Statement of the case.

BRONSON *v.* RODES.

1. A bond, given in December, 1851, for payment of a certain sum, in gold and silver coin, lawful money of the United States, with interest also in coin, at a rate specified, until repayment, cannot be discharged by a tender of United States notes issued under the Loan and Currency Acts of 1862 and 1863, and by them declared to be lawful money and a legal tender for the payment of debts.
2. When obligations made payable in coin are sued upon, judgment may be entered for coined dollars and parts of dollars.

ERROR to the Court of Appeals of the State of New York.

The facts shown by the record were these:

In December, 1851, one Christian Metz, having borrowed of Frederick Bronson, executor of Arthur Bronson, fourteen hundred dollars, executed his bond for the repayment to Bronson of the principal sum borrowed on the 18th day of January, 1857, *in gold and silver coin*, lawful money of the United States, with interest, also in coin, until such repayment, at the yearly rate of seven per cent.

To secure these payments, according to the bond, at such place as Bronson might appoint, or, in default of such appointment, at the Merchants' Bank of New York, Metz executed a mortgage upon certain real property, which was afterwards conveyed to Rodes, who assumed to pay the mortgage debt, and did, in fact, pay the interest until and including the 1st day of January, 1864.

Subsequently, in January, 1865, there having been no demand of payment, nor any appointment of a place of payment by Bronson, Rodes tendered to him United States notes to the amount of fifteen hundred and seven dollars, a sum nominally equal to the principal and interest due upon the bond and mortgage. These notes had been declared, by the acts under which they were issued, to be lawful money and a legal tender in payment of debts, public and private, except duties on imports, and interest on the public debt.*

* See the history of these notes, and of the acts under which they were issued, particularly set out in the opinion of the Chief Justice, in Lane County *v.* Oregon, *supra*, pp. 74–5.

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Argument for payment in coin.

At the time of the tender by Rodes to Bronson, one dollar in coin was equivalent in market value to two dollars and a quarter in United States notes.

This tender was refused; whereupon Rodes deposited the United States notes in the Merchants' Bank to the credit of Bronson, and filed his bill in equity, praying that the mortgaged premises might be relieved from the lien of the mortgage, and that Bronson might be compelled to execute and deliver to him an acknowledgment of the full satisfaction and discharge of the mortgage debt.

The bill was dismissed by the Supreme Court sitting in Erie County; but, on appeal to the Supreme Court in general term, the decree of dismissal was reversed, and a decree was entered, adjudging that the mortgage had been satisfied by the tender, and directing Bronson to satisfy the same of record; and this decree was affirmed by the Court of Appeals. The case was now brought here by Bronson for review.

Mr. C. N. Potter, for the plaintiff in error; a brief being moreover filed at the last term (when the cause was ordered to stand continued for reargument at this) by Mr. J. J. Townsend.

Assuming, for the purpose of this discussion, that Congress had power to declare treasury notes a legal tender in payment of private debts, the question, whether a promise to pay a certain number of specie dollars, can be discharged by a tender of the stipulated number of treasury-note dollars, seems to depend upon whether there be, *in fact*, legal-tender dollars of different actual values; and if so, whether courts are prevented, either by positive enactment or public policy, from recognizing this existing fact.

1. As a matter of fact, there are four legal-tender dollars of different value:

1. The gold dollar, coined *since* 1834, of the value of 100 cents (meaning by a cent, 1-100th of a gold dollar of that coinage).
2. The gold dollar, coined *before* 1834, of the value of 106 of the same cents.

3. The silver dollar, now of the value of 103 of the same cents.
4. The treasury-note dollar, now (December, 1868) of the value of 75 of the same cents.

These differences in the value of the coin dollars were not the result of a design by government to coin dollars of different values; but were the result of changes in the relative values of gold and silver.

Now, if the existing differences between these "dollars" can be regarded, let us consider the effect of contracts made with reference to such differences.

2. Although these dollars are not equal in actual value, yet, as each is a "dollar," it can, *therefore*, be used to discharge contracts payable simply in "dollars," *because it complies with the terms of the contract.*

When a man lends money, payable merely in "dollars," he must receive payment in whatever the law may declare to be "dollars" when the contract is enforced. So, if a man were to contract to deliver one thousand barrels of apples, a delivery of so many barrels of merchantable apples—whether pippins, greenings, or other variety of apples—would meet the terms of the contract and satisfy it. But where, in fact, different varieties of one article exist, and the parties contract for the delivery of a particular variety, such a contract is not satisfied by the delivery of an inferior variety of the same article. Therefore, if A. were to contract to deliver B. one thousand barrels of "pippins," he could not meet that obligation by tendering one thousand barrels of inferior fruit. Both the pippin and the greening are apples, and each is good to meet a contract payable generally in "apples." But the greening is not the equal of the pippin. In no proper sense whatever is it of the same legal value; since a portion only of the latter may be sold or exchanged for enough of the former to meet the contract.

Upon the principle, then, of having respect first "to that which is agreed, which is the very basis and foundation of law," and protected by the fundamental law itself, a man who has contracted to deliver one thousand gold dollars of

the coinage prior to 1834, should not be allowed to discharge his obligation by the tender of a thousand gold dollars of the present coinage (worth only nine-tenths of the other) — *unless, indeed*, there be some positive enactment, or some public policy to oblige the court to regard these things, unequal in themselves, as equal in law; nor, having agreed to pay one thousand specie dollars generally (which gives him the choice of coinage), should he be allowed to meet his obligation by the tender of one thousand dollars in paper notes, worth nearly a third less than the same sum in coin.

We have, therefore, to inquire whether parties are prevented from contracting with reference to, or courts are prevented from recognizing, this difference in the actual value of the dollars that government has put out. When the law declared the treasury notes "lawful money and a legal-tender," did it mean that a treasury-note dollar should be a lawful dollar, and so meet all contracts payable generally in "dollars;" or did it further mean that it should be taken and deemed not only as a dollar, but as the equal of the coined dollars?

3. No value has been prescribed for the treasury-note dollar by statute; nor is there anything in the law to prevent private parties from contracting with reference to the actual existing difference in value of the different dollars.

Assuming that Congress had power to pass such a law, it might have declared, not only that treasury notes should be legal dollars, but that in law they should have the same value as coin dollars; and then, in the eye of the law, the paper would have to be regarded as equal to the coin, and by a legal fiction the court would be forced to treat the less and the greater as equal.

But Congress has not so legislated. It has simply declared that the treasury note shall be a legal tender in payment of debts as a "dollar." As such, it is efficacious to satisfy all debts, according to the amount of the debts, estimated in dollars. But estimated in which dollars? Estimated in the legal dollar of least value; for it is in that

dollar that debts are always computed, since the debtor has the option to pay the debt in such dollars of least value.

There was, indeed, no occasion for legislation, fixing the value of the treasury-note dollar; but the contrary. Probably, not the ten-thousandth part of the debts due in the country, was due in any particular specified dollar, but only in "dollars" generally; and every possible advantage or credit which could be conferred on government paper was given it, by enabling it to meet obligations payable in "dollars" generally, in which the great mass of the engagements of the country were expressed.

4. Congress by its legislation, and the government by its practice, have uniformly recognized the difference in value between the coin and paper dollar.

As to the legislation of Congress: The Legal Tender Act itself discriminates (§ 1), against the treasury-note dollar for the payment of duties.

So, subsequent legislation. The act of March 17, 1862, authorized the purchase of coin with treasury notes on the most advantageous terms. The act of June 17, 1864, declared that thereafter loans of coin should not be made *unless made payable in coin;* thus assuming the legality of all coin loans. The act of March 10, 1866, required all returns of income to state whether made in legal tender currency or coin; and if in coin, then the assessor was to increase the assessment to the equivalent income in paper. The act of March 10, 1866, chapter xv, § 4, assumed loans of coin to be valid; and the various acts of 1861–2 authorized loans, some to be paid specially in coin, and others not.

As to the practice of the government: The government has some loans payable specially in coin and others payable in lawful money generally; it borrows coin to be repaid in coin, and treasury notes to be repaid in treasury notes. It daily issues bills, checks, and obligations payable in "gold" and payable in "dollars" simply, *i. e.*, in currency. It keeps its accounts of specie and currency distinct and reports each separately. It sells commodities for coin only, and buys and sells coin for currency. It estimates taxes on sales of

gold according to the market value of the gold. In all returns of taxes and income it requires coin to be turned into the equivalent currency. It taxes all legacies of coin at their equivalent in currency, and receives only coin for duties.

5. There is no reason or warrant for holding the different dollars of equal value in law; nor for refusing to recognize the actual existing difference in their values.

If the greater and the lesser dollars are to be regarded as of the same value in law, what *must* follow?

A. lends B. £1000 sterling, worth to-day $7000 in treasury-note dollars. By this doctrine he can recover for his £1000 only $4844.

A. dies, leaving among his effects 100,000 gold dollars. His administrator takes them, exchanges them for 200,000 treasury-note dollars, distributes to A.'s heirs in treasury notes, one-half of this sum, and pockets the residue.

An army officer seizes 100,000 gold dollars as enemy's property, exchanges it for 200,000 treasury-note dollars, and accounts to his government for only 100,000 of these dollars, and retains the residue for himself.

I deliver $10,000 in coin to a carrier. He may sell the coin for $14,000 of treasury notes, tender me $10,000 of these notes, and so discharge himself and keep the balance.

I deposit $10,000 in coin for safe keeping with my banker. I go for it next week, and if he pleases, I must be content to take $10,000 of treasury notes.

My broker collects my government coupons in gold, and, according to this doctrine, pays me the legal equivalent when he hands me over *the same nominal amount of currency dollars.*

A merchant sends his clerk with gold to pay duties, and he sells it, keeps the premium, and returns you the like sum in treasury notes, and you must rest satisfied.

And then, finally, as you must pay your duties in coin, you sell your goods at a reduced price for coin; and the buyer takes them and counts you out the reduced price in treasury notes.

And so on indefinitely, through all the transactions of life.

Of course, such monstrous injustice is appalling. It is so obviously against, instead of for, public interest and policy, that counsel will endeavor to distinguish between the rule for torts and contracts. This reluctance, however, to carry out to its logical results the notion that "the policy of the law requires the courts to insist upon the fiction of the equality of dollars," only indicates the fallacy of the notion.

6. The true object and policy of the law is to recognize the actual differences which exist between the different dollars.

The debts of the country were, with scarcely an exception, at the time the Legal Tender Act was passed, payable in "dollars" simply, *i. e.*, in what the law might determine to be dollars. To make treasury notes "dollars," and thus meet those debts (and dues to the government), was to give these notes every possible value and create for them every possible demand, while violating no contract and establishing no forced valuation. Once issued, it was unavoidable that men should contract, deal, and compute with reference to the actual available value of these notes; and, to have attempted to prevent this by insisting that this treasury-note dollar should be deemed equal to the coin dollar, was to repeat a legislation which has always failed, and to have decreed a forced circulation and valuation which would have jeoparded the credit of the country and the chances of its new financial plan.

7. These different dollars are not made of the same value by calling them by the same name.

The confusion about this question arises from treating *different things as the same thing because they are called by the same name;* and from failing to bear in mind that, in estimating what should be paid in articles of different value but having the same name, the estimate should always be made in the variety *of least value, since in that the recovery may be discharged.*

The fallacy of confounding the distinctions between dollars consists in assuming that because they are equally good for a certain and most important purpose (that of meeting contracts payable in dollars generally), they are therefore

the equivalent of each other. A debt is the amount due in "dollars" merely; the treasury note meets the debt because it is a dollar, not because it is the equal of a coin dollar; because it is one of the class that the contract calls for, and thus comes up to the contract, not because it is the equal of the best of its class. On a debt of one hundred gold dollars, and one hundred lawful dollars, the same amount is not now due; the same number of dollars is due, but not of the same kind. Just as a dozen large eggs and a dozen small ones are equally good to meet an agreement to deliver eggs simply. Both are eggs, but not therefore in all respects of equal value, for only the one will satisfy a contract for large eggs.

8. But even if the different dollars were of the same intrinsic value, parties should be left at liberty to discriminate between them.

Why should not parties be at liberty to discriminate and contract with reference to a difference between the coined and paper dollar, even if they were of the same *intrinsic* value? We frequently hear of sales of Washington cents, and of dollars of certain years' coinage, at very high prices. It was never suggested before the Legal Tender Act that such sales were not legal, and that if a man agreed to pay fifty dollars for one dollar of the coinage of the year 1808 he should not pay it.

So, at times when gold is being shipped abroad, double eagles will command a premium over smaller gold coins, because of the greater facility with which they may be counted, handled, and packed. But it has never been suggested that an agreement to pay a premium for double eagles, although the payment was in coins of intrinsically the same value, could not be enforced, for the reason that "the law cannot permit a discrimination between the different dollars, without allowing its authority to be annulled."

9. The true meaning of an obligation to pay "one thousand dollars in gold" is, that the debtor will pay *one thousand gold dollars;* not so much gold as equals one thousand lawful, *i. e.*, treasury-note dollars.

Argument for payment in notes.

10. The weight of authority is *now* in favor of the recognition by the courts of the existing distinction in value between the different dollars. [The counsel here cited numerous authorities, many not yet regularly reported, and given therefore from law periodicals, newspapers, MSS., etc.]

11. Congress has no power to restrain private citizens from contracting with reference to the dollars it puts forth; nor to prohibit the State courts from giving effect to contracts in respect of such difference.

Mr. S. S. Rogers, by brief filed, contra; Mr. Rogers filing with his brief the opinions of Daniel, J., of the Supreme Court of New York, and of Smith, J., of the Court of Appeals; both largely quoted in the argument.

The different acts of Congress, under which the treasury notes in question were issued, declare that they "shall be lawful money and a legal tender in payment of all debts, public and private, within the United States, except for duties on imports and interest on the public debt."* Since the organization of the General Government, Congress has been in the habit of prescribing the combinations and weights of the gold, silver, and copper coins, issued by virtue of its authority, and of declaring the extent to which they could be lawfully tendered in payment of debts. The composition and weight of the coins issued have not been entirely uniform, and owing to that circumstance not of the same intrinsic value, but still Congress has declared them to be of the same legal or nominal value of those coins possessing greater intrinsic value, though limiting the extent to which they might be used as lawful tender for the payment of debts. In 1834, when an act was passed providing for the composition and value of gold coin, it was declared that such coin should be receivable in all payments, when of full weight, according to their respective values.† And in 1837 the act declaring the composition and weight of silver dollars, half

* 12 Stat. at Large, 345, § 1, 532, § 710, § 3.

† 4 Stat. at Large, 699, § 1.

dollars, quarter dollars, dimes and half dimes, provided that they should be legal tenders of payment, according to their nominal value, for any sums whatever.* But three-cent pieces, afterwards provided for, were declared a legal tender in payment of debts only to the amount of thirty cents and under.† And when, without changing the composition of the metals, the weight of the silver half dollar, quarter dollar, dime and half dime, was reduced, their use as a lawful tender for the payment of debts was limited to sums not exceeding five dollars.

These statutes, together with the others relating to the same general subject, show that the gold and silver coin of the United States are not necessarily intrinsically worth their nominal values, but are made to bear a conventional value by the force of legislation. And in the exercise of its sovereign authority over this subject, Congress, under its constitutional right "to coin money, regulate the value thereof, and of foreign coin,"‡ has the power of still further debasing the coins of the country, or reducing their weight, or of doing both, as it may deem just and proper. Such debased coin would be, of course, a legal tender for the payment of all debts within the United States.

For the purpose of the present case, the existence of a power in Congress under the Constitution, to make government notes a legal tender for the payment of debts is conceded. The question is whether, assuming that the "legal tender acts" are valid, an obligation to pay so many dollars in gold or silver can be discharged in the notes issued under those acts?

The statutes defining the extent to which the coin and treasury notes of the United States may be rendered available as a tender for the payment of private or individual debts, in no manner discriminate between them, except so far as the amounts that may be so used. Of the silver coins provided for by the acts of 1851 and 1853 the amount is limited. As to these, the limitations imposed are that three-

* 5 Stat. at Large, 137, § 9. † 9 Id. 591, § 11. ‡ Art. 1, § 8, sub. 5.

cent pieces shall not be lawful tender for an amount exceeding thirty cents, and the half and quarter dollars, dimes and half dimes, to an amount exceeding the sum of five dollars. No such limitation, nor any other whatever as to debts between individuals, is placed upon treasury notes. They are made a legal tender in payment of all debts, according to their nominal value. This is complained of as an arbitrary exercise of authority. But it is the same in principle, though it may, from the manner of its use, be different in degree as that which fixes and declares the value of gold and silver coin. In that case, it is not the commercial value of the article which alone determines its value as money, though that undoubtedly is an important element entering into the adjustment of it. But its value as money is determined by the legislative power of the country. That power declares that certain quantities of gold and silver metal, alloyed, moulded and stamped in the manner in which it provides, shall have a certain commercial value, which is ordinarily less than the real value of the weight and quality of the metals used. Under the exercise of that power, the coin acquires a greater value as money than it possesses as a marketable commodity.

The same power is used, though it may be differently derived, which declares and impresses treasury notes with the value they purport to have upon their face. These notes are not deprived of intrinsic value, for they were issued upon the credit of the government, and have the good faith and responsibility of all the people pledged for their redemption. The conviction of that being the case, though not perhaps one quite as tangible to the senses, should be an assurance of actual value for them, equal to that created by the intrinsic value of gold and silver. It was not a mere arbitrary value, therefore, which Congress provided these notes with, but one of an actual value, which at no remote day will extinguish the obligations they create with gold and silver coin.

That this value has been depreciated is true, but this has been done without diminishing the obligation of the paper, and done also in the face of what may be called a certainty

of its final redemption. It is not paper alone of this description that is liable to depreciation. For whenever the value of property is inflated or reduced, that of gold and silver coin is also correspondingly diminished or increased. Changes of this nature frequently occur in all countries engaged in trading or commercial pursuits. On this account, debts contracted when the prices of property are unusually stimulated, are paid with greater difficulty and by greater sacrifices after such prices have receded, while those contracted when such prices are low, are more easily paid, and with less sacrifice of property after those prices have again advanced. In one case, the debtor actually pays less to extinguish the same debt, than is required for the same purpose in the other, though the actual amount of money used is the same in both. Yet coin, through all the commercial changes it may pass, retains the legal value impressed upon it under the authority of the government, even though the holder of it may be unable to obtain half as much with it at one time as he could at another. Treasury notes do the same. The law has impressed them with a legal value equal with that of gold or silver coin of the same denominations for the purpose of paying individual debts with them, and it cannot permit a discrimination against them, in favor of gold and silver, without allowing its authority to be substantially annulled. However the fact may be as to the value as a mere commodity, a treasury note for the sum of one dollar is as completely a legal dollar as a piece of metal of a certain weight and quality, impressed as the law directs, is a legal dollar. The one is no more so than the other for purposes for which the laws have declared them to be of equal value. Where those laws are supreme, that value must be observed and secured by courts of justice, for such courts are required to execute and carry the laws into effect as they are found, without endeavoring to accommodate them to the accidental or premeditated depreciations produced in the currency of the country by the tricks and devices of brokers.

It will be said that this view of the case is unjust to the creditor. But it is not so, unless the interests of creditors

are more to be regarded than the rights of debtors, and are paramount to even the vital needs of the government. It is well understood that in the case of a contract for the future delivery of a commodity of a stipulated quantity and quality, each party takes the risk of a rise or fall in its market value. So, in the case of a contract for the payment of a specified sum, in money, at a future day, each party takes a risk; the debtor, of an appreciation of the currency, the creditor, of its depreciation. It is immaterial whether the change in the value of the currency is caused by the operation of uncontrollable monetary laws, or by the direct exercise of the sovereign power of the government. In either case, it is within the risk. In the extreme peril which threatened the United States in 1861, it was impossible to procure the thousands of millions of dollars needed, at the instant, as it were, to suppress the rebellion and preserve the Federal government, without adopting some measure which would largely disturb all commercial values, by either raising or lowering the purchasing value of the currency, and thus bearing with severity upon either the creditor or the debtor class. The choice of measures, within the warrant of the Constitution, rested with the government itself. The parties to the mortgage in this case, must be presumed to have contracted in full knowledge that Congress had power to authorize the issuing of paper money, and to declare it a lawful tender in payment of pre-existing debts, as they did by the act of 1862, and also to have known that such power of Congress could not be restricted, hampered or evaded by a stipulation in the contract, making the debt payable in metallic money. If by that legislation the value of the creditor's claim has been reduced, the same effect might have been caused, and to the same extent, without the agency of paper money, by simply debasing the gold and silver coin of the country to a sufficient degree, a measure as we have already said unquestionably within the power of Congress. A tender in such debased coin would have been a literal compliance with the contract, upon the defendant's own construction, but it would have been no better for him than was the tender which he refused.

Argument for payment in notes.

The case of an agreement made since the act of 1862 for the payment of a specified sum *in coin*, in consideration of a loan in coin, or upon any other equivalent consideration, and in view of the difference in *market* value existing at the time between coin and treasury notes having the same *legal* value, may differ materially from the present case. The validity of such an agreement, for some purposes at least, is distinctly recognized by the act itself, and, in many cases, contracts of that character may accord with, and even aid, the policy of the statute. But we need not discuss that case.

The next point is, whether the obligation of the plaintiff under the bond and mortgage resolved itself into a debt, so as to be brought within the operation of these laws. Under these statutes the term "debt" seems to import any obligation by contract, express or implied, which may be discharged by money through the voluntary action of the party bound. If the obligation in this case had been such as required the delivery of one thousand eight hundred gold dollars, and not as it was, to pay one thousand eight hundred dollars in gold or silver coin, it would be in no sense a debt within the contemplation of these statutes, and could not be affected by their provisions declaring treasury notes a lawful tender for the payment of debts. In the case supposed, the obligation would regard dollars, not as currency, but as articles of traffic, or commodities merely. And it could only be performed by the actual delivery of the number and kind of dollars described in it. And in case of failure to perform it, the defaulting party would be liable for whatever value they might have at that time, as distinguished from treasury notes. The damages to be recovered would be the market value of the articles agreed to be delivered. This distinguishes the case before us from the obligations of bailees, who may undertake to carry and deliver specified quantities of gold or silver coin. The obligation can be discharged only either by making such delivery or paying the value in the market of the article agreed to be delivered. The same principle would apply to the case of a person who should

unlawfully convert or appropriate the gold or silver dollars of another. But in this case no specific dollars were to be delivered by the plaintiff to the defendant. His obligation was to pay a specified number of dollars, not to deliver dollars of a specified quality. And as such, it could be extinguished by anything possessing the legal value and character of that quantity of dollars.

Any different construction would be productive of injustice, not only in this case, but in all those where the debtors had inadvertently promised payment of these debts in gold or silver. For if the creditor should be permitted to recover the market value of gold or silver, as distinguished from its legal value, he might, by recovering judgment against his debtor when the premium was the greatest, collect as much more than the real debt owing to him as that premium exceeded the market value of treasury notes. For, by holding his judgment and delaying its collection until the difference between the cheaper legal currency in which it would be payable and gold and silver entirely disappeared, it would be as easy for the debtor to pay them in the latter as it would in the former. And as he would be bound to pay in one or the other, the creditor would recover as much more than his actual debt, as treasury notes were depreciated below gold and silver when the judgment was recovered. The law intended to subject debtors to no such consequences as these.

No injustice will ordinarily result to the creditor from this construction given to the statutes and covenants in question. For although the creditor may be compelled by it to receive payment of the debt due to him in notes depreciated below their nominal value in the market, the period of that depreciation will, as we have said, soon pass over, and their actual value be restored to that of gold and silver. And at all times, even when most depreciated, they have been convertible, as all know, into the stocks of the United States, upon which the interest, and, at their maturity, the principal, were payable in coin. No persons have had less ground for complaint against treasury notes as a legal tender, than the capitalist. For though by law obliged to receive them at

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their nominal value, he had the ability to invest them for the same amount, at legal rates of interest, and when the time for their redemption arrives he has the responsibility of the government for their payment; whatever losses their depreciation may have entailed on those who received them for their labor and expended them for their sustenance, none of those losses have been borne by him, as long as the amount of his capital has continued unimpaired.

It can make no difference in the application of the rule prescribed by the statutes, that the bond and mortgage were executed before their enactment, for the rule is a general one, allowing all debts to be discharged by that which may be lawfully tendered at the time the payment of them may be made.* This principle has been applied to the payment of debts contracted before, as well as those contracted since. Treasury notes were declared by the statutes authorizing them to be a legal tender, even though the laws of the contract provided for their payment in gold and silver coin. Before the enactment of those statutes all debts were so payable, when they were not expressly agreed to be payable otherwise. And where the contract expressly rendered them payable in gold or silver, it did but duly express what the law without that as explicitly implied. Congress has intervened by means of these statutes, and for the purpose of promoting the paramount interests of the country, so far defeated the intention of the contracting parties as to allow all private debts to be paid with treasury notes. The obligation to receive them is no higher in one case than it is in another. It applies to all in the same manner. Accordingly, the Supreme Court of Iowa held that a note, dated in October, 1860, for $700, payable in United States gold, could be paid by that amount of treasury notes.† And the District Court of the County and City of Philadelphia, that a bond for twenty-eight thousand dollars, "in specie, current gold and silver money of the United States," could be dis-

* Faw *v.* Marsteller, 2 Cranch, 10.

† Warnibold *v.* Schlicting, 16 Iowa, 244.

charged by treasury notes in the same manner.* The same ruling was made by the Supreme Court of Michigan, in an action upon a bond, $500 of which was payable in gold;† by Justice Agnew, of the Supreme Court of Pennsylvania, where a rent was payable in lawful silver money of the United States of America;‡ by the Supreme Court of Massachusetts, upon a note dated in December, 1861, for $500 payable in specie;§ and by the Superior Court of New York,‖ under a charter-party made in Calcutta, by the terms of which it was payable "in silver or gold dollars, or by approved bills on London," if the cargo was unladen and delivered in the United States.

The CHIEF JUSTICE delivered the opinion of the court.

The question which we have to consider is this:

Was Bronson bound by law to accept from Rodes United States notes equal in nominal amount to the sum due him as full performance and satisfaction of a contract which stipulated for the payment of that sum in gold and silver coin, lawful money of the United States?

It is not pretended that any real payment and satisfaction of an obligation to pay fifteen hundred and seven coined dollars can be made by the tender of paper money worth in the market only six hundred and seventy coined dollars. The question is, Does the law compel the acceptance of such a tender for such a debt?

It is the appropriate function of courts of justice to enforce contracts according to the lawful intent and understanding of the parties.

We must, therefore, inquire what was the intent and understanding of Frederick Bronson and Christian Metz when they entered into the contract under consideration in December, 1851.

* Shoenberger *v.* Watts, 10 American Law Register, 553.
† Buchegger *v.* Schultz, 14 Id. 95.
‡ Schollenberger *v.* Brinton, 12 Id. 591.
§ Wood *v.* Bullens, 6 Allen, 516.
‖ Wilson *v.* Morgan, 30 Howard's Practice Reports, 386.

And this inquiry will be assisted by reference to the circumstances under which the contract was made.

Bronson was an executor, charged as a trustee with the administration of an estate. Metz was a borrower from the estate. It was the clear duty of the former to take security for the full repayment of the money loaned to the latter.

The currency of the country, at that time, consisted mainly of the circulating notes of State banks, convertible, under the laws of the States, into coin on demand. This convertibility, though far from perfect, together with the acts of Congress which required the use of coin for all receipts and disbursements of the National government, insured the presence of some coin in the general circulation; but the business of the people was transacted almost entirely through the medium of bank notes. The State banks had recently emerged from a condition of great depreciation and discredit, the effects of which were still widely felt, and the recurrence of a like condition was not unreasonably apprehended by many. This apprehension was, in fact, realized by the general suspension of coin payments, which took place in 1857, shortly after the bond of Metz became due.

It is not to be doubted, then, that it was to guard against the possibility of loss to the estate, through an attempt to force the acceptance of a fluctuating and perhaps irredeemable currency in payment, that the express stipulation for payment in gold and silver coin was put into the bond. There was no necessity in law for such a stipulation, for at that time no money, except of gold or silver, had been made a legal tender. The bond without any stipulation to that effect would have been legally payable only in coin. The terms of the contract must have been selected, therefore, to fix definitely the contract between the parties, and to guard against any possible claim that payment, in the ordinary currency, ought to be accepted.

The intent of the parties is, therefore, clear. Whatever might be the forms or the fluctuations of the note currency, this contract was not to be affected by them. It was to be paid, at all events, in coined lawful money.

Opinion of the court.

We have just adverted to the fact that the legal obligation of payment in coin was perfect without express stipulation. It will be useful to consider somewhat further the precise import in law of the phrase "dollars payable in gold and silver coin, lawful money of the United States."

To form a correct judgment on this point, it will be necessary to look into the statutes regulating coinage. It would be instructive, doubtless, to review the history of coinage in the United States, and the succession of statutes by which the weight, purity, forms, and impressions of the gold and silver coins have been regulated; but it will be sufficient for our purpose if we examine three only, the acts of April 2, 1792,* of January 18, 1837,† and March 3, 1849."‡

The act of 1792 established a mint for the purpose of a national coinage. It was the result of very careful and thorough investigations of the whole subject, in which Jefferson and Hamilton took the greatest parts; and its general principles have controlled all subsequent legislation. It provided that the gold of coinage, or standard gold, should consist of eleven parts fine and one part alloy, which alloy was to be of silver and copper in convenient proportions, not exceeding one-half silver; and that the silver of coinage should consist of fourteen hundred and eighty-five parts fine, and one hundred and seventy-nine parts of an alloy wholly of copper.

The same act established the dollar as the money unit, and required that it should contain four hundred and sixteen grains of standard silver. It provided further for the coinage of half-dollars, quarter-dollars, dimes, and half-dimes, also of standard silver, and weighing respectively a half, a quarter, a tenth, and a twentieth of the weight of the dollar. Provision was also made for a gold coinage, consisting of eagles, half-eagles, and quarter-eagles, containing, respectively, two hundred and ninety, one hundred and thirty-five, and sixty-seven and a half grains of standard gold, and be-

* 1 Stat. at Large, 246. † 5 Id. 136. ‡ 9 Id. 397.

ing of the value, respectively, of ten dollars, five dollars, and two-and-a-half dollars.

These coins were made a lawful tender in all payments according to their respective weights of silver or gold; if of full weight, at their declared values, and if of less, at proportional values. And this regulation as to tender remained in full force until 1837.

The rule prescribing the composition of alloy has never been changed; but the proportion of alloy to fine gold and silver, and the absolute weight of coins, have undergone some alteration, partly with a view to the better adjustment of the gold and silver circulations to each other, and partly for the convenience of commerce.

The only change of sufficient importance to require notice, was that made by the act of 1837.* That act directed that standard gold, and standard silver also, should thenceforth consist of nine parts pure and one part alloy; that the weight of standard gold in the eagle should be two hundred and fifty-eight grains, and in the half-eagle and quarter-eagle, respectively, one-half and one-quarter of that weight precisely; and that the weight of standard silver should be in the dollar four hundred twelve and a half grains, and in the half-dollar, quarter-dollar, dimes, and half-dimes, exactly one-half, one-quarter, one-tenth, and one-twentieth of that weight.

The act of 1849† authorized the coinage of gold double-eagles and gold dollars conformably in all respects to the established standards, and, therefore, of the weights respectively of five hundred and sixteen grains and twenty-five and eight-tenths of a grain.

The methods and machinery of coinage had been so improved before the act of 1837 was passed, that unavoidable deviations from the prescribed weight became almost inappreciable; and the most stringent regulations were enforced to secure the utmost attainable exactness, both in weight and purity of metal.

* 5 Stat. at Large, 137. † 9 Id. 397.

In single coins the greatest deviation tolerated in the gold coins was half a grain in the double-eagle, eagle, or half-eagle, and a quarter of a grain in the quarter eagle or gold dollar;* and in the silver coins, a grain and a half in the dollar and half-dollar, and a grain in the quarter-dollar, and half a grain in the dime and half-dime.†

In 1849 the limit of deviation in weighing large numbers of coins on delivery by the chief coiner to the treasurer, and by the treasurer to depositors, was still further narrowed.

With these and other precautions against the emission of any piece inferior in weight or purity to the prescribed standard, it was thought safe to make the gold and silver coins of the United States legal tender in all payments according to their nominal or declared values. This was done by the act of 1837. Some regulations as to the tender, for small loans, of coins of less weight and purity, have been made; but no other provision than that made in 1837, making coined money a legal tender in all payments, now exists upon the statute-books.

The design of all this minuteness and strictness in the regulation of coinage is easily seen. It indicates the intention of the legislature to give a sure guaranty to the people that the coins made current in payments contain the precise weight of gold or silver of the precise degree of purity declared by the statute. It recognizes the fact, accepted by all men throughout the world, that value is inherent in the precious metals; that gold and silver are in themselves values, and being such, and being in other respects best adapted to the purpose, are the only proper measures of value; that these values are determined by weight and purity; and that form and impress are simply certificates of value, worthy of absolute reliance only because of the known integrity and good faith of the government which gives them.

The propositions just stated are believed to be incontestable. If they are so in fact, the inquiry concerning the legal import of the phrase "dollars payable in gold and silver

* 9 Stat. at Large, 398.

† 5 Id. 140.

coin, lawful money of the United States," may be answered without much difficulty. Every such dollar is a piece of gold or silver, certified to be of a certain weight and purity, by the form and impress given to it at the mint of the United States, and therefore declared to be legal tender in payments. Any number of such dollars is the number of grains of standard gold or silver in one dollar multiplied by the given number.

Payment of money is delivery by the debtor to the creditor of the amount due. A contract to pay a certain number of dollars in gold or silver coins is, therefore, in legal import, nothing else than an agreement to deliver a certain weight of standard gold, to be ascertained by a count of coins, each of which is certified to contain a definite proportion of that weight. It is not distinguishable, as we think, in principle, from a contract to deliver an equal weight of bullion of equal fineness. It is distinguishable, in circumstance, only by the fact that the sufficiency of the amount to be tendered in payment must be ascertained, in the case of bullion, by assay and the scales, while in the case of coin it may be ascertained by count.

We cannot suppose that it was intended by the provisions of the currency acts to enforce satisfaction of either contract by the tender of depreciated currency of any description equivalent only in nominal amount to the real value of the bullion or of the coined dollars. Our conclusion, therefore, upon this part of the case is, that the bond under consideration was in legal import precisely what it was in the understanding of the parties, a valid obligation to be satisfied by a tender of actual payment according to its terms, and not by an offer of mere nominal payment. Its intent was that the debtor should deliver to the creditor a certain weight of gold and silver of a certain fineness, ascertainable by count of coins made legal tender by statute; and this intent was lawful.

Arguments and illustrations of much force and value in support of this conclusion might be drawn from the possible case of the repeal of the legal tender laws relating to coin,

and the consequent reduction of coined money to the legal condition of bullion, and also from the actual condition of partial demonetization to which gold and silver money was reduced by the introduction into circulation of the United States notes and National bank currency; but we think it unnecessary to pursue this branch of the discussion further.

Nor do we think it necessary now to examine the question whether the clauses of the currency acts, making the United States notes a legal tender, are warranted by the Constitution.

But we will proceed to inquire whether, upon the assumption that those clauses are so warranted, and upon the further assumption that engagements to pay coined dollars may be regarded as ordinary contracts to pay money rather than as contracts to deliver certain weights of standard gold, it can be maintained that a contract to pay coined money may be satisfied by a tender of United States notes.

Is this a performance of the contract within the true intent of the acts?

It must be observed that the laws for the coinage of gold and silver have never been repealed or modified. They remain on the statute-book in full force. And the emission of gold and silver coins from the mint continues; the actual coinage during the last fiscal year having exceeded, according to the report of the director of the mint, nineteen millions of dollars.

Nor have those provisions of law which make these coins a legal tender in all payments been repealed or modified.

It follows that there were two descriptions of money in use at the time the tender under consideration was made, both authorized by law, and both made legal tender in payments. The statute denomination of both descriptions was dollars; but they were essentially unlike in nature. The coined dollar was, as we have said, a piece of gold or silver of a prescribed degree of purity, weighing a prescribed number of grains. The note dollar was a promise to pay a coined dollar; but it was not a promise to pay on demand nor at any fixed time, nor was it, in fact, convertible into a coined dollar. It was impossible, in the nature of things,

that these two dollars should be the actual equivalents of each other, nor was there anything in the currency acts purporting to make them such. How far they were, at that time, from being actual equivalents has been already stated.

If, then, no express provision to the contrary be found in the acts of Congress, it is a just if not a necessary inference, from the fact that both descriptions of money were issued by the same government, that contracts to pay in either were equally sanctioned by law. It is, indeed, difficult to see how any question can be made on this point. Doubt concerning it can only spring from that confusion of ideas which always attends the introduction of varying and uncertain measures of value into circulation as money.

The several statutes relating to money and legal tender must be construed together. Let it be supposed then that the statutes providing for the coinage of gold and silver dollars are found among the statutes of the same Congress which enacted the laws for the fabrication and issue of note dollars, and that the coinage and note acts, respectively, make coined dollars and note dollars legal tender in all payments, as they actually do. Coined dollars are now worth more than note dollars; but it is not impossible that note dollars, actually convertible into coin at the chief commercial centres, receivable everywhere, for all public dues, and made, moreover, a legal tender, everywhere, for all debts, may become, at some points, worth more than coined dollars. What reason can be assigned now for saying that a contract to pay coined dollars must be satisfied by the tender of an equal number of note dollars, which will not be equally valid then, for saying that a contract to pay note dollars must be satisfied by the tender of an equal number of coined dollars?

It is not easy to see how difficulties of this sort can be avoided, except by the admission that the tender must be according to the terms of the contract.

But we are not left to gather the intent of these currency acts from mere comparison with the coinage acts. The currency acts themselves provide for payments in coin. Duties on imports must be paid in coin, and interest on the public

debt, in the absence of other express provisions, must also be paid in coin. And it hardly requires argument to prove that these positive requirements cannot be fulfilled if contracts between individuals to pay coin dollars can be satisfied by offers to pay their nominal equivalent in note dollars. The merchant who is to pay duties in coin must contract for the coin which he requires; the bank which receives the coin on deposit contracts to repay coin on demand; the messenger who is sent to the bank or the custom-house contracts to pay or deliver the coin according to his instructions. These are all contracts, either express or implied, to pay coin. Is it not plain that duties cannot be paid in coin if these contracts cannot be enforced?

An instructive illustration may be derived from another provision of the same acts. It is expressly provided that all dues to the government, except for duties on imports, may be paid in United States notes. If, then, the government, needing more coin than can be collected from duties, contracts with some bank or individual for the needed amount, to be paid at a certain day, can this contract for coin be performed by the tender of an equal amount in note dollars? Assuredly it may if the note dollars are a legal tender to the government for all dues except duties on imports. And yet a construction which will support such a tender will defeat a very important intent of the act.

Another illustration, not less instructive, may be found in the contracts of the government with depositors of bullion at the mint to pay them the ascertained value of their deposits in coin. These are demands against the government other than for interest on the public debt; and the letter of the acts certainly makes United States notes payable for all demands against the government except such interest. But can any such construction of the act be maintained? Can judicial sanction be given to the proposition that the government may discharge its obligation to the depositors of bullion by tendering them a number of note dollars equal to the number of gold or silver dollars which it has contracted by law to pay?

But we need not pursue the subject further. It seems to us clear beyond controversy that the act must receive the reasonable construction, not only warranted, but required by the comparison of its provisions with the provisions of other acts, and with each other; and that upon such reasonable construction it must be held to sustain the proposition that express contracts to pay coined dollars can only be satisfied by the payment of coined dollars. They are not "*debts*" which may be satisfied by the tender of United States notes.

It follows that the tender under consideration was not sufficient in law, and that the decree directing satisfaction of the mortgage was erroneous.

Some difficulty has been felt in regard to the judgments proper to be entered upon contracts for the payment of coin. The difficulty arises from the supposition that damages can be assessed only in one description of money. But the act of 1792 provides that "the money of account of the United States shall be expressed in dollars, dimes, cents, and mills, and that all accounts in the public offices, and all proceedings in the courts of the United States, shall be kept and had in conformity to these regulations."

This regulation is part of the first coinage act, and doubtless has reference to the coins provided for by it. But it is a general regulation, and relates to all accounts and all judicial proceedings. When, therefore, two descriptions of money are sanctioned by law, both expressed in dollars and both made current in payments, it is necessary, in order to avoid ambiguity and prevent a failure of justice, to regard this regulation as applicable alike to both. When, therefore, contracts made payable in coin are sued upon, judgments may be entered for coined dollars and parts of dollars; and when contracts have been made payable in dollars generally, without specifying in what description of currency payment is to be made, judgments may be entered generally, without such specification.

We have already adopted this rule as to judgments for

duties by affirming a judgment of the Circuit Court for the District of California,* in favor of the United States, for thirteen hundred and eighty-eight dollars and ten cents, payable in gold and silver coin, and judgments for express contracts between individuals for the payment of coin may be entered in like manner.

It results that the decree of the Court of Appeals of New York must be reversed, and the cause remanded to that court for further proceedings.

Mr. Justice DAVIS.

I assent to the result which a majority of the court have arrived at, that an express contract to pay coin of the United States, made before the act of February 25th, 1862, commonly called the legal tender act, is not within the clause of that act which makes treasury notes a legal tender in payment of debts; but I think it proper to guard against all possibility of misapprehension by stating that if there be any reasoning in the opinion of the majority which can be applicable to any other class of contracts, it does not receive my assent.

Mr. Justice SWAYNE.

I concur in the conclusion announced by the Chief Justice. My opinion proceeds entirely upon the language of the contract and the construction of the statutes. The question of the constitutional power of Congress, in my judgment, does not arise in the case.

JUDGMENT REVERSED AND THE CASE REMANDED.

Mr. Justice MILLER, dissenting.

I do not agree to the judgment of the court in this case, and shall, without apology, make a very brief statement of my reasons for believing that the judgment of the Court of Appeals of New York should be affirmed. The opinion just read correctly states that the contract in this case, made before the passage of the act or acts commonly called the legal

* Cheang-Kee v. United States, 3 Wallace, 320.

tender acts, was an agreement to pay $1400 "in gold and silver coin, lawful money of the United States." And I agree that it was the intention of both parties to this contract that it should be paid in coin. I go a step farther than this, and agree that the legal effect of the contract, as the law stood when it was made, was that it should be paid in coin, and could be paid in nothing else. This was the conjoint effect of the contract of the parties and the law under which that contract was made.

But I do not agree that in this respect the contract under consideration differed, either in the intention of the parties, or in its legal effect, from a contract to pay $1400 without any further description of the dollars to be paid.

The only dollars which, by the laws then in force, or which ever had been in force since the adoption of the Federal Constitution, could have been lawfully tendered in payment of any contract simply for dollars, were gold and silver.

These were the "lawful money of the United States" mentioned in the contract, and the special reference to them gave no effect to that contract, beyond what the law gave.

The contract then did not differ, in its legal obligation, from any other contract payable in dollars. Much weight is attached in the opinion to the special intent of the parties in using the words gold and silver coin, but as I have shown that the intent thus manifested is only what the law would have implied if those words had not been used, I cannot see their importance in distinguishing this contract from others which omit these words. Certainly every man who at that day received a note payable in dollars, expected and had a right to expect to be paid "in gold and silver coin, lawful money of the United States," if he chose to demand it. There was therefore no difference in the intention of the parties to such a contract, and an ordinary contract for the payment of money, so far as the right of the payee to exact coin is concerned. If I am asked why these words were used in this case I answer, that they were used out of abundant caution by some one not familiar with the want of power in the States to make legal tender laws. It is very well known that

under the system of State banks, which furnished almost exclusively the currency in use for a great many years prior to the issue of legal tender notes by the United States, there was a difference between the value of that currency and gold, even while the bank notes were promptly redeemed in gold. And it was doubtless to exclude any possible assertion of the right to pay this contract in such bank notes, that the words gold and silver coin were used, and not with any reference to a possible change in the laws of legal tender established by the United States, which had never, during the sixty years that the government had been administered under the present Constitution, declared anything else to be a legal tender or lawful money but gold and silver coin.

But if I correctly apprehend the scope of the opinion delivered by the Chief Justice, the effort to prove for this contract a special intent of payment in gold, is only for the purpose of bringing it within the principle there asserted, both by express words and by strong implication, that all contracts must be paid according to the intention of the parties making them. I think I am not mistaken in my recollection that it is broadly stated that it is the business of courts of justice to enforce contracts as they are intended by the parties, and that the tender must be according to the intent of the contract.

Now, if the argument used to show the intent of the parties to the contract is of any value in this connection, it is plain that such intent must enter into, and form a controlling element, in the judgment of the court, in construing the legal tender acts.

I shall not here consume time by any attempt to show that the contract in this case is a debt, or that when Congress said that the notes it was about to issue should be received as a legal tender in payment for *all private debts*, it intended that which these words appropriately convey. To assume that Congress did not intend by that act to authorize a payment by a medium differing from that which the parties intended by the contract is in contradiction to the express language of the statute, to the sense in which it was acted on by

the people, who paid and received those notes in discharge of contracts for incalculable millions of dollars, where gold dollars alone had been in contemplation of the parties, and to the decisions of the highest courts of fifteen States in the Union, being all that have passed upon the subject.

As I have no doubt that it was intended by those acts to make the notes of the United States to which they applied a legal tender for all private debts then due, or which might become due on contracts then in existence, without regard to the intent of the parties on that point, I must dissent from the judgment of the court, and from the opinion on which it is founded.

[See the next case.]

BUTLER *v.* HORWITZ.

1. A contract to pay a certain sum in gold and silver coin is in substance and legal effect a contract to deliver a certain weight of gold and silver of a certain fineness to be ascertained by count.
2. Whether the contract be for the delivery or payment of coin, or bullion, or other property, damages for non-performance must be assessed in lawful money; that is to say, in money declared to be legal tender in payment, by a law made in pursuance of the Constitution of the United States.
3. There are, at this time, two descriptions of lawful money in use under acts of Congress, in either of which (assuming these acts, in respect to legal tender, to be constitutional) damages for non-performance of contracts, whether made before or since the passage of these acts, may be assessed in the absence of any different understanding or agreement between the parties.
4. When the intent of the parties as to the medium of payment is clearly expressed in a contract, damages for the breach of it, whether made before or since the enactment of these laws, may be properly assessed so as to give effect to that intent.
5. When, therefore, it appears to be the clear intent of a contract that payment or satisfaction shall be made in gold and silver, damages should be assessed in coin, and judgment rendered accordingly.

ERROR to the Court of Common Pleas for Maryland.

Daniel Bowly, on the 18th of February, 1791, leased to Conrad Orendorf a lot of ground in the city of Baltimore,