the master to take a licensed pilot and making provision for the payment of pilot fees, do not amount to a compulsion to take a pilot, and I am satisfied they are correct, and that such a statute cannot be set up as exempting a ship from responsibility while navigated by a licensed pilot.

Believing those decisions to be correct, I cannot consent to pronounce them incorrect, especially as no such conclusion is necessary to the right disposition of the present case. Neither the common law courts nor the courts of admiralty, in this country, have adopted the rule established by Dr. Lushington. On the contrary, they all have held that the State laws requiring the master to pay pilot fees, whether he employed a pilot or not, did not compel him to surrender the navigation of his ship to the licensed pilot, or prevent him from continuing in the command of his ship. Dissenting as I do from the rule laid down in the English courts, I concur with the majority of the court in overruling those decisions as applied to our jurisprudence, but I cannot concur in overruling the American decisions which assert the opposite doctrine, because I believe they are correct.

DECREE AFFIRMED.

LANE COUNTY *v.* OREGON.

1. An enactment in a State statute that "the sheriff shall pay over to the county treasurer the full amount of the State and school taxes, in gold and silver coin," and that "the several county treasurers shall pay over to the State treasurer the State tax, in gold and silver coin," requires by legitimate, if not necessary consequence, that the taxes named be *collected* in coin. But if, in the judgment of this court, this were otherwise, yet the Supreme Court of the State having held this construction to be correct, this court will follow their adjudication.
2. The clauses in the several acts of Congress, of 1862 and 1863, making United States notes a legal tender for debts, have no reference to taxes imposed by State authority.

ERROR to the Supreme Court of Oregon. The case was this:

Congress, February, 1862, authorized the issue of $150,-

000,000 in notes of the United States, and enacted that they should "be receivable in payment of all taxes, internal duties, levies, debts, and demands due to the United States, except duties on imports; and of all claims and demands of any kind whatever *against the United States*, except interest on bonds and notes, which shall be paid in coin; and shall also be lawful money and legal tender in payment of all *debts*, public and private, within the United States, except duties on imports." A subsequent act, authorizing a further issue, contained an enactment very similar, as to the legal characteristics of the notes, when issued. A third act, authorizing a yet further issue, enacted simply that they should be lawful money or a legal tender. Under these three acts, a large amount of notes of the United States, which circulated as money, were issued.

Subsequently to this, the legislature of Oregon passed a statute, enacting that "the sheriff shall pay over to the county treasurer, the full amount of the *State and school taxes*, in *gold and silver coin;*"* and that "the several county treasurers shall pay over to the State treasurer the *State tax in gold and silver coin.*"†

In this condition of statute law, Federal and State, the State of Oregon, in April, 1865, filed a complaint against the County of Lane, in the Circuit Court of the State for that county, to recover $5460.96, *in gold and silver coin*, which sum was alleged to have become due, as State revenue, from the county to the State, on the first Monday of February, 1864.

To this complaint an answer was put in by the county, alleging a tender of the amount claimed by the State, made on the 23d day of January, 1864, to the State treasurer, at his office, in *United States notes*, and averring that the lawful money, so tendered and offered, was, in truth and fact, part of the first moneys collected and paid into the county treasury, after the assessment of taxes for the year 1862.

To this answer there was a demurrer, which was sustained

* Statutes of Oregon, 438, § 32.

† Ib. 441, § 46.

by the Circuit Court, and judgment was given that the plaintiff recover of the defendant the sum claimed, in gold and silver coin, with costs of suit. This judgment was affirmed, upon writ of error, by the Supreme Court of the State.

The case was now brought here by writ of error to that court.

Mr. Williams, for Lane County, plaintiff in error, laid down and pressed upon the attention of the court, seeking to maintain them by argument and authority, these two propositions:*

1st. That the laws of Oregon did not require the collection, in coin, of the taxes in question, and that the treasurer of the county could not be required to pay the treasurer of the State any other money than that in which the taxes were actually collected.

2d. That the tender of the amount of taxes made to the treasurer of the State, by the treasurer of the county, in United States notes, was warranted by the acts of Congress authorizing the issue of these notes, and that the law of the State, if it required collection and payment in coin, was repugnant to these acts, and therefore void.

Mr. Johnson (*a brief of Mr. Mallory being filed*), *contra.*

The CHIEF JUSTICE delivered the opinion of the court.

Two propositions have been pressed upon our attention, ably and earnestly, in behalf of the plaintiff in error.

The first of them will be first considered.

The answer avers, substantially, that the money tendered was part of the first moneys collected in Lane County after the assessment of 1863, and the demurrer admits the truth of the answer.

The fact therefore may be taken as established, that the

* He cited Bouvier's Law Dictionary, title "Debt;" Multnomah County *v.* The State, 1 Oregon, 358; Rhodes *v.* Farrell, 2 Nevada, 60; Ohio *v.* Hibbard, 3 Ohio, 63; Same *v.* Gazlay, 5 Id. 14; Appleton *v.* Hopkins, 5 Gray, 530; Blackstone's Commentaries, 160.

taxes for that year, in Lane County, were collected in United States notes.

But was this in conformity with the laws of Oregon?

In this court the construction given by the State courts to the laws of a State, relating to local affairs, is uniformly received as the true construction; and the question first stated must have been passed upon in reaching a conclusion upon the demurrer, both by the Circuit Court for the county and by the Supreme Court of the State. Both courts must have held that the statutes of Oregon, either directly or by clear implication, required the collection of taxes in gold and silver coin.

Nor do we perceive anything strained or unreasonable in this construction. The laws of Oregon, as quoted in the brief for the State, provided that "the sheriff shall pay over to the county treasurer the full amount of the State and school taxes, in gold and silver coin;" and that "the several county treasurers shall pay over to the State treasurer the State tax, in gold and silver coin."

It is certainly a legitimate, if not a necessary inference, that these taxes were required to be collected in coin. Nothing short of express words would warrant us in saying that the laws authorized collection in one description of money from the people, and required payment over of the same taxes into the county and State treasuries in another.

If, in our judgment, however, this point were otherwise, we should still be bound by the soundest principles of judicial administration, and by a long train of decisions in this court, to regard the judgment of the Supreme Court of Oregon, so far as it depends on the right construction of the statutes of that State, as free from error.

The second proposition remains to be examined, and this inquiry brings us to the consideration of the acts of Congress, authorizing the issue of the notes in which the tender was made.

The first of these was the act of February 25, 1862, which authorized the Secretary of the Treasury to issue, on the

credit of the United States, one hundred and fifty millions of dollars in United States notes, and provided that these notes "shall be receivable in payment of all taxes, internal duties, excises, debts and demands due to the United States, except duties on imports, and of all claims and demands against the United States of every kind whatsoever, except interest on bonds and notes, which shall be paid in coin; and shall also be lawful money and legal tender in payment of all debts, public and private, within the United States, except duties on imports and interest as aforesaid."

The second act contains a provision nearly in the same words with that just recited, and under these two acts two-thirds of the entire issue was authorized. It is unnecessary, therefore, to refer to the third act, by which the notes to be issued under it are not in terms made receivable and payable, but are simply declared to be lawful money and a legal tender.

In the first act no emission was authorized of any notes under five dollars, nor in the other two of any under one dollar. The notes, authorized by different statutes, for parts of a dollar, were never declared to be lawful money or a legal tender.*

It is obvious, therefore, that a legal tender in United States notes of the precise amount of taxes admitted to be due to the State could not be made. Coin was then, and is now, the only legal tender for debts less than one dollar. In the view which we take of this case, this is not important. It is mentioned only to show that the general words "all debts" were not intended to be taken in a sense absolutely literal.

We proceed then to inquire whether, upon a sound construction of the acts, taxes imposed by a State government upon the people of the State, are debts within their true meaning.

In examining this question it will be proper to give some attention to the constitution of the States and to their relations as United States.

* 12 Stat. at Large, 592; Ib. 711.

The people of the United States constitute one nation, under one government, and this government, within the scope of the powers with which it is invested, is supreme. On the other hand, the people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence. The States disunited might continue to exist. Without the States in union there could be no such political body as the United States.

Both the States and the United States existed before the Constitution. The people, through that instrument, established a more perfect union by substituting a national government, acting, with ample power, directly upon the citizens, instead of the Confederate government, which acted with powers, greatly restricted, only upon the States. But in many articles of the Constitution the necessary existence of the States, and, within their proper spheres, the independent authority of the States, is distinctly recognized. To them nearly the whole charge of interior regulation is committed or left; to them and to the people all powers not expressly delegated to the national government are reserved. The general condition was well stated by Mr. Madison in the Federalist, thus: "The Federal and State governments are in fact but different agents and trustees of the people, constituted with different powers and designated for different purposes."

Now, to the existence of the States, themselves necessary to the existence of the United States, the power of taxation is indispensable. It is an essential function of government. It was exercised by the Colonies; and when the Colonies became States, both before and after the formation of the Confederation, it was exercised by the new governments. Under the Articles of Confederation the government of the United States was limited in the exercise of this power to requisitions upon the States, while the whole power of direct and indirect taxation of persons and property, whether by taxes on polls, or duties on imports, or duties on internal production, manufacture, or use, was acknowledged to belong ex-

clusively to the States, without any other limitation than that of non-interference with certain treaties made by Congress. The Constitution, it is true, greatly changed this condition of things. It gave the power to tax, both directly and indirectly, to the national government, and, subject to the one prohibition of any tax upon exports and to the conditions of uniformity in respect to indirect and of proportion in respect to direct taxes, the power was given without any express reservation. On the other hand, no power to tax exports, or imports except for a single purpose and to an insignificant extent, or to lay any duty on tonnage, was permitted to the States. In respect, however, to property, business, and persons, within their respective limits, their power of taxation remained and remains entire. It is indeed a concurrent power, and in the case of a tax on the same subject by both governments, the claim of the United States, as the supreme authority, must be preferred; but with this qualification it is absolute. The extent to which it shall be exercised, the subjects upon which it shall be exercised, and the mode in which it shall be exercised, are all equally within the discretion of the legislatures to which the States commit the exercise of the power. That discretion is restrained only by the will of the people expressed in the State constitutions or through elections, and by the condition that it must not be so used as to burden or embarrass the operations of the national government. There is nothing in the Constitution which contemplates or authorizes any direct abridgment of this power by national legislation. To the extent just indicated it is as complete in the States as the like power, within the limits of the Constitution, is complete in Congress. If, therefore, the condition of any State, in the judgment of its legislature, requires the collection of taxes in kind, that is to say, by the delivery to the proper officers of a certain proportion of products, or in gold and silver bullion, or in gold and silver coin, it is not easy to see upon what principle the national legislature can interfere with the exercise, to that end, of this power, original in the States, and never as yet surrendered. If this be so, it is, certainly,

a reasonable conclusion that Congress did not intend, by the general terms of the currency acts, to restrain the exercise of this power in the manner shown by the statutes of Oregon.

Other considerations strengthen this conclusion. It cannot escape observation that the provision intended to give currency to the United States notes in the two acts of 1862, consists of two quite distinguishable clauses. The first of these clauses makes those notes receivable in payment of all dues to the United States, and payable in satisfaction of all demands against the United States, with specified exceptions; the second makes them lawful money, and a legal tender in payment of debts, public and private, within the United States, with the same exceptions.

It seems quite probable that the first clause only was in the original bill, and that the second was afterwards introduced during its progress into an act. However this may be, the fact that both clauses were made part of the act of February, and were retained in the act of July, 1862, indicates clearly enough the intention of Congress that both shall be construed together. Now, in the first clause, taxes are plainly distinguished, in enumeration, from debts; and it is not an unreasonable inference, that the word debts in the other clause was not intended to include taxes.

It must be observed that the first clause, which may be called the receivability and payability clause, imposes no restriction whatever upon the States in the collection of taxes. It makes the notes receivable for national taxes, but does not make them receivable for State taxes. On the contrary, the express reference to receivability by the national government, and the omission of all reference to receivability by the State governments, excludes the hypothesis of an intention on the part of Congress to compel the States to receive them as revenue.

And it must also be observed that any construction of the second, or, as it may well enough be called, legal-tender clause, that includes dues for taxes under the words debts, public and private, must deprive the first clause of all effect whatever. For if those words, rightly apprehended, include

State taxes, they certainly include national taxes also; and if they include national taxes, the clause making them receivable for such taxes was wholly unnecessary and superfluous.

It is also proper to be observed, that a technical construction of the words in question might defeat the main purpose of the act, which, doubtless, was to provide a currency in which the receipts and payments incident to the exigencies of the then existing civil war might be made.

In his work on the Constitution, the late Mr. Justice Story, whose praise as a jurist is in all civilized lands, speaking of the clause in the Constitution giving to Congress the power to lay and collect taxes, says, of the theory which would limit the power to the object of paying the debts, that, thus limited, it would be only a power to provide for the payment of debts *then existing*.* And certainly, if a narrow and limited interpretation would thus restrict the word debts in the Constitution, the same sort of interpretation would, in like manner, restrict the same word in the act. Such an interpretation needs only to be mentioned to be rejected. We refer to it only to show that a right construction must be sought through larger and less technical views. We may, then, safely decline either to limit the word debts to existing dues, or to extend its meaning so as to embrace all dues of whatever origin and description.

What then is its true sense? The most obvious, and, as it seems to us, the most rational answer to this question is, that Congress must have had in contemplation debts originating in contract or demands carried into judgment, and only debts of this character. This is the commonest and most natural use of the word. Some strain is felt upon the understanding when an attempt is made to extend it so as to include taxes imposed by legislative authority, and there should be no such strain in the interpretation of a law like this.

We are the more ready to adopt this view, because the

* 1 Story on the Constitution, 639, § 921.

greatest of English elementary writers upon law, when treating of debts in their various descriptions, gives no hint that taxes come within either;* while American State courts, of the highest authority, have refused to treat liabilities for taxes as debts, in the ordinary sense of that word, for which actions of debt may be maintained.

The first of these cases was that of *Pierce* v. *The City of Boston*,† 1842, in which the defendant attempted to set off against a demand of the plaintiff certain taxes due to the city. The statute allowed mutual debts to be set off, but the court disallowed the right to set off taxes. This case went, indeed, upon the construction of the statute of Massachusetts, and did not turn on the precise point before us; but the language of the court shows that taxes were not regarded as debts within the common understanding of the word.

The second case was that of *Shaw* v. *Pickett*,‡ in which the Supreme Court of Vermont said, "The assessment of taxes does not create a debt that can be enforced by suit, or upon which a promise to pay interest can be implied. It is a proceeding *in invitum*."

The next case was that of the *City of Camden* v. *Allen*,§ 1857. That was an action of debt brought to recover a tax by the municipality to which it was due. The language of the Supreme Court of New Jersey was still more explicit: "A tax, in its essential characteristics," said the court, "is not a debt nor in the nature of a debt. A tax is an impost levied by authority of government upon its citizens, or subjects, for the support of the State. It is not founded on contract or agreement. It operates *in invitum*. A debt is a sum of money due by certain and express agreement. It originates in and is founded upon contracts express or implied."

These decisions were all made before the acts of 1862 were passed, and they may have had some influence upon the choice of the words used. Be this as it may, we all think that the interpretation which they sanction is well warranted.

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* 1 Blackstone's Comm. 475, 6.

† 3 Metcalf, 520.

‡ 26 Vermont, 486.

§ 2 Dutcher, 398.

We cannot attribute to the legislature an intent to include taxes under the term debts without something more than appears in the acts to show that intention.

The Supreme Court of California, in 1862, had the construction of these acts under consideration in the case of *Perry* v. *Washburn.** The decisions which we have cited were referred to by Chief Justice Field, now holding a seat on this bench, and the very question we are now considering, "What did Congress intend by the act?" was answered in these words: "Upon this question we are clear that it only intended by the terms debts, public and private, such obligations for the payment of money as are founded upon contract."

In whatever light, therefore, we consider this question, whether in the light of the conflict between the legislation of Congress and the taxing power of the States, to which the interpretation, insisted on in behalf of the County of Lane, would give occasion, or in the light of the language of the acts themselves, or in the light of the decisions to which we have referred, we find ourselves brought to the same conclusion, that the clause making the United States notes a legal tender for debts has no reference to taxes imposed by State authority, but relates only to debts in the ordinary sense of the word, arising out of simple contracts or contracts by specialty, which include judgments and recognizances.†

Whether the word debts, as used in the act, includes obligations expressly made payable, or adjudged to be paid in coin, has been argued in another case. We express at present, no opinion on that question.‡

The judgment of the Supreme Court of Oregon must be

AFFIRMED.

* 20 California, 350. † 1 Parsons on Contracts, 7.

‡ See *infra*, pp. 229, 258, Bronson *v.* Rodes, and Butler *v.* Horwitz.