There is argument in his behalf that the privileges and immunities clause of the Fourteenth Amendment as well as the due process clause has been flouted by the judgment.

Maxwell v. *Dow, supra,* p. 584, gives all the answer that is necessary.

The judgment is

Affirmed.

MR. JUSTICE BUTLER dissents.

SMYTH, EXECUTOR, *v.* UNITED STATES.*

CERTIORARI TO THE COURT OF CLAIMS.

No. 42. Argued November 18, 19, 1937.—Decided December 13, 1937.

1. Bonds of the United States promising payment of principal and interest in United States gold coin of the standard of value in force at the time of their issuance (25.8 grains of gold 9/10ths fine per dollar) were called by the Secretary of the Treasury for redemption and payment prior to their stated day of maturity, pursuant to provisions therein which reserved this right to the United States to be exercised through a published notice, and which declared that from the date of redemption designated in such notice interest on the called bonds should cease and all coupons thereon maturing after that date should be void. Prior to the notices, the Joint Resolution of June 5, 1933, providing for the discharge of "gold clause" obligations upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for private debts, had been adopted; and in two of the cases the notices were later than the decisions of this Court in the *Gold Clause Cases,* including *Perry* v. *United States,* 294 U. S. 330. *Held:*

(1) That the effect of the published notice was to accelerate the maturity of the bonds, the new date specified in the notice

* Together with No. 43, *Dixie Terminal Co.* v. *United States,* also on writ of certiorari to the Court of Claims; and No. 198, *United States* v. *Machen,* on writ of certiorari to the Circuit Court of Appeals for the Fourth Circuit.

supplanting the old one stated in the bonds as if there from the beginning. P. 353.

(2) Holders of the bonds had no claim against the United States on interest coupons covering a period subsequent to the new date, since by the terms of the bonds interest ceased to run on that date. P. 353.

In the absence of contract or statute evincing a contrary intention, interest does not run upon claims against the Government even though there has been default in payment of the principal. The allowance of interest in eminent domain cases is only an apparent exception, which has its origin in the Constitution.

(3) The proposition that the notices of call were void, upon the ground that they must be read with the Joint Resolution of June 5, 1933, and, thus supplemented, promised payment different from that promised by the bonds, can not be maintained. P. 354.

The notices of call were not promises, and did not commit the Government, either expressly or by indirection, to a forbidden medium of payment. Notice that the bonds were called for redemption on the specified date implied that at that accelerated maturity the bondholders would be entitled to payment of principal and accrued interest in such form and measure as would discharge the obligation in accordance with the Constitution, statutes and any controlling decisions.

The contention that the existence of the Joint Resolution, *supra*, amounted to an anticipatory breach, is examined and rejected. The doctrine of anticipatory breach has in general no application to unilateral contracts, and particularly to contracts for the payment of money only. Moreover, an anticipatory breach, if it were made out, could have no effect upon the right of the complaining bondholders to postpone the time of payment to the date of natural maturity. The Government was not subject to a duty to keep the content of the dollar constant during the period intervening between promise and performance. The duty of the Government was to pay the bonds when due. P. 356.

The fact that the statutory provisions for payment in any legal tender remained unrepealed did not affect the date of maturity as accelerated by the notices.

(4) No question of constitutional law, nor of fraud, is involved in the decision of these cases. P. 359.

(5) The Secretary of the Treasury did not exceed his lawful powers by issuing the calls without further authority from the Congress than was conferred by the statutes under which the bonds were issued. P. 359.

2. The Act of March 18, 1869 (R. S. § 3693; 16 Stat. 1), which in its day placed restrictions upon the redemption by the Government of interest-bearing bonds, was for the protection of holders of United States obligations not bearing interest, the "greenbacks" of that era. Upon the resumption of specie payments in 1879 the aim of the statute was achieved, and its restrictions are no longer binding. P. 360.

85 Ct. Cls. 318; 83 Ct. Cls. 656, affirmed.

87 F. (2d) 594, reversed.

CERTIORARI, 301 U. S. 679, 680; *post*, p. 672, to review judgments in three suits against the United States to recover on interest coupons attached to Government bonds containing the gold clause, which had been called for redemption. In Nos. 42 and 43, the Court of Claims dismissed the claims. In No. 198, the District Court gave judgment for the United States, which was reversed by the Circuit Court of Appeals. In the first two cases the plaintiffs had presented their bonds to the Treasurer of the United States and demanded payment in gold dollars each of 25.8 grains of gold 9/10ths fine, and declined a tender in coin or currency other than gold or gold certificates. They had then demanded, unsuccessfully, that coupons for interest periods subsequent to the date fixed in the calls for redemption of the bonds, be paid either in gold or in legal tender currency. Their suits were for the amounts of the coupons in current dollars. In No. 198 the situation was similar. There had been no presentation of the bond or coupon for payment, but it was stipulated that the Treasurer of the United States and other fiscal agents had not at any time been directed by the Secretary of the Treasury to redeem the bonds in gold coin, but had been authorized and directed to redeem in legal tender currency; also that there was a refusal to

pay similar coupons for interest accruing after the date of redemption.

Mr. Robert A. Taft for petitioners in Nos. 42 and 43.

1. The provisions of the bond and circular with respect to payment in gold coin are valid under the *Perry* decision, in spite of the legislation adopted by Congress.

In view of this decision, there can be no doubt that the Government was obligated to pay the petitioner's bond in gold coin of the former standard of value, and that this obligation remains binding upon the conscience of the sovereign.

The lack of remedy is not material, because the plaintiff is not suing for gold. The plaintiff in the *Perry* case failed to recover because he attempted to obtain arbitrarily an amount of currency in excess of the face amount of his bond, without alleging or proving any direct damages to himself resulting from the Government's repudiation of its obligation. But in this case the plaintiff is not seeking a remedy; it is the Government which is attempting to exercise a privilege given to it by the terms of the bond, at the same time that it is repudiating its obligation contained in that bond. The petitioner contends that he may hold his bond until maturity, at which time the gold standard may be restored, or the value of the gold dollar increased. If not, the petitioner will no doubt be obliged to accept currency in payment of the bond. Although the Government is legally and morally obligated to pay this bond in gold, it is now trying to exercise the power given to it in the bond to redeem the bond, and to pay that bond immediately in a depreciated currency. If the Government had to pay the bond in gold, it would never have called the bond. The plaintiff is seeking to recover only the currency value of his coupon; he is not seeking damages for failure to pay gold; he is merely insisting that the Government cannot repudiate its obligations in one

breath, and avail itself of privileges conferred on it at the same time.

2. The attempt to redeem was void *ab initio,* because the notice published was not a notice of intention to redeem in gold in accordance with the terms of the bond.

It is clear that "notice published at least three months prior to the redemption date" is a condition precedent to the right to redeem. What kind of a notice does this refer to? It must obviously be a notice to pay the bond in accordance with its terms. A notice to pay the bond in real estate, or by transferring municipal bonds or other securities, would be exactly as good as no notice at all. Under the circumstances existing on March 14, 1932, and the legislation then in effect, this notice was not a notice to redeem in gold in accordance with the terms of the bond, but a notice to redeem in currency.

On March 14, 1935, when the notice to redeem First Liberty Loan Bonds was issued in Treasury Department Circular No. 535, there was in full effect the Gold Reserve Act of 1934, which provided: "No gold shall hereafter be coined and no gold coin shall hereafter be paid out or delivered by the United States." We respectfully submit, in the first place, that the Secretary of the Treasury, while that statute was in effect, could not issue a notice of intention to pay the bond in accordance with its terms. The Secretary of the Treasury is an administrative officer, subject in all respects to the legislation of Congress. Except for enactment by Congress, the right to redeem "at the pleasure of the United States" does not mean the right to redeem at the pleasure of the Secretary of the Treasury. As far as he has any power to issue a notice, it exists by congressional enactment. Since Congress prohibited him from paying out gold, there can certainly be no authority implied in any way for him to give a notice of intention to redeem in gold.

In the second place, no matter what the power of the Secretary of the Treasury, the notice issued was not a

notice to redeem in gold. It was silent as to the medium of payment, but in view of the legislation then in effect, it was clearly a statement of intention to redeem in currency and not in gold. We have already referred to the Joint Resolution of June 5, 1933, and the Gold Reserve Act of 1934. We have referred to the various other acts of Congress and the President nationalizing gold and prohibiting the holding of gold by private persons. The notice issued must be construed in the light of these enactments as a notice to redeem in currency. It must be presumed that the Secretary of the Treasury, an administrative officer, was merely carrying out the intention of Congress.

This is no imaginary argument. When the call was issued, everybody in the United States knew exactly what was intended. Congress had repeatedly declared its intention of abandoning gold and paying in currency. No official of the Government, no holder of any bond, had the slightest idea that the notice of call meant anything except a call to pay in currency. The Secretary of the Treasury would never have called the bonds if he had had the slightest expectation of having to pay in gold.

The President had also devalued the dollar, and established, with the approval of Congress, a dollar having a different standard of value from that prescribed in the bond, so that even if gold could have been paid out, it would have been a different amount of gold than that called for by the terms of the bond.

A call for payment in currency is clearly not in accord with the provisions of the bond and the circular under which the bond was issued, which provisions this Court has held to be valid. It seems manifest, therefore, that the so-called "call" of March 14, 1935, may be treated by the bondholder as completely void, and his bond will continue to draw interest until maturity, or until after a bona fide call for redemption in accordance with the terms of the bond.

The whole argument that the Government can distinguish itself as contractor and sovereign in the matter of Government Bonds was destroyed once and for all in the *Perry* case. The Government's contention in that case was that in its capacity as sovereign it could effectually destroy its obligation as contractor on its own bonds. It was a strong argument, which prevailed with one of the Justices of this Court, and it drew support from the very cases which the Government attempts to rely on here. But the Court found that the Government's own obligations on its public debt were assumed in the exercise of its sovereign powers, and that they could not be changed or abrogated through the exercise of any other sovereign power.

It is suggested by the Government that because the Supreme Court of the United States, in *Perry* v. *United States,* treated the call as valid, and considered Perry's claim for payment of the principal, therefore that case is an authority to establish the validity of the Government's call. In the first place, this question was not considered by this Court at any point. Both the Government and the plaintiff were willing to proceed on the assumption that the bond had been called, so that the point was not brought to the attention of the Court. In the second place, it is entirely possible that the bondholder may have an option to treat the call as valid if he so desires. If a private corporation issued a call, and then failed to have funds to pay the bonds, the bondholder certainly could hold his bonds until maturity, but he should also in reason have an option to treat the bonds as called and insist upon their payment. Such a corporation would be estopped to assert the invalidity of its own call.

The Government in the lower court contended that the tender to petitioner of currency in payment of his bond was a compliance with the terms of the bond, on the ground that currency is the "equivalent" of gold. To sup-

port this position, they quote from the opinion of the Chief Justice in *Perry* v. *United States*, at page 357, in which he states that the word "equivalent" cannot mean more than the amount of money which the promised gold coin would be worth to the bondholder for the purpose for which it could legally be used. But in that case the plaintiff sued for $10,000 in gold coin, or its equivalent in currency, which the plaintiff claimed to be $16,931.25. The Chief Justice held that this was not necessarily the equivalent in currency, and that many other circumstances, such as the price level and the intrinsic worth of the currency, had a bearing on the question. The entire discussion related solely to the question of damages. In this case, however, the question of damages does not arise, nor is the petitioner asking for any "equivalent." It is the Government which is tendering the petitioner something, in redemption of his bond prior to maturity, which the Government is claiming to be the "equivalent" of gold.

Certainly currency is not the same as gold coin. This Court necessarily holds that it is different in holding the Joint Resolution of June 5, 1933, unconstitutional. The very thing which Congress was attempting to do was to make legal-tender currency the equivalent of gold coin. When this Court stated 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," it necessarily held that legal-tender currency was not the equivalent of gold coin.

The right of redemption is based on exact compliance with the terms of the bond. Petitioner is not obligated to allow his bond to be redeemed, even though the Government does offer an equivalent or far more than an equivalent. The right of redemption rests on the words of the bond and the circular, which say nothing whatever about an "equivalent."

We respectfully submit, therefore, that the entire procedure by which the Government attempted to call Liberty Bonds in advance of maturity, when it had no intention to pay the bonds in accordance with their terms and statutes expressly forbade such payment, was void *ab initio,* because the notice published was not the notice provided for by the bond. It follows, therefore, that interest did not cease to run on the date fixed for redemption, but continued as part of the original contract entered into by the Government in its bond.

3. Even if the purported call were considered valid, the running of interest on petitioner's bond did not cease on June 15, 1935, because the United States was not ready and willing at that time or at any time to redeem the petitioner's bond in accordance with its terms.

The necessary and logical conclusion from the Government's position is that under the terms of the bond the Government could call a bond without the slightest intention of paying it and thereby cause interest to stop running. In the *Perry* case, this Court insisted on the sacredness of the Government's obligations. The construction of the obligation insisted on by the Government would enable it to cancel its sacred obligations.

It is well settled that holders of bonds without a call provision cannot be made to accept payment in advance of maturity: *Chicago, etc. Railroad Co.* v. *Pyne,* 30 Fed. 86; *Missouri Railroad Co.* v. *Union Trust Co.,* 156 N. Y. 592, 51 N. E. 309. A statute providing that payment must be accepted before maturity is unconstitutional; *Randolph* v. *Middleton,* 26 N. J. Eq. 543. Surely an effective call cannot be issued unless it is followed by a tender of the money either to a trustee or paying agent in the case of a private corporation, or direct to the bondholder in the case of the United States.

While the petitioner's bond provided that from the date of redemption designated in any notice of call, inter-

est on the called bonds should cease, yet the bond also contained the express provision that "all or any of the bonds of the series of which this is one, may be redeemed *and paid* [italics ours] . . . ." Certainly this provision for redemption and payment would not have been inserted in the bond, if it were the intention of the parties that interest should cease upon a date set for redemption, regardless of the willingness and ability of the United States to redeem.

The Government relies on the phrase used in the first sentence of the bond, in which the United States promises to pay the principal sum "with interest at the rate of three and one-half percentum per annum payable semi-annually on December fifteenth and June fifteenth in each year until the principal hereof shall be payable." The Government points out that the United States does not undertake to pay interest until the principal shall be "paid." Of course it is clear why the word "payable" is used. Many holders of such bonds do not turn in their bonds on the call date, through oversight or otherwise, and it is proper that interest should cease to run at that time in the ordinary case when the Government is meeting its obligations. In order to provide for this contingency, the word "payable" is used.

If it had been thought necessary to provide for the contingency that the Government would repudiate its bonds, only a very complicated phrase could have expressed the Government's obligation. It would have had to refer to a repudiation, which nobody thought likely or desired to refer to. Contracts seldom provide for what shall occur in case of default because they are made to be carried out and not to be broken. It is usual to leave to the courts the question of the parties' rights when such a default does occur. This is particularly true in the case of the Government, for, as stated by Mr. Justice Strong in *United States* v. *Sherman,* 98 U. S. 565: "But delay

or default cannot be attributed to the Government. It is presumed to be always ready to pay what it owes."

Furthermore, the word "payable" refers to the maturity of the bond, and not to any date on which it may be redeemable. Citing: *Morgan* v. *United States,* 113 U. S. 476; *Sterling* v. *H. F. Watson Co.,* 241 Pa. 105, and *Corbett* v. *McClintic-Marshall Corp.,* 17 Del. Ch. 165. Distinguishing *Spaulding* v. *Lord,* 19 Wis. 533. See 50 Harv. L. Rev. 986. If there is any ambiguity, the bond should be construed most strongly against the Government because drafted by its own officials, and sold to persons who did not even contemplate the repudiation of its obligations by the United States. Certainly this Court should not countenance an interpretation of the bond which necessarily means that the Government may at any time call a bond without the slightest intention of paying it, and thereby stop the running of interest after the call date, whether or not the Government is prepared to redeem the bond on that date. This is not the contract which the bondholders thought they were getting.

4. The purported call issued on March 14, 1935, was void, because the Secretary of the Treasury had no authority to issue a call without further action by Congress.

The redemption of bonds is a major financial transaction, requiring the consideration of Congress. The Secretary of the Treasury, between October 12, 1933, and August 1, 1935, determined to call nearly nine billion dollars in bonds payable in gold, at a time when the terms of the bonds could not be complied with. The policy followed involved a repudiation by the Government of its solemn obligations declared to be such by this Court in the case of *Perry* v. *United States,* 294 U. S. 330. Certainly no one would maintain that an individual, holding an appointed office in a government founded on the theory of popular representation and control, would have

the right to obligate the country for nine billion dollars. We submit that he has no greater right to exercise the pleasure of the United States in repudiating obligations incurred on the authorization of Congress.

5. The purported call issued on March 14, 1935, was void because forbidden by the Act of March 18, 1869, 16 Stat. 1; 31 U. S. C. § 731.

The reason for the original passage of this law was obviously to prevent the Government from doing just what it is attempting to do now—paying off its obligations to its bondholders in a depreciated currency. United States notes, or "greenbacks," were, of course, at a considerable discount from gold in 1869, and were not redeemable in gold or silver coin at that time. In order to protect the bondholders, Congress provided that none of the interest-bearing obligations should be redeemed or paid before maturity as long as United States notes were not convertible into coin at the option of the holder. Neither on March 4, 1933, nor at any subsequent date have United States notes been convertible into coin at the option of the holder. The Government, and not the holder, has the option, and it may pay out currency of any kind for any United States notes presented.

The proviso at the end of § 731 was intended to permit the redemption of bonds should the Government be in a position to sell its bonds and receive gold for them, even though they bear a lower rate of interest. If the bonds bearing a lower rate of interest can only be sold for currency, then no call can be made. It is obvious that government bonds, when this call was issued in 1935, could not be sold for gold coin. There was no gold coin except in minor hoards, and if anyone could lawfully have obtained gold, he would not have paid gold for United States bonds, whether on their face they were payable in gold or in currency.

It is suggested that United States bonds might have been sold for silver coin. Obviously the Government has

never sold bonds and required payment in silver coin, and it is not a practical operation. An examination of the testimony and schedule presented by the Treasury shows that the total amount of silver coin in existence in 1935 was approximately eight hundred fifty-nine million dollars, considerably less that the amount of the First Liberty Loan Bonds called. Furthermore, all of the bullion and nearly all of the standard silver dollars were in the Treasury already, and of course the subsidiary silver coin not in the Treasury, amounting to about $300,000,000, is required for ordinary change throughout the country. Furthermore, the silver coin has a purely fictitious value in excess of the value of the silver contained in such coins, and in effect is nothing but subsidiary currency. In 1869 it might have been possible for the Government to sell gold bonds and require payment in gold coin, thus obtaining the gold coin necessary to redeem the prior issue, but since the validity of the gold clause is in doubt, such bonds cannot be sold either for gold or silver coin today. In short § 731 was intended to prevent exactly what the Government is now trying to do.

Solicitor General Reed, with whom *Attorney General Cummings, Assistant Attorney General Whitaker,* and *Messrs. Harry LeRoy Jones, Edward First, Clarence V. Opper,* and *Bernard Bernstein* were on the brief, for the United States.

The bondholders rest their case upon a contractual obligation. By the terms of the agreement between the parties the obligation to pay interest upon the bonds was specifically to cease upon the issuance of a public notice calling the bonds for redemption and the passage of time to the date designated in such notice. Since this condition has occurred the contractual obligation of the Government to pay interest has terminated.

The issuance of a notice of call for redemption in the usual form, operated to create, and was intended to

create, the same right to payment assured by the bonds themselves. That the call was effective to entitle the bondholders to demand payment of the principal amounts of their bonds is established by the decision in *Perry* v. *United States,* 294 U. S. 330. By the same token the call was effective to terminate the obligation to pay interest. The suggestion that the bondholders may have an option to demand payment of the principal or to sue for interest has no basis in the contract and, if accepted, would introduce confusion in public and private finance. Termination of the obligation to pay interest was not conditioned upon actual performance of the principal obligation. Distinguishing *Sterling* v. *H. F. Watson Co.,* 241 Pa. 105. Imposition of this additional condition by implication would be unwarranted by judicial authority and would defeat by indirection the rule that interest is not allowed on claims against the Government in the absence of specific statutory authorization.

The terms of the Acts of Congress pursuant to which the bonds were issued, as well as the bonds themselves, establish the authority of the Secretary of the Treasury to issue the notice of call which terminated the obligation to pay interest. This authority has been recognized and confirmed by other legislation of the Congress.

The Act of March 18, 1869, R. S. 3693; 16 Stat. 1, does not affect the validity of the calls for redemption. Examination of the purposes and circumstances surrounding the enactment of that statute establishes that it was intended to apply only to Government bonds then outstanding and that it ceased to have significance when the Government, in 1879, resumed specie payments on its United States notes and maintained all coins and currencies at a parity of value. Even if the validity of the calls for redemption here involved were to be tried by the requirements of that Act, however, the conclusion would be compelled that these requirements have been fully met.

The contention that the United States has failed to tender the performance due under the bonds appears to rest exclusively upon its refusal to make payment in gold dollars, "each containing twenty-five and eight-tenths grains of gold, nine-tenths fine." For a double reason this contention cannot be supported. The gold clause in the plaintiffs' bonds is not a promise for payment solely in gold coin, but a promise to pay the value of gold coin. *Perry* v. *United States, supra; Feist* v. *Société Intercommunale Belge d'Electricité,* L. R. [1934] A. C. 161, 172, 173; *R.* v. *International Trustee for the Protection of Bondholders Akt.,* [1937] 2 All Eng. L. R. 164; *Case of Serbian Loans,* P. C. I. J., series A. Nos. 20–21, pp. 32–41. Compare *Norman* v. *Baltimore & Ohio R. Co.,* 294 U. S. 240, 296, 302; *Holyoke Water Power Co.* v. *American Writing Paper Co.,* 300 U. S. 324, 336. Under the *Perry* decision, no claim of breach of the bond is maintainable which does not allege and prove also a failure to pay the equivalent in value of the gold coin. Even if the gold clause could properly be construed as promising payment in gold coin itself, however, the *Perry* decision does not warrant an assumption that the failure to make such payment, under the circumstances there and here presented, would constitute a breach of obligation. The power of the Congress to prohibit payment of gold coin from the Treasury is an essential aspect of its power "to deal with gold coin as a medium of exchange," and has received ample recognition in the decisions of this Court. Compare *Ling Su Fan* v. *United States,* 218 U. S. 302; *Nortz* v. *United States,* 294 U. S. 317; *Holyoke Water Power Co.* v. *American Writing Paper Co., supra,* at 336, 337.

Even if the bondholders were in a position here to urge that the failure of the United States to pay them a number of dollars in legal tender currency in excess of the face amount of the bonds constituted a breach of con-

tract, no such contention would be tenable. The assertion of the Circuit Court of Appeals in No. 198 that the dollars stated in the bonds were each "worth" 1.69 dollars in legal tender currency is in direct conflict with the decision of this Court in *Perry* v. *United States, supra,* which flatly rejected any method of computing equivalence or worth mathematically, in accordance with the ratios of the statutory gold content of the past and present dollars, regardless of actual loss. The maintenance of all forms of money at a parity in the economy of the country, this Court there held, precluded such a method of computation.

Nothing short of a position of material and present default on the part of the United States would in any event warrant the effort here made to work a forfeiture of the option of redemption. So long as the bondholders have been tendered the substantial equivalent of the performance due, no equitable ground can be urged for disregarding the express terms of the bonds and of the calls for redemption. Nor do intimations that the position of the United States, which under the circumstances now existing has been held to be correct, might under different circumstances be incorrect, afford a ground in these cases for forfeiture of its option of redemption. In claiming such a forfeiture, the bondholders are, in effect, insisting upon payment of an uncontemplated premium, consisting of the added capital value of their bonds under present rates of interest. Acceptance of their contention would jeopardize huge savings of interest effected by refunding operations in recent years. In thus interfering with the sound administration of the public debt, it would tend to restrict the very power which—in the opinion in the *Perry* case upon which the bondholders rely—it was deemed necessary to protect.

The bondholders misinterpret the statements in the opinion delivered by the Chief Justice in the *Perry* case

reflecting upon the constitutionality of the Joint Resolution of June 5, 1933. If those statements mean that borrowing contracts of the United States may not in any fashion be affected by a subsequent exercise by Congress of the monetary power, they should be reconsidered, since by the settled doctrines of this Court they were not made under such circumstances as to constitute a precedent. *Alaska* v. *Troy,* 258 U. S. 101, 111. Compare *City of New York* v. *Miln,* 8 Pet. 120; *United States* v. *Celeste Macarty et al.,* Archives, December Term, 1851, p. 199. See also *Myers* v. *United States,* 272 U. S. 52, 142; *Liverpool, N. Y. & P. S. S. Co.* v. *Commissioners of Emigration,* 113 U. S. 33, 39; *United States* v. *Hastings,* 296 U. S. 188, 192, 193. The principle that governmental action taken in pursuance of sovereign governmental powers may affect rights arising out of transactions entered into between the Government and private individuals may justly be considered a postulate of American public law. It seems clear, however, that the statements in question were made in answer to a contention, which the Government was understood as making, importing that Congress is free to disregard the obligations of the Government at its discretion. The Government is bound, under the law, upon its contracts as individuals are bound. Far from asserting that Government contracts may not be affected as individual contracts are affected by a subsequent exercise of general legislative power, the opinion delivered by the Chief Justice recognizes and reaffirms the principle that they may be so affected.

Mr. H. Vernon Eney for Machen, respondent in No. 198.

I. The respondent in the case at bar is suing on a coupon and he has not asked for "an amount in legal tender currency in excess of the face amount of the" coupon. He is not suing for any damages caused by the refusal of the Government to pay the bond in gold on the

redemption date; nor is he asking for any damages caused by the refusal to pay the coupon in gold rather than in other currency. If the respondent were demanding $29.57 in legal tender currency, the *Perry* case might be in point, but since he is demanding only $17.50, it is clearly not in point. This Court decided that inasmuch as Perry had elected to surrender his bond and sue for damages for breach of contract, but had failed to prove damage, he could not recover. This Court did *not* decide that Perry's *only* remedy was to surrender his bond and sue for damages for breach of contract. The question whether the obligation of the United States to pay interest ceased upon the giving of a notice of redemption without any intention to pay in gold was not considered by the Court. The only provision of the bond construed by the Court was the clause requiring payment in gold. The clauses as to the payment of interest, the meaning of which is here presented to the Court for determination, were not even quoted or referred to in the opinion of the Court in the *Perry* case, much less construed by it.

If payment in gold or an honest intention to pay in gold, was a condition precedent to redemption, and we strongly contend that it was, then the respondent had a right to refuse to surrender his bond except upon a strict compliance with that condition and the question as to whether or not the failure to comply therewith caused him damage was entirely immaterial.

The Government reserved to itself an option to redeem its Liberty Bonds prior to maturity. It gave notice that it would redeem, not in accordance with its contract, but on its own terms. The plaintiff in the *Perry* case elected to treat the Government as having exercised its option and sued for damages for its failure to do so in accordance with the terms of its contract. The respondent, on the other hand, as we contend he had every right

to do, elected to treat the Government as having failed to exercise its option. The two cases are manifestly quite different.

The contract is governed by the ordinary legal principles. The only substantial question in this case arises out of the interpretation of the contract in suit and for that reason it is necessary to keep always in mind three important and fundamental rules of construction.

First, the contract should be so construed as to effectuate its general purpose, to give effect to the intention of the parties, and to give their ordinary meaning to the words used.

Second, in cases of ambiguity, a contract should be most strongly construed against its author.

Third, when contracts are optional in respect to one party, they are strictly construed in favor of the party bound and against the party who is not bound.

The power of the United States to issue callable bonds or otherwise manage the public debt is not at issue.

II. The right to redeem depended upon the performance of two conditions, neither of which was in fact performed, although strict performance of each was required.

An exact compliance with the conditions attached to a right of redemption is necessary.

As said by this Court in the *Perry* case "the terms of the bond are explicit" (294 U. S. 348). It provides: "The principal and interest of this bond shall be payable in *United States gold coin* of the present standard of value." The statute pursuant to which the bonds were issued (40 Stat. 35) and the general law (U. S. C., Tit. 31, § 768) likewise required payment of both principal and interest in gold coin.

The provisions of the bond remain unaltered by the Joint Resolution of June 5, 1933, and the United States are clearly obligated to pay the respondent $1,000.00 in gold coin in order to redeem his bond.

The provision requiring the giving of a notice of redemption was the condition precedent. The requirement that the principal be paid in gold coin was the concurrent condition. Under the rule laid down by the cases strict compliance with both conditions was required. But the fact is that there was compliance with neither condition. Consequently, the respondent's bond was not redeemed on June 15, 1935.

The notice issued on March 14, 1935, was not a valid and bona fide notice such as was contemplated in the bond.

The interest coupons did not become void except upon actual redemption of the bond by payment in gold coin.

The question of whether or not the respondent would sustain any damage by reason of the refusal of the United States to pay the bond in gold coin is entirely immaterial.

III. Regardless of whether the respondent's bond be construed as a "gold coin" contract or as a "gold value" contract, payment of the principal, dollar for dollar, in legal tender currency, would not be a fulfillment of the obligation.

Payment in gold coin is required.

Even if it be assumed that the gold clause is a "gold value" contract, the burden is upon the Government to prove that it has tendered the equivalent of the gold coin, and this it has not done.

IV. The Joint Resolution of June 5, 1933, was unconstitutional in so far as it attempted to override the obligation created by Liberty Loan bonds.

Opinion of the Court by MR. JUSTICE CARDOZO, announced by the CHIEF JUSTICE.

Three cases present a single question: Was a notice of call issued by the Secretary of the Treasury for the redemption of Liberty Loan bonds effective to terminate

the running of interest on the bonds from the designated redemption date?

Petitioner in No. 42 is the owner of a $10,000 First Liberty Loan 3½% bond of 1932–1947, serial number 6670. The bond was issued pursuant to the Act of April 24, 1917 (40 Stat. 35), and Treasury Department Circular No. 78, dated May 14, 1917, and was purchased by petitioner in December, 1934, for $10,362.50 and accrued interest. Its provisions, so far as material, read as follows:

"The United States of America for value received promises to pay to the bearer the sum of Ten Thousand Dollars on the 15th day of June, 1947, with interest at the rate of three and one-half per centum per annum payable semi-annually on December 15 and June 15 in each year until the principal hereof shall be payable, upon presentation and surrender of the interest coupons hereto attached as they severally mature. The principal and interest of this bond shall be payable in United States gold coin of the present standard of value, . . . All or any of the bonds of the series of which this is one may be redeemed and paid at the pleasure of the United States on or after June 15, 1932, or on any semi-annual interest payment date or dates, at the face value thereof and interest accrued at the date of redemption, on notice published at least three months prior to the redemption date, and published thereafter from time to time during said three months period as the Secretary of the Treasury shall direct. . . . From the date of redemption designated in any such notice interest on the bonds called for redemption shall cease, and all coupons thereon maturing after said date shall be void. . . ."

On March 14, 1935, the Secretary of the Treasury published a notice of call for the redemption on June 15, 1935, of all the bonds so issued. "Public notice is hereby given:

1. All outstanding First Liberty Loan bonds of 1932–47 are hereby called for redemption on June 15, 1935. The

various issues of First Liberty Loan bonds (all of which are included in this call) are as follows:

First Liberty Loan 3½ percent bonds of 1932–47 (First 3½'s), dated June 15, 1917; . . .

2. Interest on all such outstanding First Liberty Loan bonds will cease on said redemption date, June 15, 1935."

Thereafter, on April 22, 1935, the Secretary of the Treasury issued a circular (Department Circular, No. 535) prescribing rules for the redemption of First Liberty Loan bonds, and providing, among other things, as follows: "Holders of any outstanding First Liberty Loan bonds will be entitled to have such bonds redeemed and paid at par on June 15, 1935, with interest in full to that date. After June 15, 1935, interest will not accrue on any First Liberty Loan bonds."

Nearly two years before the publication of the notice of call Congress had adopted the Joint Resolution of June 5, 1933 (48 Stat. 112) by which every obligation purporting to be payable in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, was to be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment was legal tender for public and private debts. Nearly four weeks before the publication of the notice of call, the validity of that Joint Resolution had been the subject of adjudication by this court in the Gold Clause Cases, *Norman* v. *Baltimore & Ohio R. Co.*, 294 U. S. 240, *Nortz* v. *United States*, 294 U. S. 317, and *Perry* v. *United States*, 294 U. S. 330, all decided February 18, 1935. We may presume that the call was issued with knowledge of those rulings.

About six months after the date designated for redemption, petitioner, on December 28, 1935, presented his bond (with coupons due on and before June 15, 1935, detached) to the Treasurer of the United States, and demanded the redemption by the payment of 10,000 gold dollars each

containing 25.8 grains of gold nine-tenths fine, which was the gold content of a dollar in 1917. The Treasurer refused to comply with that demand, but offered payment of the face amount of the principal in legal tender coin or currency other than gold or gold certificates. Petitioner declined to accept the tender and retained the bond. Thereafter, on the same day, petitioner presented to the Treasurer of the United States, the interest coupon for the six months period June 15 to December 15, 1935, and demanded payment either in gold coin or legal tender currency. The Treasurer refused payment on the ground that the bond to which the coupon was attached had been called for redemption on June 15, 1935.

An action followed in the Court of Claims, petitioner resting his claim upon the interest coupon only, and limiting his demand to a recovery in current dollars.[1] The Court gave judgment for the United States on the ground that on the designated redemption date, all coupons for later interest became void. Because of the important interests, public and private, affected by the judgment, a writ of certiorari was granted by this court.

Petitioner in No. 43 is the owner of a $50 Fourth Liberty Loan 4½% bond of 1933–1938, which it bought on March 9, 1935. The bond was issued pursuant to the Act of September 24, 1917 (40 Stat. 288) as amended, and Treasury Department Circular, No. 121. It was to mature on October 15, 1938, subject, however, to re-

[1] The Joint Resolution of Aug. 27, 1935 (49 Stat. 938, 939), withdrawing the consent of the United States to suit where the claimant asserted against it a right, privilege or power "upon any gold-clause securities of the United States or for interest thereon" makes an exception of any suit begun by January 1, 1936, as well as any proceeding "in which no claim is made for payment or credit in an amount in excess of the face or nominal value in dollars of the securities, coins or currencies of the United States involved in such proceeding." Petitioner has brought himself within each branch of the exception.

demption on October 15, 1933 or later. The terms of redemption are stated in Circular No. 121, which is incorporated by reference into the bond itself. Six months notice by the Secretary of the Treasury was required, "From the date of redemption designated in any such notice, interest on bonds called for redemption shall cease." On October 12, 1933, the Secretary of the Treasury published a notice of call for redemption on April 15, 1934, of certain bonds of this issue. The bond now owned by petitioner is one of them. There were tenders and refusals similar to those described already in the statement of the other case. An action followed in the Court of Claims. Petitioner prayed for judgment in the sum of $1.07, the amount of the interest coupon for the six months period ending October 15, 1934.[2] The court dismissed the claim and the case is here on certiorari.

Respondent in No. 198 is the owner of a $1,000 First Liberty Loan 3½% bond of 1932–1947, No. 47084, purchased on March 22, 1933, for $1,011.25. This is the same bond issue involved and described in No. 42. Respondent did not present his bond for payment either on the redemption date or later. He did not present the coupon which is the foundation of the suit. However, the fact is stipulated that the Treasurer of the United States and other fiscal agents have not at any time been directed by the Secretary of the Treasury to redeem the bonds in gold coin, but have been authorized and directed to redeem in legal tender currency. The fact is also stipulated that there was a refusal to pay similar coupons for interest accruing after the date of redemption. Respondent brought suit upon his coupon in the United States Dis-

[2] The coupon reads as follows: "The United States of America will pay to bearer on October 15, 1934, at the Treasury Department, Washington, or at a designated agency, $1.07, being six months' interest then due on $50 Fourth Liberty Loan 4¼% Gold Bonds of 1933–1938 unless called for previous redemption."

trict Court for the District of Maryland. The District Court gave judgment in favor of the United States. The Court of Appeals for the Fourth Circuit reversed and ordered a new trial (87 F. (2d) 594), declining to follow the ruling which had been made by the Court of Claims. The case is here on certiorari on the petition of the Government.

Hereafter, for convenience of reference, the bondholder in each of the three cases will be spoken of as a "petitioner," without adverting to the fact that in one of them (No. 198) he is actually a respondent.

First. The so-called redemption provisions of the bonds are provisions for the acceleration of maturity at the pleasure of the Government, and upon publication of the notice of call for the period stated in the bonds the new date became substituted for the old one as if there from the beginning.

The contract is explicit. "From the date of redemption designated in any such notice interest on the bonds called for redemption shall cease, and all coupons thereon maturing after said date shall be void." The contract is not to the effect that interest shall cease upon or after payment. Cf. *Sterling* v. *H. F. Watson Co.,* 241 Pa. 105, 110; 88 Atl. 297. The contract is that interest shall cease upon the date "designated" for payment. The rule is established that in the absence of contract or statute evincing a contrary intention, interest does not run upon claims against the Government even though there has been default in the payment of the principal. *U. S. ex rel. Angarica* v. *Bayard,* 127 U. S. 251; *United States* v. *North Carolina,* 136 U. S. 211; *United States* v. *North American T. & T. Co.,* 253 U. S. 330, 336; *Seaboard Air Line Ry.* v. *United States,* 261 U. S. 299, 304. The allowance of interest in eminent domain cases is only an apparent exception, which has its origin in the Constitution. *Shoshone Tribe* v. *United States,* 299 U. S. 476, 497;

United States v. *Rogers,* 255 U. S. 163, 169. If the bonds in suit had matured at the date of natural expiration, interest would automatically have ended, whether the bonds were paid or not. Maturity at a different and accelerated date does not make the obligation greater. In the one case as in the other the interest obligation ends, and this for the simple reason that the contract says that it shall end. Upon non-payment of principal at the original maturity, the bondholder, if unpaid, has a remedy by suit to recover principal, with interest then overdue, but not interest thereafter. Upon non-payment of principal at the accelerated date, he has a like remedy, but no other. Default, if there has been any, is as ineffective in one situation as in the other to keep interest alive.

Petitioners insist, however, that the notices of call were not adequate to accelerate maturity, with the result that interest continued as if notice had not been given. This surely is not so if we look to form alone and put extrinsic facts aside. "All outstanding First Liberty Loan bonds of 1932–47 are hereby called for redemption on June 15, 1935." "All outstanding Fourth Liberty Loan 4¼ per cent bonds of 1933–38, hereinafter referred to as Fourth 4¼'s, bearing the serial numbers which have been determined by lot in the manner prescribed by the Secretary of the Treasury, are called for redemption on April 15, 1934, as follows," (the serial numbers being thereupon stated). Nothing could be simpler, nothing more clearly adequate, unless the notices are to be supplemented by resort to extrinsic facts, the subject of judicial notice, which neutralize their terms. Petitioners maintain that such extrinsic facts exist. In their view, each of the two forms of notice must be read as if it incorporated within itself the Joint Resolution of June 5, 1933, and promised payment in the manner called for by that Resolution, and not in any other way. Thus supplemented, we are told, the notice is a nullity, for the payment that it promises is not the payment owing under the letter of the bond.

The notice of call for the redemption of the bonds was a notice, not a promise. The Secretary of the Treasury was not under a duty to make any promise as to the medium of payment. He did not undertake to make any. The obligation devolving upon the United States at the designated date was measured by the law, and the law includes the Constitution as well as statutes and resolutions. The medium of payment lawful at the time of issuing the call might be different from that prevailing at the accelerated maturity. This might happen as a consequence of an amendment of the statute. It might happen through judicial decisions adjudging a statute valid and equally through judicial decisions adjudging a statute void. The interval between notice and redemption was three months in the case of the First Liberty bonds; it was six months for the Fourth. The Secretary of the Treasury understood these possibilities when he sent out his notices for the redemption of the bonds in suit. Indeed, *Perry* v. *United States, supra,* had already been decided when bonds of the First Liberty issue were made the subject of his call. In each form of notice the implications of the call are clear. What the bondholders were told was neither more nor less than this, that at the accelerated maturity they would be entitled to payment in such form and in such measure as would discharge the obligation. The Secretary's beliefs or expectations as to what the proper form or measure would be at the appointed time are of no controlling importance, even if they were shown. The obligation was not his; it was that of the United States. His own beliefs and expectations and even those of the Government might be changed or frustrated by subsequent events. The bondholders had the assurance that the bonds would be redeemed, and they were entitled to no other. Whatever medium of payment would discharge the obligation if maturity had been attained through the natural lapse of time would dis-

charge it as completely at an accelerated maturity. The same money that would "pay" would serve also to "redeem." There is no reason to believe that the one situation was distinguished from the other in the minds of the contracting parties. The sum total of existing law—Constitution and statutes and even controlling decisions, if there were any—would say how much was due.

If this analysis is sound, it carries with it the conclusion that the call did not commit the Government either expressly or by indirection to a forbidden medium of payment. The case for the petitioners, if valid, must rest upon some other basis. A suggested basis is that the existence of the Joint Resolution amounted without more to an anticipatory breach, which made the notice of redemption void from its inception, if there was an election so to treat it, and this though the notice left the medium of payment open. But the rule of law is settled that the doctrine of anticipatory breach has in general no application to unilateral contracts, and particularly to such contracts for the payment of money only. *Roehm* v. *Horst,* 178 U. S. 1, 17; *Nichols* v. *Scranton Steel Co.,* 137 N. Y. 471, 487; 33 N. E. 561; *Kelly* v. *Security Mutual Life Ins. Co.,* 186 N. Y. 16; 78 N. E. 584; Williston, Contracts, rev. ed., vol. 5, § 1328; Restatement, Contracts, §§ 316, 318. Whatever exceptions have been recognized do not touch the case at hand. *New York Life Ins. Co.* v. *Viglas,* 297 U. S. 672, 679, 680. Moreover, an anticipatory breach, if it were made out, could have no effect upon the right of the complaining bondholders to postpone the time of payment to the date of natural maturity. The sole effect, if any, would be to clothe them with a privilege to declare payment overdue, which is precisely the result that they are seeking to avoid. The conclusion therefore follows that for the purpose of the present controversy the breach would be immaterial even if it were not unreal. But its unreality is the feature we

prefer to dwell upon. The Government was not subject to a duty to keep the content of the dollar constant during the period intervening between promise and performance. The erroneous assumption of the existence of such a duty vitiates any argument in favor of the petitioners as to an anticipatory breach just as it vitiates their argument as to the implications of the call. The duty of the Government and its only one was to pay the bonds when due. If the statutes had been amended before the date of redemption or if the courts had decided that payment must be made in gold or in currency proportioned to the earlier content of the dollar, there is little likelihood that any one would judge the efficacy of the notice by the test of the law in force at the date of its announcement.

The petitioners being dislodged from the position that the notices of call were void in their inception are perforce driven to the stand that they became nullities thereafter, when the statutes were unrepealed at the designated date. But at the designated date the accelerated maturity was already an accomplished fact. The duty of payment did not arise in advance of maturity. In the very nature of things it presupposes maturity as a preliminary condition. If there had been any different intention, the bonds would have provided that interest should cease upon payment or lawful tender, and not from the date of redemption stated in the call. This is not a case of mutual promises or covenants with performance to be rendered on each side at a given time and place. The obligees were not under a duty to do anything at all at the accelerated maturity, though they were privileged, if they pleased, to present the bonds for payment. Most of the learning as to dependent and independent promises in the law of bilateral contracts (*Loud* v. *Pomona Land & W. Co.*, 153 U. S. 564, 576) is thus beside the mark. This is a case of a unilateral contract where

the only act of performance, the payment of the bonds, was one owing from the obligor, and arose by hypothesis upon maturity and not before. Let maturity, whether normal or accelerated, be accepted as a postulate, and it must follow that default in payment will not change the date again. If the Government were to come forward with a tender a day or a week after the designated date, the obligees would not be sustained in a rejection of the payment on the theory that the original date of maturity had been restored by the delay. If the obligees were to sue after the designated date, the Government would not be heard to say that because of the default in payment, the proposed acceleration was imperfect and inchoate. As pointed out already, the bondholders became entitled, when once the notice had been published, to a measure and medium of payment sufficient to discharge the debts. If the then existing Acts of Congress were valid altogether, payment would be sufficient if made in the then prevailing currency. If the Acts were invalid, either wholly or in some degree, there might be need of something more, how much being dependent upon the operation of an implied obligation, read into the bonds by a process of construction, to render an equivalent. Whatever the form and measure, the bondholders had a remedy if they had chosen to invoke it.

We do not now determine the effect of a notice given in bad faith with a preconceived intention to withhold performance later. Fraud vitiates nearly every form of conduct affected by its taint, but fraud has not been proved and indeed has not been charged. There is no reason to doubt that a Secretary of the Treasury who was willing to give notice of redemption after knowledge of the decision in *Perry* v. *United States* understood that the obligation of the Government would be measured by the Constitution and not by any statute, in so far as the two might be found to be in conflict. Never for a moment

was there less than complete submission to the supremacy of law. At the utmost, there was honest mistake as to rights and liabilities in a situation without precedent. Fraud being eliminated, the case acquires a new clarity. When we reach the heart of the matter, putting confusing verbiage aside and fixing our gaze upon essentials, the obligation of the bonds can be expressed in a simplifying paraphrase. "This bond shall be payable on June 15, 1947, or (upon three months notice by the Secretary of the Treasury) on June 15, 1932, or any interest date thereafter." That is what was meant. That in substance is what was said.[3]

No question of constitutional law is involved in the decision of these cases. No question is here as to the correctness of the decision in *Perry* v. *United States*, or as to the meaning or effect of the opinion there announced. All such inquiries are put aside as unnecessary to the solution of the problem now before us. Irrespective of the validity or invalidity of the whole or any part of the legislation of recent years devaluing the dollar, the maturity of the bonds in suit was accelerated by valid notice. As a consequence of such acceleration the right to interest has gone.

Second. The Secretary of the Treasury did not act in excess of his lawful powers by issuing the calls without further authority from the Congress than was conferred by the statutes under which the bonds were issued.

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[3] Important differences exist, and are not to be ignored, between the retirement of shares of stock (*Sterling* v. *H. F. Watson Co., supra; Corbett* v. *McClintic-Marshall Corp.*, 17 Del. Ch. 165; 151 Atl. 218), and the accelerated payment of money obligations, and also between the acceleration of the obligations of the Government and those of other obligors. In the case of private obligations, a liability for interest survives the acceleration of the debt and continues until payment. In the case of Government obligations, interest does not continue after maturity (in the absence of statute or agreement) though payment is not made.

The argument to the contrary is inconsistent with the plain provisions of the statutes and also of the bonds themselves.

There was also confirmation of his power in subsequent enactments. Victory Liberty Loan Act, § 6, 40 Stat. 1311, as amended, March 2, 1923, c. 179, 42 Stat. 1427, and January 30, 1934, § 14 (b), 48 Stat. 344; Gold Reserve Act of 1934, § 14, 48 Stat. 343; Act of February 4, 1935, §§ 2, 4, 49 Stat. 20.

Third. In issuing the calls, the Secretary of the Treasury was not limited by the Act of March 18, 1869 (R. S. 3693; 16 Stat. 1) which in its day placed restrictions upon the redemption by the Government of interest-bearing bonds.

The aim of that statute was the protection of holders of United States obligations not bearing interest, the "greenbacks" of that era. "The bonds of the United States are not to be paid before maturity, while the note-holders are to be kept without their redemption, unless the note-holders are able at the same time to convert their notes into coin." Statement of Robert C. Schenck, one of the House Managers, Congressional Globe, March 3, 1869, p. 1879. Upon the resumption of specie payments in 1879 the aim of the statute was achieved, and its restrictions are no longer binding.

The judgments in Nos. 42 and 43 should be affirmed, and that in No. 198 reversed.

Nos. 42 and 43, affirmed.
No. 198, reversed.

Dissenting: MR. JUSTICE MCREYNOLDS, MR. JUSTICE SUTHERLAND and MR. JUSTICE BUTLER. See *post*, p. 364.

MR. JUSTICE STONE.

I concur in the result.

I think the court below, in the *Machen* case, 87 F. (2d) 594, correctly interpreted the bonds involved in

these cases as reserving to the government the privilege of accelerating their maturity by paying them or standing ready to pay them on any interest date according to their tenor, and upon giving the specified notice fixing the "date of redemption." The words "redeemed" and "redemption" as used in the bonds [1] point the way in which the privilege was to be exercised as plainly as when they are written in the bonds of a private lender. *Lynch* v. *United States,* 292 U. S. 571, 579; cf. *Perry* v. *United States,* 294 U. S. 330, 352. If payment, or readiness to pay the bonds in accordance with their terms was essential to "redemption," the one or the other, equally with the required notice, was a condition of acceleration.

The obligation of the bonds, read in the light of long established custom and of our own decision in *Holyoke Water Power Co.* v. *American Writing Paper Co.,* 300 U. S. 324, 336, decided since the *Perry* case, must, I think, be taken to be a "gold value" undertaking to pay in gold dollars of the specified weight and fineness or their equivalent in lawful currency. Compare *Norman* v. *B. & O. R. Co.,* 294 U. S. 240, 302. *Feist* v. *Société Intercommunale Belge, &c.,* L. R. [1934] A. C. 172, 173. The suppression of the use of gold as money, and the restriction on its export and of its use in international exchange, by acts

[1] The redemption clause is as follows:

"The principal and interest of this bond shall be payable in United States gold coin of the present standard of value, . . . All or any of the bonds of the series of which this is one may be redeemed and paid at the pleasure of the United States on or after June 15, 1932, or on any semi-annual interest payment date or dates, at the face value thereof and interest accrued at the date of redemption, on notice published at least three months prior to the redemption date, and published thereafter from time to time during said three months period as the Secretary of the Treasury shall direct. . . . From the date of redemption designated in any such notice interest on the bonds called for redemption shall cease, and all coupons thereon maturing after said date shall be void. . . ."

of Congress, 48 Stat. 1, 337, did not relieve the government of its obligation to pay the stipulated gold value of the bonds in lawful currency. Hence it has not complied, or ever stood ready to comply, with one of the two conditions upon performance of which the bonds "may be redeemed and paid" in advance of their due date—the payment to the bondholder of the currency equivalent of the stipulated gold value.

It will not do to say that performance of this condition can be avoided or dispensed with by the adoption of any form of words in the notice. Nor can it be said that a declaration, in the notice, of intention to pay whatever can be collected in court, see the *Perry* case, *supra,* 354, is equivalent to a notice of readiness to pay the currency equivalent of the gold value stipulated to be paid, or that a statement of purpose to pay what will constitutionally satisfy the debt suffices to accelerate although no payment of the currency equivalent is made or contemplated or is permitted by the statutes. It follows that judgment must go for the bondholders unless the Joint Resolution of Congress of June 5, 1933, 48 Stat. 112, requiring the discharge of all gold obligations "dollar for dollar" in lawful currency, and declaring void as against public policy all provisions of such obligations calling for gold payments, is to be pronounced constitutional.

Decision of the constitutional question being in my opinion now unavoidable, I am moved to state shortly my reasons for the view that government bonds do not stand on any different footing from those of private individuals and that the Joint Resolution in the one case, as in the other, was a constitutional exercise of the power to regulate the value of money. Compare *Norman* v. *B. & O. R. Co., supra,* 304, 309. Without elaborating the point, it is enough for present purposes to say that the undertaking of the United States to pay its obligations in gold, if binding, operates to thwart the exercise of the

constitutional power in the same manner and to the same degree *pro tanto* as do bonds issued by private individuals, *Norman* v. *B. & O. R. Co., supra,* 311 *et seq.,* except insofar as the government resorts to its sovereign immunity from suit. Had the undertaking been given any force in the *Gold Clause Cases,* or the meaning which we have since attributed to it when used in private contracts, it would, if valid and but for the immunity from suit, have defeated the government policy of suspension of gold payments and devaluation of the dollar. Compare the *Norman* case, *supra,* with the concurring memorandum in *Perry* v. *United States, supra,* 360–361.

The very fact of the existence of such immunity, which admits of the creation of only such government obligations as are enforceable at the will of the sovereign, is persuasive that the power to borrow money "on the credit" of the United States cannot be taken to be a limitation of the power to regulate the value of money. Looking to the purposes for which that power is conferred upon the national government, its exercise, if justified at all, is as essential in the case of bonds of the national government as it is in the case of bonds of states, municipalities and private individuals. See *Norman* v. *B. & O. R. Co., supra,* 313 *et seq.* Its effect on the bondholders is the same in every case. Compare *Norman* v. *B. & O. R. Co., supra,* with *Nortz* v. *United States,* 294 U. S. 317. No reason of public policy or principle of construction of the instrument itself has ever been suggested, so far as I am aware, which would explain why the power to regulate the currency, which is not restricted by the Fifth Amendment in the case of any obligation, is controlled, in the case of government bonds, by the borrowing clause which imposes no obligation which the government is not free to discard at any time through its immunity from suit. I cannot say that the borrowing clause which is without force to compel the sovereign to

pay nevertheless renders the government powerless to exercise the specifically granted authority to regulate the value of money with which payment is to be made.

Mr. Justice Black, concurring.

Agreeing altogether with the opinion of Mr. Justice Cardozo, which deals only with the construction of the contract and the rights flowing from the notice, I find it unnecessary and therefore inappropriate to express any opinion as to the validity of the Joint Resolution of 1933 or other acts of legislation devaluing the dollar.

Mr. Justice McReynolds, dissenting.*

Mr. Justice Sutherland, Mr. Justice Butler and I cannot acquiesce in the conclusion approved by the majority of the Court. In our view it gives effect to an act of bad faith and upholds patent repudiation. Its wrongfulness is betokened by the circumlocution presented in defense.

The suit is to recover in currency of today the face value of a past due coupon originally attached to a three and one-half per cent bond of the United States issued in 1917 and payable 1947—nothing else.

The opinion of the Circuit Court of Appeals, to which little can be added, sets out the important facts and adequately supports its judgment.

In 1917, when gold coins contained 25.8 grains to the dollar, the United States obtained needed funds by selling coupon bonds—among them the one here involved. They solemnly agreed to pay the holder one thousand dollars on June 15, 1947, with semi-annual interest, in "gold coin of the present standard of value" subject to the following option:—"All or any of the bonds of the

* This opinion was entitled in only one of the three cases, No. 198.

series of which this is one may be redeemed [1] and paid at the pleasure of the United States on or after June 15, 1932, on any semi-annual interest payment date or dates, at the face value thereof and interest accrued at the date of redemption, on notice published at least three months prior to the redemption date. . . . From the date of redemption designated in any such notice, interest on the bonds called for redemption shall cease, and all coupons thereon maturing after such date shall be void."

The promise is to pay one thousand dollars in gold coin, 1917 standard. The face value of the bond is one thousand gold dollars. The option reserved is to redeem and pay after notice by giving the holder that number of such dollars. The notice required is nothing less than a declaration of *bona fide* purpose to redeem or pay off the obligation as written—no other right was reserved. A notice divorced from that purpose could amount to nothing more than a dishonest effort to defeat the contract and defraud the creditor. It would not come within the fair intendment of the contract; would not, in truth, designate a "date of redemption"; and, therefore, could not hasten the maturity of the principal or cause interest to cease. All this seems obvious, if respect is to be accorded to the ordinary rules of construction and principles of law governing contracts.

The obligation of the bond was declared by this Court in *Perry* v. *United States,* 294 U. S. 330, 351, 353, 354, to be a pledge of the credit of the United States and an assurance of payment as stipulated which Congress had no power to withdraw or ignore. "The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudia-

[1] Redeem—5. To buy off, take up or remove the obligation of, by payment or rendering of some consideration; as to redeem bank notes with coin.

Webster's New International Dictionary.

tion, 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." "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" was there denied. "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 obligations. 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."

The right to redeem and pay the bond at face value after notice was reserved—nothing else. Did the United States give notice of a *bona fide* purpose so to redeem and pay? If not they cannot properly claim to have exercised their option to mature the obligation. That they did not honestly comply with this necessary preliminary becomes obvious upon consideration of the circumstances and pertinent legislation.

There is no question here concerning the Government committing itself through notice sent out by the Secretary of the Treasury expressly or indirectly to a forbidden medium of payment. No question of an anticipatory breach of contract. The Government simply has not in good faith complied with a condition precedent. It has never given notice of purpose to pay the obligation according to its terms. Its suggestion was to make payment of another kind.

The Circuit Court of Appeals well said—

"The notice calling the bond for payment was in the usual form; and there is no question but that it would have had the effect of stopping the running of interest and avoiding the coupons maturing after June 15, 1935, except for the legislation of Congress affecting the currency, which limited the power of the Secretary of the Treasury and must be read into the notice. At the time of the issuance of the bond the gold dollar was the standard of value in our monetary system and was defined by law as consisting of twenty-five and eight tenths grains of gold nine-tenths fine. Act of Mar. 14, 1900, c. 41, sec. 1, 31 Stat. 45, 31 U. S. C. A. 314. And the statutes provided for the use of gold coin as a medium of exchange. R. S. 3511. By Presidential Proclamation of January 31, 1934, issued under the act of May 12, 1933 (38 Stat. 52, 53), as amended by the act of January 30, 1934 (48 Stat. 342), the content of the dollar was reduced to 15-5/21 grains of gold nine-tenths fine; and, at the time of the publication of the notice calling the bond for payment, gold coin had been withdrawn from circulation, its possession had been prohibited under penalty, and payment in gold coin by the United States had been prohibited. 48 Stat. 337, 340. By joint resolution of June 5, 1933 (48 Stat. 112, 113), the payment of gold clause bonds in any legal tender currency 'dollar for dollar' had been authorized; and it was paper currency based on the 15-5/21 grain dollar, and nothing else, that was offered in payment of gold clause bonds which were called for payment by the Treasury. The notice of redemption calling the bond in question for payment was equivalent, therefore, to a notice that the United States elected to redeem the bond in paper currency based on a 15-5/21 grain dollar, notwithstanding that it was payable in gold coin based on a 25-8/10 grain dollar and might be redeemed only at its face value. . . .

"It is manifest that when the bonds were payable in gold coin of the standard of value at the time of issue,

i. e., 25-8/10 grains of gold to the dollar, a proposal to redeem them in paper money based upon 15-5/21 grains of gold to the dollar was not a proposal to redeem them at face value; and a notice that the government would redeem them on such basis, which is what the notice in question means when considered as it must be in connection with the legislation binding upon the Secretary of the Treasury, was not such a notice as the bonds prescribed for the exercise of the option retained by the government."

We are not now concerned with the power of the United States to discharge obligations at maturity in depreciated currency or clipped coin. Did they cause respondent's bond to mature before the ultimate due date by proper exercise of the option reserved when they sent out a notice which in effect stated that payment would not be made as provided by the bond, but otherwise? The answer ought not to be difficult where men anxiously uphold the doctrine that a contractual obligation "remains binding upon the conscience of the sovereign" and reverently fix their gaze on the Eighth Commandment.

We concur in the views tersely expressed in the following paragraph excerpted from the opinion below—

"No amount of argument can obscure the real situation. It is this: the government has promised to pay the bonds in question in gold coin of the standard of value prevailing in 1917. By their terms, it is permitted to redeem them only by paying them at their face value. It is proposing to redeem them, not by paying them at that face value but in paper money worth only about 59% thereof. The notice which it has issued means this and nothing else. Such a notice is not in accordance with the condition of redemption specified in the bond and consequently does not stop the running of interest or avoid the coupons."

The challenged judgment was correct and should be affirmed.