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,

for ninety-nine years, renewable forever, reserving rent in the following words: "Yielding and paying therefor to the said Daniel Bowly, his heirs and assigns, the yearly rent or sum of £15, current money of Maryland, payable in English golden guineas, weighing five pennyweights and six grains, at thirty-five shillings each, and other gold and silver at their present established weight and rate according to act of Assembly, on the 1st day of January in each and every year during the continuance of the present demise."

On the 1st of January, 1866, one Horwitz was the owner of the rent and reversion, and a certain Butler of the leasehold interest in the lot. It being agreed that the £15 was equal to $40 in gold and silver, Butler tendered to Horwitz the amount of the annual rent, that is to say $40, then due, in currency, which Horwitz refused to receive, and brought suit to recover the value of the gold in currency, which being on the 1st of January, 1866, at a premium of $1.45, was $58. The court below gave judgment in favor of Horwitz for that amount with interest, $59.71. The case was thereupon brought here by Butler, for review.

*Mr. J. R. Quin, for the plaintiff in error; Mr. B. F. Horwitz, contra.*

The CHIEF JUSTICE delivered the opinion of the court.

The principles which determined the case of *Bronson* v. *Rodes*,* will govern our judgment in this case.

The obvious intent of the contract now before us was to secure payment of a certain rent in gold and silver, and thereby avoid the fluctuations to which the currency of the country, in the days which preceded and followed the establishment of our independence, had been subject, and also all future fluctuations incident to arbitrary or uncertain measures of value, whether introduced by law or by usage.

It was agreed in the court below that the rent due upon the lease, reduced to current gold and silver coin, was, on the first day of January, 1866, forty dollars; and judgment

* See *supra*, p. 229.

was rendered on the 27th June, 1866, for fifty-nine dollars and seventy-one cents.

This judgment was rendered as the legal result of two propositions: (1.) That the covenant in the lease required the delivery of a certain amount of gold and silver in payment of rent; and (2.) That damages for non-performance must be assessed in the legal tender currency.

The first of these propositions is, in our judgment, correct; the second is, we think, erroneous.

It is not necessary to go at length into the grounds of this conclusion. We will only state briefly the general propositions on which it rests; some of which have been already stated more fully in *Bronson* v. *Rodes*.

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. Damages for non-performance of such a contract may be recovered at law as for non-performance of a contract to deliver bullion or other commodity. But 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.

It was not necessary in the case of *Bronson* v. *Rodes*, nor is it necessary now, to decide the question, whether the acts making United States notes legal tender are warranted by the Constitution? We express no opinion on that point; but assume, for the present, the constitutionality of those acts. Proceeding upon this assumption, we find two descriptions of lawful money in use under acts of Congress, in either of which damages for non-performance of contracts, whether made before or since the passage of the currency acts, may be properly assessed, in the absence of any different understanding or agreement between parties. But the obvious intent, in contracts for payment or delivery of coin or bullion, to provide against fluctuations in the medium of payment, warrants the inference that it was the understanding

of the parties that such contracts should be satisfied, whether before or after judgment, only by tender of coin, while the absence of any express stipulation, as to description, in contracts for payment in money generally, warrants the opposite inference of an understanding between parties that such contracts may be satisfied, before or after judgment, by the tender of any lawful money.

This inference as to contracts made previous to the passage of the acts making United States notes a legal tender, is strengthened by the consideration that those acts not only do not prohibit, but, by strong implications, sanction contracts made since their passage for payment of coin; and consequently, taken in connection with the provision of the act of 1792, concerning money of account, require that damages upon such contracts be assessed in coin, and judgment rendered accordingly; leaving the assessment of damages for breach of other contracts to be made, and judgments rendered in lawful money. It would be unreasonable to suppose that the legislature intended a different rule as to contracts prior to the enactment of the currency laws, from that sanctioned by them in respect to contracts since. We are of the opinion, therefore, that under the existing laws, of which, in respect to legal tender, the constitutionality is, we repeat, in this case, assumed, damages may be properly assessed and judgments rendered, so as to give full effect to the intention of parties as to the medium of payment. 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 and judgment rendered accordingly.

It follows that in the case before us the judgment was erroneously entered. The damages should have been assessed at the sum agreed to be due, with interest, in gold and silver coin, and judgment should have been entered in coin for that amount, with costs. The judgment of the Court of Common Pleas must, therefore, be

REVERSED, AND THE CAUSE REMANDED FOR FURTHER PROCEEDINGS.

Statement of the case.

Mr. Justice MILLER, dissenting.

I believe the judgment of the court below was right, because I understand the original contract to have been an agreement to pay in English guineas, as a commodity, and their value was, therefore, properly computed in the legal tender notes which by law would satisfy the judgment.

I cannot agree to the opinion, for the reasons given in my dissent in the case of *Bronson* v. *Rodes*.

---

## RAILROAD COMPANY *v.* JACKSON.

1. A State has no power to tax the interest of bonds (secured in this case by mortgage) given by a railroad corporation, and binding every part of the road, when the road lies partially in another State;—one road incorporated by the two States.
2. The Internal Revenue Act of June 30th, 1864, does not lay a tax on the income of a non-resident alien, arising from bonds held by him of a railroad company incorporated by States of the Union, and situated in them.

ERROR to the Circuit Court for the District of Maryland.

The State of Pennsylvania, by certain acts, as expounded by the Supreme Court of that State,* taxed "money owing by solvent debtors, whether by promissory note, penal or single bill, bond or judgment," imposing three mills on the dollar of the principal, payable out of the interest. And where the money was due by a railroad corporation, they made it the duty of the president, or other officer of the company who paid the coupons or interest to the holder, to retain the amount of the tax.

The United States, also, by certain acts, laid what is known as the income tax.

The first tax of this kind was imposed by the act of Congress passed August 5th, 1861.† The 49th section of that act directed that there should be levied and collected upon

---

* Maltby *v.* Railroad Company, 52 Pennsylvania State, 140.

† 12 Stat. at Large, 309.