rate of 13 shillings and four pence per hundred weight; and marshal's fees and commissions, and all costs attending the execution of the said writ, $8.11, making in the whole the sum of $171.99." This aggregate sum was correct, according to the execution, and not according to the recital, there having been a mistake in writing the word twenty for twelve. The court below, considering the recital as correct in substance, rendered judgment for the plaintiff. The defendants took a bill of exceptions, and brought their writ of error.

Youngs, for the defendant in error, cited *Scott* v. *Hornsby*, 1 Call 42; *Bell* v. *Marr*, Ibid. 47 ; *Worsham* v. *Egleston*, Ibid. 48 ; and *Wilkinson* v. *McLochlin*, Ibid. 49.

Judgment affirmed, with ten per cent. damages and costs.

Faw *v.* Marsteller. (*a*)

Depreciation.

In a deed, made in the year 1779, of land, rendering an annual rent of 26*l.* current money of Virginia for ever, the rents are not to be reduced by the scale of depreciation, but the actual annual value of the land, at the date of the contract, in specie, or in other money equivalent thereto, is to be ascertained by a jury.[1]

Marsteller *v.* Faw, 1 Cr. C. C. 117, reversed.

This was an appeal by Faw, the original defendant, from a decree of the Circuit Court of the district of Columbia, sitting as a court of chancery, at Alexandria, in July 1803 (Reported below, 1 Cr. C. C. 117). The case, as stated by Marshall, Ch. J., in delivering the opinion of the court, was as follows :

*11] *In the month of May 1779, the executors of John Alexander, in pursuance of a power contained in the will of their testator, set up to the highest bidder, on a ground-rent for ever, certain lots of land lying in the town of Alexandria. One of these lots, containing half an acre, was struck off to a certain Peter Wise, at the rent of 26*l.* per annum, current money of Virginia. Wise bid for Jacob Sly, a citizen of Maryland, who transferred the lot to Abraham Faw, to whom the same was conveyed in fee-simple, by a deed bearing date the 5th of August 1779, in which the said ground-rent of 26*l.* per annum, current money of Virginia, was reserved.

In the year 1784, Abraham Faw divided the said half acre of ground into eight smaller lots, five of which he had sold, reserving a ground-rent

---

(*a*) The counsel in this cause had not furnished the court with a statement of the points of the case, according to the rule of the court, ante, vol. 1, p. xvi. Being called upon by the court for such a statement, Swann observed, that there was but a single point in the case, and therefore, they had not supposed it necessary to reduce it to writing.

Marshall, Ch. J.—The court will proceed to hear this cause, without having been furnished with a statement of the points; but they wish it to be understood, that they always expect such a statement. If there is only one point, it is the easier to state it.

[1] The obligation of a contract to pay money, is to pay that which the law shall recognise as money, when the payment is to be made. Knox *v.* Lee, 12 Wall. 548, Strong, J. See Thorington *v.* Smith, 8 Id. 1; Bigler *v.* Waller, 14 Id. 297.

for ever, amounting to 84*l.* 12*s.* per annum. One of these lots was conveyed by Faw to Jacob Hess, in the year 1784, at the ground-rent of 25*l.* 16*s.* per annum, which lot had been since purchased by Philip Marsteller, the appellee, who had also purchased from the devisee of John Alexander, all his rights in, or issuing from, the half-acre lot of ground conveyed to Abraham Faw. Thus, Abraham Faw became liable to Philip Marsteller, for the rent accruing under the deed of August 1779, who was himself liable to the said Faw for the rent accruing on part of the same lot, under the deed executed by Faw to Hess, in November 1784.

In November 1781, the legislature of Virginia passed an act calling paper money out of circulation; and also another act directing the mode for adjusting and settling contracts made in that currency. The second section of this latter act, after stating, by way of preamble, that "the good people of the state would labor under many inconveniences for want of some rule, whereby to settle and adjust the payment of debts and contracts entered into, or made, between the first day of January 1777, and the first day of January 1782, unless some rule should be by law established for liquidating and adjusting the same, so *as to do justice as well to the debtor as the creditor," [*12] enacted, that from and after the passing of the act, "all debts and contracts entered into or made in the current money of this state, or the United States, excepting, at all times, contracts entered into for gold and silver coin, tobacco or any other specific property, within the period aforesaid, now remaining due and unfulfilled, or which may become due, at any future day or days, for the payment of any sum or sums of money, shall be liquidated, settled and adjusted agreeably to a scale of depreciation hereinafter mentioned and contained; that is to say, by reducing the amount of all such debts and contracts to the true value in specie, at the days or times the same were incurred or entered into, and upon payment of said value so found, in specie, or other money equivalent thereto, the debtors or contractors shall be for ever discharged of and from the said debts or contracts, any law, custom or usage to the contrary, in any wise notwithstanding."

The fourth section established the scale of depreciation which should constitute the rule by which the value of the debts, contracts and demands in the act mentioned, should be ascertained; and the fifth section enacted, "that where a suit shall be brought for the recovery of a debt, and it shall appear, that the value thereof hath been tendered and refused; or where it shall appear, that the non-payment thereof hath been owing to the creditor; or where other circumstances arise, which, in the opinion of the court, before whom the cause is brought to issue, would render a determination agreeable to the above table unjust; in either case, it shall and may be lawful for the court to award such judgment as to them shall appear just and equitable."

The act then empowered the court to direct at what depreciation any judgment should be discharged, on a verdict given for damages, between the first day of January 1777, and the first day of January 1782, having "regard to the original injury or contract on which the damages are founded, and any other proper circumstances that the nature of the case will admit."

*It was proved in the cause, that the contracts made by the executors of John Alexander excited at the time very great attention, [*13] and were the subject of general conversation. The prevailing opinion among the bidders was, that the rents would be paid in paper money, so long as

paper should be the circulating medium, after which, they would be paid in specie. Such, too, was the opinion of Peter Wise, the purchaser of the particular lot which occasioned the existing controversy, and there was reason to suppose, it was also the opinion of those who were disposing of the property ; it was also thought, the rent reserved was low, when considered as payable in paper, but high, if to be paid in specie.

It was further proved, that a lot, not more valuable than that which occasioned the present contest, was sold in 1774, on a ground-rent of 13*l.* 5*s.* per annum, for ever, and that a lot, less valuable, was sold in the year 1784, on a ground-rent of 35*l.* per annum. But it appeared from other parts of the testimony, that the lots which were sold in the year 1784, in Alexandria, on ground-rent, were contracted for so much above the value they afterwards bore, that the lessors, in very many instances, were under the necessity of reducing the rents one-half below the sum originally stipulated, and in some instances, the reduction was still greater.

The circuit court decreed that the rents which accrued during the existence of paper money, should be reduced according to the scale, for the time when they became payable, but that the subsequent rents should be paid in specie. From this decree, Faw appealed, and the case was now argued by *Swann* and *Mason*, for the appellant ; and by *E. J. Lee*, *Jones* and *Key*, for the appellee.

For the *appellant*, it was contended, that this was a contract within the letter and spirit of the 2d section of the act of assembly of Virginia before mentioned, passed in November 1781, c. 22 (Chancery Revision of the Laws, p. 147), and entitled "An act directing the mode of adjusting and settling the payment of certain debts and contracts, and for other purposes ;" and therefore, *it was not within the the 5th section of that act. [*14]

1. This is a contract made in current money of the state, within the period contemplated by the act, payable at a future day or days, for the payment of money, and is, therefore, within the very words of the 2d section of the act. This point was decided by the court of appeals in Virginia, in the case of *Watson and Hartshorne* v. *Alexander*, 1 Wash. 340. The object of that section was to provide for contracts in which the fact of depreciation had increased the ideal value of the consideration of the contract. It is proved, in the present case, that the rent was high, if payable in specie. It is, therefore, a case within the spirit as well as within the words of the section ; for it is reasonable to presume, that the high rent was agreed to be given, in consequence of the depreciated state of the paper currency.

2. The 5th section could not mean to provide for cases which were within the spirit of the 2d ; because that would be to render the latter section a mere nullity. There would be no use in fixing a scale, if the court were to make a rule according to the circumstances of each particular case. But the 5th section was intended for the benefit of debtors only. Every case of equity in favor of creditors was provided for by the exception in the 2d. The only two cases particularly specified in the 5th section to authorize the equitable interposition of the court, are, where the money has been tendered and refused, or where the non-payment is owing to the creditor. In both these cases, the equity is in favor of the debtor. The act then proceeds, "or where other circumstances arise, which in the opinion of the court would render a determination according to the above table unjust ; in either case,

it shall be lawful for the court, to award such judgment as to them shall appear just and equitable." The two cases are only put by way of example, to show the nature of those other circumstances which will justify the court in departing from the general rule.

*In the present case, there are no such other circumstances as come within the intention of the legislature; nothing like the examples which they have stated. [*15

The act of assembly is founded upon the idea that every contract for the payment of current money, made within the period described, is to be considered, *primâ facie*, a contract for the payment of paper money. This idea is founded in reason, because, during that period, it was almost the only circulating medium : gold and silver were scarcely known.

But if the 5th section was intended for the benefit of creditors, as well as debtors, still it authorizes the court to interfere only in cases attended with extraordinary circumstances. No such circumstances appear in the present case : it was an ordinary and a common contract, not differing from the great mass of cases which the legislature intended to subject to the operation of the scale. At the time when this contract was made, May 1779, the parties could have had no idea of a scale of depreciation. It was even in a manner criminal, to doubt the faith of the money. It might have appreciated, until it gained the par of gold and silver. It was, therefore, natural, that they should have had an expectation that the rents would at some future time be payable in specie. Such must also have been the expectation of all those who made contracts for the payment of current money, at distant future periods, and therefore, that circumstance cannot vary this case from all others, where the money was to be paid in future. The injury arising from that expectation was the very evil which the legislature intended to guard against.

Argument for the *appellee*.—1. This case is not within the letter or the spirit of the 2d section of the act : 2. It is within the 5th section.

1. It is not within the spirit or letter of the 2d section. *The object of the legislature was, to prevent injury arising from the depreciation of paper money, in cases where the contract was not made with a view to that currency, and where the parties had not guarded themselves from the effect of its depreciation. The act was not expected to do abstract justice in each case, but to fix a rule which should produce a general good effect. It was predicated upon the idea, that an equivalent ought to be paid for the consideration received. The consideration was presumed to pass, at the time when the obligation was given, or the contract entered into ; and if entered into between certain periods, the value of the consideration was supposed to have been measured by the paper medium. But where anything on the face of the contract, showed that paper money was not in contemplation, then the rule was not to apply, as where the contract was made for gold and silver, tobacco or other specific thing. A contract, therefore, in which the parties did not estimate the value of the consideration by the paper medium, was not a contract within the spirit of the 2d section of this act of assembly. So, if the parties themselves had provided for the event of the depreciation and total failure of paper money, and had regulated the price accordingly, the case would be out of the spirit of the law; for the parties themselves [*16

had taken care to do the thing which the law supposed them to have neglected, and only for that reason provided a remedy.

Hence, in the construction of this act, courts have always traced the contract up to the time when the consideration first moved from the plaintiff to the defendant, as in the case of *Pleasants* v. *Bibb*, 1 Wash. 8, where the bond was dated 1st of February 1780, with condition to pay 105*l.* on or before December 17th, 1781, with interest thereon from the 16th of February 1779, and it was decided, that the debt arose in February 1779, and was to be reduced by the scale for that month. By the same reason, if the debt had been stated to have accrued before January 1777, it would not have been reduced at all, yet it would, by the tender law, have been payable in paper money, during its existence, but if not actually paid or tendered *17] *in paper, during that time, it would not come within the act of assembly of 1781.

Suppose, a contract made in 1779, when the depreciation was twenty for one, and a bond given to pay 20*l.* current money, on delivery of a horse worth 20*l.* current money, in 1785. This is another case not within the spirit of the act. Again, suppose, a contract made in 1777, when the market price of wheat was 20*s.* a bushel, payable in paper money, by which A. should bind himself and his heirs, to deliver to B. and his heirs, 1000 bushels of wheat per annum, for 1000 years, for which B. agrees for himself and his heirs, to pay ten shillings current money of Virginia per bushel, on delivery. Would this contract be within the spirit of the act?

In the present case, the lease creates no debt; it is only inducement. The debt arises only from the enjoyment of the property; and *nil debet* is a good plea, which it would not be, if the debt was due by specialty. The consideration of the rent due at the end of any one year was the enjoyment for that year; and if the tenant should be evicted by a paramount title, the rent would not be recoverable. The consideration for all the rents since 1781, has accrued since the passage of the law.

If the debt in 1800 arises from the enjoyment of the preceding year, is it possible to measure the value of that enjoyment, by the depreciated paper of 1779? No consideration passed at the date of the deed, and no debt was then created. It is impossible to conceive, that an interminable contract, when a new debt is always rising from a new enjoyment, should be measured by the paper money and the enjoyment of 1779.

The act must have meant temporary, and not interminable contracts. It could not have been the understanding of the parties, at the date of the deed, *18] that the rent was for ever *to be paid in the currency of 1779; which is the construction contended for by the appellant, in his answer to the bill. No person had an expectation that paper money would last for ever: it was not in the nature of things, that it should. Nor is such a construction warranted by the expressions of the deed. The words are, "to have and to hold the said lot unto the said Abraham Faw, his heirs and assigns for ever, yielding and paying for the same, on the fifth day of August next ensuing, and yearly and every year for ever, on the same day, unto the said William Thornton Alexander, his heirs and assigns, the sum of twenty-six pounds, current money of Virginia." And the covenant of Faw is, that he will "yearly and every year for ever, well and truly pay the aforesaid sum of twenty-six pounds, Virginia currency." This can only mean money current

at the times the rents shall become payable. It cannot be contended, that he could satisfy the terms of the lease by paying the rents since 1782, in paper money.

As this case is not within the spirit, so neither is it within the letter, of the second section of the act. The words are, "all debts and contracts entered into or made in the current money of this state, or of the United States," "within the period aforesaid, now remaining due and unfulfilled, or which may become due at any future day or days, for the payment of any sum or sums of money," &c. At the date of the deed, this was neither a debt nor a contract, in the sense in which those terms are used in the act.

The whole clause must be taken together. The subsequent words explain the kind of debts and contracts intended. The word debts means *debita in præsenti, solvenda in futuro;* such as debts due by instalments. But in the present case, there was no debt at the date of the deed. If Faw had become bankrupt, the rents not accrued *at the time of the bankruptcy, could not be proved under the commission; and the certificate [*19 would be no bar to the recovery of the future rents. The reason is, because there is no debt, until after enjoyment. Each gale of rent is as a new and separate contract, and constitutes a new and separate debt.

The words "debts" and "contracts" are not used synonymously, but in contradistinction to each other; and the subsequent epithets are to be applied distributively, *reddenda singula singulis.* Thus, the words "now remaining due, or which may become due, at any future day or days," are to be referred only to the word "debts;" and the expressions "unfulfilled," and "for the payment of any sum or sums of money," are only applicable to the word "contracts." The meaning, therefore, is, "debts now remaining due, or which may become due, at any future day or days," and "contracts for the payment of any sum or sums of money, now remaining unfulfilled."

It is clear, then, that this was not a debt within the meaning of the act. The word contract evidently means such a contract as might be fulfilled. This is implied by the words "now remaining unfulfilled." It must not only be a contract which might be fulfilled, but it must be then remaining unfulfilled. Now, this is not a contract which can ever be fulfilled, strictly speaking; and if the rents had been paid up to the time of passing the act, it would have been fulfilled so far as it was possible ever to fulfil it. If the rents should be paid for a thousand years, it would still be as far from being fulfilled, as it was the day of its date. But as the rents were not paid up to the time of passing the act, there was something for the act to operate upon, if it is to be considered as affecting the case at all. The rents then accrued constituted a debt "remaining due," and therefore, perhaps, they were properly subject to the scale. But the future rents constituted no debt; and the contract was constantly renovating, and never could be discharged.

*The case, then, is not within the statute. But if it is, it is within the fifth section. It has been urged, that this section is for the [*20 benefit of debtors only. But surely, the legislature of Virginia would not so violate the principles of justice, as to provide for the equity of debtors, without also providing for special cases in favor of creditors. The case of *Watson and Hartshorne* v. *Alexander*, 1 Wash. 340, is full in our favor upon this point. The judgment in that case was not reversed on the merits, but upon a supposed impropriety in the manner of bringing the special cir-

cumstances of the case before the court below. But here, it is not contended, that the facts did not come properly before the court.

It appears, that the rent was high at that time, if payable in specie; but low, if payable in paper money. The deposition of Wise, who purchased the lot for Sly, states, that he understood, at the time, that the rents would be payable in specie, when paper should cease to circulate. What was the appellant's own opinion, appears by his having received from Saunders, 400*l.* in specie, for a breach of Saunders's covenant to extinguish the rent. If the rent is to be reduced to the sum of 1*l.* 3*s.* 7*d.*, according to the appellant's idea, he will have received more than three hundred years' purchase.

But the parties in this case made their contract, with a full knowledge of the depreciation of paper money. It had already greatly depreciated, and was continuing rapidly to depreciate. They knew they were forming a contract which would extend far beyond the possible existence of paper money. That temporary medium, therefore, could not have had much influence upon either of them. The chance of paying his rent, for some time, in a depreciated currency might have been some small temptation to the appellant, to give a little higher rent, but it does not appear to have been a very high rent, even if payable in specie, provided specie had been as plenty as it was
*21] *before the existence of paper money. The small increase of the rent which the existence of paper money occasioned, was compensated to the appellant, by his right to pay it in a depreciated currency, during the existence of that currency; while the same increase of rent, was a compensation to Alexander, for his loss by the depreciation.

It was, therefore, a fair and equitable bargain, in which the subject of depreciation was completely and fairly settled by the parties themselves. This court, therefore, as a court of equity, has nothing more to do than to carry into effect the contract, as it was understood by the parties at the time, by reducing to the scale the rents which accrued during the existence of paper money, and by compelling a payment of the residue in specie. The intention of the parties constitutes the contract; especially, in equity. If it was their intention (as seems to have been fully proved) that the rent should be paid in paper money, during its existence, and afterward, in specie, then it was a contract to pay the rent in gold and silver, after a certain period; which period has, by subsequent events, been proved to be the 1st of January 1782. As to all the rents, therefore, which have since accrued, it was a contract for gold and silver, and therefore, expressly within the exception of the 2d section of the act.

Upon these principles, the decree of the court below is founded, and if the court is now to form an equitable adjustment of the contract, it cannot be formed on surer ground than the intentions of the parties themselves, deliberately entered into, with a full knowledge of all the circumstances, and without even an allegation of fraud, mistake or accident.

In *reply*, it was observed, that the nature of the consideration makes no difference. The case is not varied, whether the consideration be a horse or land; or the use of a horse, or the use of land; or whether an annuity for ever be granted in consideration of 1000*l.* paid in hand, or whether it be a perpetual rent.

*If the deed did not create a debt, yet it created a contract. It contains a covenant on the part of Faw to pay, every year, 26*l.* Virginia currency. This is a contract obligatory upon him, without enjoyment.

The intention of the parties has been resorted to. That intention can be learned only from the instrument itself. But if we do resort to extraneous evidence, it appears, that current money was intended, and that paper money was most naturally within the contemplation of the parties, because there was little specie in circulation. The law was intended to carry into effect the intention of the parties.

It has been said, that the consideration must be a past, and not an accruing consideration. But here the consideration was past. The grantor had parted with his whole right and estate. In an action of debt, for rent, upon a demise by deed, it is not necessary to aver occupation and enjoyment. The deed itself is the consideration.

February 14th, 1804. MARSHALL, Ch. J., after stating the facts of the case, delivered the opinion of the court.

This suit was instituted to recover the rent in arrear, under the deed, executed in August 1779, a part of which rent had accrued during the circulation of paper money. The circuit court decreed that the rents which became payable in the years 1780 and 1781 should be adjusted by the scale of depreciation, when they respectively became due, and that the rents accruing afterwards should be discharged in specie. From this decree, Faw appealed to this court, and it is alleged, that the decree of the court below is erroneous, because, 1st. The contract of August 1777, is within the 2d section of the act of the Virginia assemby, which has been cited. And, if so, *2d. That it is not within the 5th section of that act. [*23

The descriptive words of the act of assembly are, "all debts and contracts entered into, or made, in the current money of this state, or of the United States," "now remaining due and unfulfilled, or which may become due, at any future day or days, for the payment of any sum or sums of money." These words, it is urged, comprehend in express terms the very contract now before the court. That contract is an engagement entered into within the time specified by the act, to pay several sums of current money in future. To make the case still stronger, contracts for gold and silver coin, tobacco or any other specific property, are expressly excepted out of the operation of the law. When those who introduced these exceptions were so very cautious, as expressly to take a contract for tobacco, or other specific property, out of the operations of a law made solely for money contracts, there are additional inducements to believe, that every possible contract, not included within the exceptions, was designed to be comprehended in the general rule.

It is admitted in argument, by the counsel for the appellee, that the terms used in the first part of the section are such, that if they stood alone, they would include, in their letter, the case at bar: but it is contended, that there are subsequent words which limit those just quoted, so as to restrain their operation to contracts capable of being extinguished. These words are, that upon payment of what was the value of the debt or contract, at the time it was entered into, "the debtors or contractors shall be for ever discharged of and from the said debts or contracts." These words, it is

said, can only apply to temporary contracts, such as may be completely fulfilled, and from which the debtors or contractors may, in the language of the law, "be for ever discharged."

It will not be denied, that there is much weight in this argument; but it does not appear to the court, to be strictly correct. In searching for the literal construction of an act, it would seem to be generally true, that positive and explicit provisions, comprehending in terms *a whole class of cases, are not to be restrained, by applying to those cases an implication drawn from subsequent words, unless that implication be very clear, necessary and irresistible. In the present case, the implication does not appear to the court to be of that description. A contract for the payment of distinct sums of money, at different periods, is very much in the nature of distinct contracts. An action of debt lies for each sum, as it becomes due, and when that sum is paid, the debtor or contractor is for ever discharged from the contract to pay it. To understand, in this sense, the words of the act which are considered as restrictive, does not appear to the court to be such a violence to their natural import as to be inadmissible; and to understand them in this sense, reconciles the different parts of the clause with each other.

*24]

But although the counsel for the appellee may not have established the literal construction for which they insist, yet so much weight is admitted to be in the argument, that if they succeed in showing the case to be out of the mischief intended to be guarded against, or out of the spirit of the law, the letter would not be deemed so unequivocal as absolutely to exclude the construction they contend for.

It is urged, that the mischief designed to be guarded against, is confined to temporary contracts, and that by the spirit of the law, and the construction it has received, the time when the consideration, on which the debt is founded, moved from the creditor, is the real date of contract. But the court perceives no sufficient ground for saying that this case is taken out of the mischief or spirit of the law, by either of the circumstances which have been relied on.

The only real reason for supposing that the law might not be designed to comprehend interminable contracts is, that as paper money must unavoidably cease to circulate, during the continuance of the contract, the parties must have measured their agreement by a more permanent standard. *Very great respect is certainly due to this argument, but it cannot be denied, that an agreement, which is to subsist for a very great length of time, as for a thousand years, would be entered into with precisely the same sentiments as an agreement to subsist for ever. The contracting parties would be as confident, in the one case, as in the other, that the agreement would subsist, after the paper currency would cease to circulate. Yet an agreement for a thousand years would be within the very words and the spirit of the law, which plainly comprehends engagements for different sums of money, to become due in future, at different periods. To suppose a distinction to have been contemplated between two such cases, is to suppose a course of reasoning too unsubstantial, and too finely drawn for the regulation of human action. It seems to be the date, and not the duration of the contract which was regarded by the legislature. The act is applied directly to the date of contract, and the motive for making it was, that contracts en-

*25]

tered into during the circulation of paper money, ought in justice to be discharged, by a sum differing in intrinsic value from the nominal sum mentioned in the contract, and that when the legislature removed the delusive standard, by which the value of the thing acquired had been measured, they ought to provide that justice should be done to the parties.

That the time when the consideration was received constitutes the date of contract, according to the intention of the act, seems not to be a correct opinion; nor, if correct, would it affect the present case. If for example, a contract had been entered into, in 1779, to be executed in 1789, whereby a specific sum in current money was to be given for property, then to be delivered, no doubt would be entertained, but that the case would come within the law, although the thing sold would pass out of the vendor, after the first of January 1782; yet the contract to pay the money was entered into in 1779, and in the general legislative view of the subject, the value of the money at the date of the contract is supposed to have regulated the price of the article.

*If, in the case of rents, this argument of the counsel for the appellees was correct, it would follow, that rents accruing during the circulation of paper money, or leases made before the first of January 1777, were within the operation of the act. If enjoyment is the consideration for which the rent becomes payable, and the date of the consideration is, in the spirit of the act, the date of contract, then, rents accruing between the first of January 1777, and the first of January 1782, or leases made prior to the former period, would be payable according to the scale of depreciation, and rents accruing after the first of January 1782, or leases made for a short term of years, when depreciation was actually at the rate of 500 for one, would be payable in specie at their nominal sum. These consequences follow inevitably, from the construction contended for, and yet it is believed, that no person would admit an exposition which he acknowledged to involve them. [*26

The position, then, that the value of the money at the time when the consideration for which it was to be paid was received, is the standard by which the contract is to be measured, is not a correct one, and if correct, it would not apply to this case, because the real consideration is found in the contract itself, by which the right to enjoy the premises is conveyed from the grantor to the grantee. This right was defeated by subsequent events, but does not originate in those events.

The case cited from 1 Wash. 8, by no means conflicts with this opinion. In that case, it was decided, that where a written instrument discloses on its face any matter which proves that the contract itself was of a date anterior to the paper by which it is evidenced, as when a bond carries interest from a past day, the contract shall be considered as of a date antecedent to its execution, and the scale of that antecedent date shall be applied to it. The reason of this decision is, that the price of the article sold was measured in nominal money, according to its value at the date of the original contract, and not according to its value when the instrument of writing was executed.

*It is, then, the opinion of the court, that the contract of the 5th of August 1779, comes within the second section of the act "directing the mode of adjusting and settling the payment of certain debts and contracts, and for other purposes." [*27

It remains to inquire, whether it is a case proper for the interposition of

that equitable power which is conferred on the court by the fifth section of that act, and if so, in what manner, and to what extent, that power ought to be interposed. It is contended by the counsel for the appellant, that this case does not come within the fifth section of the act, becanse, 1st. That section is designed only for the benefit of debtors. 2d. No testimony out of a written contract can be admitted to explain it. 3d. If the testimony be admitted, it does not prove one of those extraordinary cases which will be entitled to the benefits of that section.

1st. The fifth section is designed only for the benefit of debtors. That the provisions of an act, for the regulation of contracts, should be designed uniformly to benefit one of the parties only, is at first view a proposition replete with so much injustice, that the person who would maintain it must certainly show, either that the words of the act will admit fairly of no other construction, or that legislative aid on one side only was requisite, in order to do right between the parties. The counsel for the appellants endeavor to maintain both these propositious, and if they succeed in either, the case is clearly with them.

In reasoning from the words of the law, they say, that the two cases put *28] are by way of example, and as *they are both cases where the scale established by the act is to be departed from, for the benefit of the debtor, the general power afterwards given to the court ought to be considered as designed to furnish a remedy in other similar cases, not occurring at the time to the legislature. The words of the section are, "that where a suit shall be brought for the recovery of the debt, and it shall appear, that the value thereof hath been tendered and refused; or where it shall appear that the non-payment thereof hath been owing to the creditor; or where other circumstances arise, which, in the opinion of the court before whom the cause is brought to issue, would render a determination agreeable to the above table unjust; in either case, it shall and may be lawful for the court to award such judgment as to them shall appear just and equitable."

The terms used in the third member of the sentence are certainly very comprehensive, and their general natural import does not appear to be so restrained by their connection with other parts of the section, as necessarily to confine their operation to cases where debtors only can derive advantage from them. The legislature was performing a very extraordinary act. It was interfering in the mass of contracts entered into between the first of January 1777, and the first of January 1782, and ascertaining the value of those contracts by a rule different from that which had been adopted by the parties themselves. Although the rule might, in the general, be a just one, yet that it would often produce excessive injury to one or other of the parties, must have been foreseen. It was, therefore, in some measure necessary to vest in the tribunals applying this rule a power to relax its rigor in such extraordinary cases. This sentiment might produce the fifth section, and if it did, the general terms used ought to be applied to the relief of the injured party, whether he was the creditor or the debtor.

The opinion that the creditor could not, in the contemplation of the legislature, be the injured party, because *the scale of depreciation gave *29] him the full value of his contract, does not seem to be perfectly correct. According to the law of the contract, all moneys accruing under it, which were not received during the currency of paper, would be payable in

such other money as might be current at the time of payment. It is impossible to say, by any general rule, what influence the knowledge of this principle might have on the parties, in every case where the contract was continuing, and was to be fulfilled at future very distant periods. Unless the rule applying to such cases possessed some degree of flexibility, it is apparent, that the one or the other of the parties would often be injured, by the interference of the legislature with their contract, and this injury would most generally be sustained by the creditor, in all cases like that at bar, because, in all such cases, the conviction that a more valuable medium than that circulating at the time would return during the continuance of the contract, must have had considerable influence on the parties, in fixing the sum of money agreed to be paid.

There appears, therefore, nothing in the state of the parties to be affected by the fifth section of the act, which should prevent its application, either to creditors or debtors, as the real justice of the case may require.

2d. But admitting the correctness of this opinion, it is contended, that no circumstances can be given in evidence, to explain a written contract, and therefore, it is said, that the judgment of the court in this case must be governed absolutely by the deed of August 1779, unless other subsequent and independent events should control that deed.

The rule which forbids a deed to be contradicted or explained by parol testimony, is a salutary one, and the court is not disposed to impair it. The application of that rule to this case, however, is not perceived. The testimony which brings this contract within the fifth section, neither contradicts nor explains the deed. It is not pretended, that the deed was not executed on the consideration expressed on the face of it. But according *to the law which existed when the deed was executed, that consideration would be payable only in gold and silver coin, when gold and silver coin should become the only currency of the country. The law changing the nominal sum of money by which the debt should be discharged, and giving a general rule by which a different sum, from that agreed on by the parties, is to be paid and received, authorizes a departure from the rule, where circumstances shall arise which render a determination agreeable to it unjust. The examination of these circumstances is not entered into for the purpose of contradicting or explaining the deed, but for the purpose of determining which of two rules given by the statute altering the law of the contract does really govern the case. [*30

The argument that the exception, if it receives the construction which the court seems inclined to give it, would destroy the rule, must be founded on a supposition that in every case, the circumstances would be looked into, and a slight injustice in the application of the scale of depreciation to the contract, would be deemed a sufficient motive for departing from it. But this is not the opinion of the court, and it may very readily be perceived, that the great mass of contracts made during the circulation of paper money, may be decided by a general scale estimating the value of those contracts, although there may be very strong features in some few cases, which distinguish them as of such peculiar character, that they are embraced by the clause which measures their value by the standard of justice.

3d. But although the just construction of the 5th section of the law admits a creditor, who would be greatly injured by the application of the general

rule to his case, to show circumstances which authorize a departure from that rule ; it is contended, that such circumstances have not been shown in the cause under consideration. It is said, that the case ought to be an extraordinary one ; that the circumstances ought to be uncommon, which would warrant a departure from the general principle established for the government of contracts generally.

*31] *This is true, and the court would certainly not feel itself at liberty to exercise, on a common occasion, a discretionary power, limited only by the opinion entertained of the naked justice of the case. But this appears to the court to be an extraordinary case. The evidence goes a great way in proving that the parties to the contract believed that the sums becoming due under it, would at no distant period be payable in specie only. This testimony is the more to be credited, because it is not easy to conceive any other motive for disposing of the property on the terms on which it was parted with ; and still more, because such was the operation of the existing law on the contract, when it was entered into. Under this impression, an impression warranted by the law of the land, a very valuable property has been conveyed away for what would have been, under the then existing law, a full consideration, but which a subsequent act of the legislature has reduced certainly to a tenth, perhaps to a twentieth, of the real value of the estate disposed of. Such a case is, in the opinion of the court, an extraordinary case, which is completely entitled to the extraordinary relief furnished by the act which has occasioned the mischief.

In inquiring to what extent this relief ought to be afforded, or, in the words of the law, what "judgment will be just and equitable," the court can perceive no other guide by which its opinion ought, in this case, to be regulated, but the real value of the property at the time it was sold. The record does not furnish satisfactory evidence of this value. It is proved, that a lot not superior to that which occasioned the present contest, rented in the year 1774, for 13*l.* 5*s.* per annum, and that other lots, perhaps not equal to it, rented in 1784, for 25*l.* per annum. It is even proved, that a small part of the very lots, about the value of which the inquiry is now to be made, rented in the year 1784, on a ground-rent for ever, for 25*l.* 16*s.* per annum. These are very strong circumstances in support of the decree of the circuit court, *32] fixing the rent at 26*l.* per annum, *the nominal sum mentioned in the lease. But a majority of the judges are of opinion, that the value must be ascertained by a less erring standard.

Neither the value in 1774, nor in 1784, ought to regulate the rent. The value at the date of the contract must be the sum which in equity and justice the lessee ought to pay, and as this value is not ascertained by the testimony in the record, it ought to be found by a jury. In finding this value, however, the jury ought not to be governed by the particular difficulty of obtaining gold and silver coin at the time, but their conduct ought to be regulated by the real value of the property, if a solid equivalent for specie had been made receivable in lieu thereof. On these principles, the court has directed the following decree :

This cause, which was abated by the death of the appellee, and was revived in the name of his administrator, came on to be heard on the transcript of the record, and was fully argued by counsel. On consideration whereof, the court is of opinion, that there is error in the decree of the circuit court in

this; that the rents reserved in the lease in the proceedings mentioned, bearing date the 5th day of August, in the year of our Lord, one thousand seven hundred and seventy-nine, and which were in arrear and unpaid, were decreed to be paid at their value according to the scale of depreciation when the same became due; and that those rents which accrued after the first of January 1782, are decreed to be paid according to the nominal sum mentioned in the lease; whereas, the annual rent reserved in the said lease ought to be reduced to such a sum in specie, as the property conveyed was, at the date of the contract, actually worth; to ascertain which, the evidence of the cause not being sufficient for that purpose, an issue ought to have been directed, according to the verdict on which, if satisfactory to the court, the final decree ought to have been rendered.

This court is, therefore, of opinion, that the decree rendered in this cause in the circuit court for the county *of Alexandria, ought to be reversed, [*33] and it is hereby reversed and annulled; and the court, proceeding to give such decree as the circuit court ought to have given, doth decree and order, that an issue be directed between the parties, to be tried at the bar of the said circuit court, in order to ascertain what was the actual annual value in specie, or in any other money equivalent thereto, of the half-acre lot of ground which was conveyed, by the executors of John Alexander, deceased, to Abraham Faw, on the 5th day of August 1779, and that in the account between the parties, in order to a final decree, the representatives of said Philip Marsteller be allowed a credit for the rent which has accrued, and which remains unpaid, estimating the said annual rent at such sum as the verdict of a jury, to be approved of by the said circuit court, shall ascertain the half-acre lot of ground before mentioned to have been fairly worth, at the date of the contract under which the same is claimed by the said Abraham Faw.

Ogle *v.* Lee.

Certificate of division.—Error to final judgment.

If a question upon which the judges below differ in opinion be certified to this court, and here decided, the parties are not precluded from a writ of error on the final judgment, when the whole cause will be before the court.

This cause came up to this court, upon a question on which the opinions of the judges of the Circuit Court were opposed.

It was made a question, whether this court would consider the whole case, or only the question upon which the court below divided.

The Court were unanimously of opinion, that they could only consider the single question upon which the judges below divided in opinion;[1] but that the parties will not be precluded from bringing a writ of error upon

---

[1] If the whole case be sent up, the cause will be remanded. Saunders *v.* Gould, 4 Pet. 392; Harris *v.* Elliott, 10 Id. 25: Adams *v.* Jones, 12 Id. 207; Dennistoun *v.* Stewart, 18 How. 565; Daniels *v.* Rock Island Railroad Co., 350. Neither can the whole case be broken up into points, some of which may never arise. Nesmith *v.* Shelden, 6 How. 41; Luther *v.* Borden, 7 Id. 1; Webster *v.* Cooper, 10 Id. 54. But see United States *v.* Chicago, 7 Id. 185.