there is no difficulty whatever in applying the formula for discharge "dollar for dollar." Moreover, the petitioner's argument, if accepted, would confine the Resolution to contracts calling for a particular kind of coin or currency, or their equivalent, and would read out of the Resolution entirely the provision which prohibits contracts requiring "payment in gold . . . or in an amount in money . . . measured thereby." This provision must mean that the Resolution was intended to apply, not only to contracts which provide for the payment of currency in the equivalent of gold coin, but also to contracts, like the present, providing for payment of currency in the equivalent of gold.

What we have here is an express gold value clause. It is what the gold clause in *Norman* v. *Baltimore & Ohio R. Co.* was construed to be. What was there implied by the parties and construed by the Court is here expressed by the parties. The decision in that case is decisive here.

The monetary power of Congress extends over money contracts measured in terms of gold as well as over contracts for gold coin. Whether it would extend to contracts attempting to make other commodities the measure of money is beside the point. Gold has been used as money and as the measure of money too long to relieve it of the public burden of regulation by Congress.

Nor is the Joint Resolution as applied to these rental clauses invalid because there may be so few of them that they alone might not reasonably be regarded as an obstacle to the effective exercise of congressional power. That is not the point. The point is whether they are to be made an exception to an exercise of that power which expressly includes them. There is no reasonable ground for singling them out as an exception. To single them out would strike at the very reason for giving the power to Congress, which was uniformity. Moreover, if they and such as they were exempted, the exception would soon become the rule, as the only way men would have to fix promised money values in terms of gold.

But, even if the Joint Resolution cannot be applied to these rental clauses, whether as inapplicable or as invalid if so applied—even if there had been no Joint Resolution, yet the equivalent in money which these indentures call for is at the rate of $20.67 per ounce of gold. This result is reached quite independently of the Resolution. The usual doctrines of the law of contracts, applied to the situation created by the impossibility of paying in gold, require it.

The measure of the equivalent of the gold in money is what the gold would have been worth to the petitioner if it had been paid. That is what the petitioner contracted for with the word "equivalent." It cannot mean more than that without belying its own name.

An examination of the relevant Treasury Regulations shows that, if the gold had been paid, the petitioner could have got for it $20.67 per ounce, not $35 per ounce or any other sum.

The reduction of the gold content of the dollar by the Gold Reserve Act of 1933, and the Presidential Proclamation made no difference to that result. Devaluation made the gold worth no more to the petitioner. It could have got no more dollars for such gold after the devaluation than before.

This is the same result we reach by applying the Joint Resolution, and it is just the result we should expect from the fact that the Gold Reserve Act, the Presidential Proclamation, the Treasury Regulations, and the Joint Resolution are all of them parts of one whole, all directed to the same end.

Perry v. *United States* held that this was so for gold coin, and there is no reason to give more for gold bullion than for gold coin. The determination of the equivalent in that case is decisive of its determination here at $20.67 per ounce.

The petitioner has shown no loss to it here, any more than Perry in that case showed any loss to him there. We have only the certainty that the respondent is being asked to pay 69 cents a dollar more than it has been paying—a gratuitous loss to it and a windfall to the petitioner.

Solicitor General Reed, with whom *Attorney General Cummings* and *Messrs. Paul A. Freund, Herman Oliphant, Clarence V. Opper, Bernard Bernstein,* and

Charles W. Boand were on the brief, for the United States, as *amicus curiae,* by special leave of Court.

MR. JUSTICE CARDOZO delivered the opinion of the Court.

The controversy is one as to the number of dollars in present currency that will discharge a covenant for rent in leases antedating the reduction of the gold content of the dollar, the covenant being phrased in the manner hereinafter stated.

At various times between 1881 and 1897 thirteen leases were executed by the Holyoke Water Company, the petitioner, to the American Writing Paper Company, Inc., the respondent, for the enjoyment in perpetuity of water-power rights and privileges in consideration of an annual rental. With variations immaterial for present purposes, the provision for rental is the same in all the leases. By concession the following form has been accepted as typical: the grantee shall yield and pay unto the grantor as rent "a quantity of gold which shall be equal in amount to fifteen hundred ($1500) dollars of the gold coin of the United States of the standard of weight and fineness of the year 1894, or the equivalent of this commodity in United States currency." In 1894 and continuously thereafter till January 31, 1934, the statutory gold content of the dollar was twenty five and eight tenths grains of gold, nine tenths fine. Since January 31, 1934, by force of the Gold Reserve Act of that year (48 Stat. 337) and the order of the President thereunder, the gold content of the dollar has been fixed to consist of fifteen and five twenty-firsts grains of gold, nine tenths fine. Before that reduction a Joint Resolution of the Congress, dated June 5, 1933 (48 Stat. 112), had declared that every obligation payable in money of the United States, whether theretofore or thereafter incurred, should be discharged upon payment, dollar for

dollar, in any coin or currency which at the time of payment was legal tender for public or private debts, irrespective of any provision contained therein whereby the obligee was given a right to require payment in gold or in a particular kind of coin or currency, or in an amount in money of the United States measured thereby. The precise terms of the Resolution and its recitals will be considered more at length hereafter.

In June, 1934, the dollar having been then devalued, the lessee corporation became insolvent or unable to pay its debts as they matured. Taking advantage of § 77B of the Bankruptcy Act, it filed a petition for reorganization which the Court of Bankruptcy approved. The lessor (petitioner here) intervened in that proceeding and prayed that the amount due to it for rent under the several water-power leases be inquired into and determined. On behalf of the lessee the contention was that by force of the Joint Resolution the debt was dischargeable, dollar for dollar, in the then prevailing currency. On behalf of the lessor the contention was that the market price of fine gold at the time of the default and later was $35 an ounce, or $31.50 for an ounce nine tenths fine, and that payment should be made upon that basis for as many ounces of such gold as were contained in the stipulated dollars at the execution of the leases. In pressing that contention, the lessor did not deny that the law declines to give effect to contracts whereby debts are made payable in gold coin, or in currency varying in amount with the gold basis of the dollar. *Norman* v. *Baltimore & Ohio R. Co.*, 294 U. S. 240. What was argued was rather this, that the covenant here in question was not for the payment of a debt, but for the sale of a commodity, or if viewed as a covenant for payment, that the standard was the commodity value of the bullion, not the value of the coin as money, the difference being thought to be sufficient to change the applicable rule.

The District Court held in favor of the lessee, and computed the indebtedness accordingly. 11 F. Supp. 518; see 9 F. Supp. 451. The Court of Appeals for the First Circuit affirmed. 83 F. (2d) 398. Because of the importance of the question we granted certiorari.

1. The obligation was one for the payment of money, and not for the delivery of gold as upon the sale of a commodity.

The lessor was a water power company, engaged in that business and not in any other. There is no pretense that it was stipulating for gold to be used in art or industry. What it wished was currency, or bullion susceptible of being converted into currency, the lessee to make the choice. The alternative forms of payment shed light upon each other. They will be considered in succession.

By the first term of the alternative, there may be payment of the rent in the form of "a quantity of gold which shall be equal in amount to $1500 of the gold coin of the United States of the standard of weight and fineness of the year 1894." In this form there is no call for a stated number of ounces of fine gold, as if a goldsmith were providing for the uses of his business. The call is for gold that shall be as heavy and as fine as a stated number of gold dollars, with the result that delivery in such dollars is a payment in strict accordance with the letter of the contract. We must consider the situation of the parties, their business needs and expectations, in gauging their intention. When these are kept in view, the gold is seen to be a standard with which to stabilize the value of the dollar; the dollar not a yardstick with which to measure the quantity of the gold. To read the leases otherwise is to permit the realities of the transaction, its substance and essential purpose, to be obscured by forms and phrases. Long ago it was said by a distinguished member of this court, commenting upon a different statute, but one analogous in purpose: "If the contract

is for the delivery of a chattel or a specific commodity or substance, the law does not apply. If it is *bona fide* for so many carats of diamonds or so many ounces of gold as bullion, the specific contract must be performed [assuming, of course, that contracts for the delivery of bullion are not prohibited by law]. But if terms which naturally import such a contract are used by way of evasion, and money only is intended, the law reaches the case." Per Bradley, J., in *Legal Tender Cases,* 12 Wall. 457, 566. Here what was intended was to assure the payment of a money debt in dollars of a value as constant as that of gold. *Norman* v. *Baltimore & Ohio R. Co., supra,* p. 302; cf. *Feist* v. *Société Intercommunale Belge D'Electricité,* L. R. [1934] A. C. 161, 172, 173. The fact is of little moment that currency is characterized as a commodity in the verbiage of the covenant as long as it is currency. Cf. *Lipke* v. *Lederer,* 259 U. S. 557, 561, 562. Weasel words will not avail to defeat the triumph of intention when once the words are read in the setting of the whole transaction. So read, the end to be achieved is shown forth unmistakably as a payment, not a sale.

This conclusion would be necessary though the first of the alternative forms of payment stood alone in the indentures. The necessity becomes even plainer when the first is considered in conjunction with the second. The lessee at its option may pay the equivalent of the gold "in United States currency." The presence of this alternative gives a quietus to the argument that the lessor was desirous of the gold as a commodity and was bargaining therefor. If there had been any such desire, the choice as to the forms of payment would never have been left to the lessee, as by implication of law it was, for a debtor, if methods of performance are alternative, may choose whichever one he pleases. 3 Williston, Contracts, § 1407; Restatement, Contracts, vol. 1, p. 493. In point of fact, there were statutes in existence

at the time of the default in payment that made delivery of gold impossible. *Norman* v. *Baltimore & Ohio R. Co., supra,* pp. 295, 296; *Nortz* v. *United States,* 294 U. S. 317, 327, 328; *Perry* v. *United States,* 294 U. S. 330, 355. The lessee would perforce have had to avail itself of the second term of the alternative, if it had been able to pay at all. But if both modes of payment had been preserved, the second equally with the first would have been effective to discharge the obligation. Payment in currency, quite as much as payment in coin or in bullion, was not only performance under the law, but performance under the contract, provided only that the value of the currency was equal, when paid, to the value of the gold. Whether that proviso has been abrogated is next to be considered.

2. A contract for the payment of gold as the equivalent of money, and *a fortiori* a contract for the payment of money measurable in gold, is within the letter of the Joint Resolution of June 5, 1933, and equally within its spirit.

The Resolution, for convenience of reference, is printed in the margin.* Its history has been traced in *Norman*

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* "JOINT RESOLUTION.

"To assure uniform value to the coins and currencies of the United States.

"Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

"Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, 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, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) every pro-

v. *Baltimore & Ohio R. Co., supra.* There is no need to repeat what has been already done so thoroughly. The Resolution touches gold as well as coin or currency whenever transactions in either are within the evil to

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vision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, 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. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

"(b) 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; 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.

"Sec. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled 'An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes,' approved May 12, 1933, is amended to read as follows:

"'All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight.'

"Approved, June 5, 1933, 4:40 p. m."

be remedied. We learn from the preamble that "provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, 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, coined or issued by the United States, in the markets and in the payment of debts." Accordingly, all such provisions are declared to be against public policy, and every obligation, heretofore or hereafter incurred, though it contain such provisions, shall be payable, dollar for dollar, in legal tender at the time of payment. Transactions for the sale or delivery of gold for industrial purposes are not within the evil to be remedied, and so are not within the statute. Cf. Executive Order of April 5, 1933, and August 28, 1933; Orders of the Secretary of the Treasury, December 28, 1933 and January 15, 1934; Emergency Banking Act of March 9, 1933, 48 Stat. 1, 2, § 3. An obligation to make delivery upon a *bona fide* sale is not fairly to be classified as an obligation "payable in money" (Joint Resolution, subdivision (b)), or so we now assume. But very definitely, the evil does include transactions whereby gold, coined or uncoined, is to be delivered in satisfaction of a debt expressed in terms of dollars, payment, not sale, being then the end to be achieved. As definitely, indeed more obviously, the evil includes transactions whereby a debt is to be discharged, not in bullion, but in dollars, if the number of the dollars is to be increased or diminished in proportion to the diminution or the increase of the gold basis of the currency. Both forms of obligation are illustrations of the very mischief that Congress sought to hit.

3. The argument is made that in the case now before us the currency called for by the contract is stated too

indefinitely to be translated, dollar for dollar, as required by the Resolution, into the legal tender of the hour. But the difficulty is quite imaginary. Things that are equal to the same thing are equal to each other. There is application for the maxim here. If the currency to be paid by the lessee is to be the equivalent of gold, and if the gold is to be the equivalent of a stated number of gold dollars of a particular weight and fineness, then the covenant to pay the currency is tantamount to a covenant to pay the dollars, and dollars of the stated standard. This is the obligation that respondent took upon itself when it became a party to these leases. It is, however, the very obligation that has been outlawed by the statute as a menace to the maintenance of our monetary system. *Norman* v. *Baltimore & Ohio R. Co.*, *supra*, pp. 306, 311. "Dollar for dollar," the obligation for the payment of money conforming to the standard of the covenant is to be discharged with money of the standard established by the law.

4. The argument is made that covenants of this particular form are so rare and exceptional that the protection of the monetary system does not require their suppression, and that arbitrary suppression is inconsistent with the Fifth Amendment. How exceptional or rare they are, we have no means of ascertaining. For anything proved in the record or subject to judicial notice they may be illustrations, even if verbal variants, of a type common in the petitioner's business and indeed in many others. But the power of the Congress is not dependent upon the results of such a census. A particular covenant, if viewed in isolation, may have a slight, perhaps a trivial, influence upon the effectiveness and symmetry of a new monetary policy. The aggregate of many covenants, each contributing its mite, may bring the system to destruction. Rivulets in combination make up a stream of tendency that may attain engulfing power.

No principle of constitutional law, no dictate of fair dealing, lays a duty upon the Congress to single out for special treatment an individual or a few among the members of a common mass. Cf. *Purity Extract Co.* v. *Lynch,* 226 U. S. 192, 201. One cannot even say with reason that the effects of this particular covenant are to be classified as negligible. The lessee as the recipient of principal or income must accept payment from its debtors in the depreciated currency. It is injured, at least appreciably, if it is required to pay its creditors in dollars of a different standard. *Norman* v. *Baltimore & Ohio R. Co., supra,* p. 315. Receipts and disbursements are no longer on a common basis.

5. In last analysis, the case for the petitioner amounts to little more than this, that the effect of the Resolution in its application to these leases is to make the value of the dollars fluctuate with variations in the weight and fineness of the monetary standard, and thus defeat the expectation of the parties that the standard would be constant and the value relatively stable. Such, indeed, *is* the effect, and the covenant of the parties is to that exent abortive. But the disappointment of expectations and even the frustration of contracts may be a lawful exercise of power when expectation and contract are in conflict with the public welfare. "Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of the Congress, they have a congenital infirmity." *Norman* v. *Baltimore & Ohio R. Co., supra,* pp. 307, 308. To that congenital infirmity this covenant succumbs.

The decree of the Circuit Court of Appeals is accordingly

Affirmed.

MR. JUSTICE VAN DEVANTER, MR. JUSTICE MCREYNOLDS, MR. JUSTICE SUTHERLAND, and MR. JUSTICE BUTLER dissent.