

## Statement of the case.

## DEWING v. SEARS.

On a lease where a yearly rent of "four ounces, two pennyweights, and twelve grains of pure gold in coined money" is reserved (equivalent at the time when the lease was made to \$80 per annum, and at the time when suit was brought to \$87.25 per annum), judgment should be entered for coined dollars and parts of coined dollars, and not for United States notes (made by statutes of the United States a legal tender), and equivalent in market value to the value in coined money of the stipulated weight of pure gold.

In error to the Superior Court of Massachusetts, the case being thus:

Sears brought suits in one of the State courts of Massachusetts to recover rent due in different quarters upon a lease executed August 14, 1828, for the term of one hundred years, in which the yearly rent reserved was "four ounces, two pennyweights, and twelve grains of pure gold, *in coined money*," payable quarterly. By the act of April 2, 1792,\* which was in force when the lease was made, the rent was just \$80 per annum, or \$20 a quarter, in gold coin. But by the act of June 28, 1834,† and the act of January 18, 1837,‡ which were in force when the rent sued for fell due, the rent was \$85.27 per annum, or \$21.31 a quarter, in gold coin.

The State court gave judgment for the market value, in United States notes, of the coined money for each quarter's rent on the days the same fell due, with interest thereon; and this judgment being affirmed in the highest court of the State, the cases were brought here for review.

*Mr. Caleb Cushing submitted them on briefs of Mr. E. M. Bigelow, for the plaintiff in error; observing that the cases were not distinguishable from Bronson v. Rodes and Butler v. Horwitz;§ and that therefore the courts below should have given judgment for the rent and interest in coined money.*

*No opposing counsel.*

\* Ch. 16, § 9, 1 Stat. at Large, 248.

† Ch. 3, §§ 8 and 10; 5 Id. 137, 138.

‡ Ch. 95, 4 Id. 699.

§ 7 Wallace, 229, 258.

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Mr. Justice STRONG delivered the opinion of the court.

The contract in these cases was for the payment or delivery of a specified weight of pure gold, solvable in coined money. They are, therefore, governed by the decisions heretofore made by this court in *Bronson v. Rodes*, and *Butler v. Horwitz*. It follows that the judgments entered in the Superior Court were erroneous. They should have been entered for coined dollars and parts of dollars, instead of treasury notes equivalent in market value to the value in coined money of the stipulated weight of pure gold.

JUDGMENT in each case REVERSED, and the causes remanded with instructions to enter judgment in accordance with the

FOREGOING OPINION.

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RANKIN v. THE STATE.

Where, on an indictment for a capital offence, the Supreme Court of a State reverses a judgment of a court below, under such circumstances as that the case must go back for trial on its merits, the judgment is not a "final judgment," and therefore is not capable of being brought here under the 25th section of the Judiciary Act.

IN error to the Supreme Court of Tennessee; the case being this:

An indictment had been found in one of the State courts of Tennessee, at August Term, 1865, against a certain Rankin, and ten other persons named in the indictment, charging them with the murder of one Thornhill, on the first of June preceding. The defendant, in August Term, 1866, pleaded that on the day mentioned in the indictment he was in the military service of the United States, in the military district of East Tennessee, being first lieutenant of company B of the 9th Tennessee Cavalry, and bound to obey all lawful orders of his superiors, "then and there existing and being an insurrection and civil war in said military district;" and that on the 5th day of October thereafter he was ar-