ruled the motion. To this the assurers excepted, and in their bill of exceptions have set out all the evidence given in the case. The only point to which our attention has been called by their counsel in this court is, that, according to the evidence thus set out, the plaintiff was clearly not entitled to recover.

The granting or overruling of a motion for a new trial in the courts of the United States rests wholly in the discretion of the court to which the motion is addressed. This is so well settled that it is unnecessary to remark further upon the subject.*

JUDGMENT AFFIRMED.

DOOLEY *v.* SMITH.

1. A plea which states that the sum due on a promissory note is a certain amount, on a certain day, and avers a tender on that day of the sum due in legal tender notes of the United States, is a good plea of tender.
2. In a suit on such note an order of court made by consent that the money might be withdrawn from court, without prejudice to the validity of the tender, cannot be supposed to be the reason why the court held the plea bad on demurrer.
3. As the record in this case showed no other reason why the Court of Appeals of Kentucky sustained a demurrer to the plea than that it was made in legal tender notes of the United States, it sufficiently appeared that the question of the validity of these notes as a tender was made and decided in the negative.
4. This court, therefore, has jurisdiction to review the judgment; and though the note sued on was made before the passage of the legal tender statutes by Congress, *held* that the tender was a valid tender, and that the judgment of the court below must be reversed.

MOTION by *Mr. W. H. Wadsworth, for the defendant in error* (*Mr. G. Davis, opposing*), to dismiss a writ of error to the Court of Appeals of the State of Kentucky, taken on the assumption that the case came within that provision of the

* Henderson *v.* Moore, 5 Cranch, 11; Barr *v.* Gratz's Heirs, 4 Wheaton, 220; Doswell *v.* De La Lanza, 20 Howard, 29; Schuchardt *v.* Allens, 1 Wallace, 371.

25th section of the Judiciary Act which, as is known, gives this court a right to review the decisions of the highest State court whenever there is drawn in question there the validity of a statute of the United States and the decision is against its validity.

The further statement of the case, as also an indication of the points raised by counsel, is made by

Mr. Justice MILLER, who delivered the opinion of the court.

It is argued by counsel for defendant in error that no question cognizable by this court on a writ of error to a State court is presented by the record, while the counsel for plaintiff insists that the validity of the acts of Congress, making certain notes of the United States a legal tender in payment of debts, was the only question raised and decided in the court below.

We are satisfied, from a careful examination of the record, that this latter question was decided against the validity of those statutes, and that such a decision was essential to the judgment rendered by the court.

Dooley being indebted to Smith in a sum of nearly $10,000, evidenced by a note, and made a lien on land by mortgage, filed his petition in the proper State court of Kentucky, alleging that on the 6th day of January, A.D. 1868, the amount due on the note was $9843.92, and that on that day he tendered to Smith that sum in United States legal tender treasury notes, commonly called greenbacks, which Smith refused to receive, and to surrender the note, though he had demanded it. He now brings said legal tender notes into court, and again tenders them, and prays for a delivery of his note and for such other relief as may be proper. He also alleges a prior tender in 1864, but this may be dismissed from further consideration, as he offers the amount due in 1868 without reference to the first tender.

To this petition Smith filed a general demurrer.

While this suit was pending the defendant, Smith, brought an action in the same court to recover the amount due on

the note, and to this action Dooley answered, referring to his petition in the former case, and making his allegation therein, of a tender, his answer in this case, and praying that the two be consolidated, which was ordered by the court. Smith demurred generally to Dooley's answer.

On these pleadings the case was submitted to the court, which ordered both demurrers to be sustained and rendered a judgment for Smith for the amount due, with interest until paid, without regard to the tender. This judgment was affirmed by the Court of Appeals of Kentucky, to which the present writ of error is directed.

Some attempt is made in argument to show that the court might have rested its judgment on the insufficiency of the amount tendered without regard to the character of the currency offered; but as the petition of plaintiff, Dooley, which is adopted as his answer in the suit of Smith, expressly avers that by reason of payments already made, the sum due on the day of the tender was the precise sum tendered, this fact must be taken as confessed by the demurrer of Smith. As regards the sufficiency of the tender of 1864, it is immaterial, as it was not relied on by the plea.

So, also, the argument that the tender paid into court having been withdrawn before judgment, that fact justified the judgment, is answered by the record, which shows that it was withdrawn by a consent order of the court, which provided that the legal effect of the tender should be the same as it would be if the money remained in court.

If the tender was good its effect was to stop the running of interest, and the judgment of the court gave interest ex pressly, as though no tender had been made.

In short, it is not possible to examine the record and discover any ground on which the plea of tender by Dooley was held bad on demurrer but the fact that it was made in legal tender notes of the United States.

This court, therefore, has jurisdiction.

The recent decision here, overruling *Hepburn* v. *Griswold*,*

* Legal Tender Cases, 12 Wallace, 457.

and holding these notes to be a valid tender in payment of contracts made before the enactment of the legal tender statutes, as well as those made since, decides the case before us on the merits, and dispenses with further argument.

JUDGMENT REVERSED, and the case remanded, with directions to that court for further proceedings

IN CONFORMITY WITH THIS OPINION.

Mr. Justice FIELD, dissenting.

The Chief Justice, Mr. Justice Clifford, and myself, dissent from the judgment of the majority of the court just rendered. The question presented is whether a contract for the payment of dollars made previous to February 25th, 1862, can be satisfied, against the will of the holder, by a tender of United States notes equal in nominal amount to the sum due on the contract. This question depends, of course, for its solution upon the validity and constitutionality of that provision of the act of 1862, which makes these notes a legal tender in payment of debts. We have recently had occasion to express on this subject our views at large, and to them we adhere. We have considered with great deliberation the views of the majority, who differ from us, and we are unable to yield our assent to them. With all proper deference and respect for our brethren, we are constrained to say that, in our judgment, the doctrines advanced in their opinions on this subject are not only in conflict with the teachings of all the statesmen and jurists of the country up to a recent period, and at variance with the uniform practice of the government for nearly three-quarters of a century, but that they tend directly to break down the barriers which separate a government of limited powers from a government resting in the unrestrained will of Congress.

We are therefore compelled by every consideration of duty which may be supposed to govern judicial officers on this bench, to express on all proper occasions our dissent from what we regard as a wide departure from the limitations of the Constitution. Those limitations must be pre-

served, or our government will inevitably drift from the system established by our fathers into a vast centralized and consolidated government.

PAIGE *v.* BANKS.

1. Where in consideration of an agreement by publishers to pay him a certain sum of money, and the performance of specified duties in connection with the publication, a reporter of judicial decisions agreed in 1828 "to furnish in manuscript the reports of his court for publication," with an additional clause that the "publishers shall have the copyright of said reports, to them and their assigns forever," *held*, on bill filed by the reporter's executrix for injunction, and account of profits after the expiration of twenty-eight years from the entry of copyright (A.D. 1830), that the publishers had a full right of property in the manuscript; and accordingly that they could publish not only for the twenty-eight years during which the act of May 31st, 1790 (the only copyright act in force when the agreement was made), gave an author and his *assigns* the exclusive right to print, reprint, publish, and vend, but also during the fourteen years granted by an act of 3d February, 1831, subsequently passed, by which the exclusive right was continued to the author if alive, or if dead to his *widow*, *child*, *or children;* the reporter not having died till 1868.
2. *Held*, further, that this view was confirmed by the fact that a notice had been given in 1858, by the reporter to his publishers, that he himself claimed the right to publish on the expiration of the first twenty-eight years, and forbid them to publish further, and that they in reply denied his right and asserted their own, and that though the reporter lived, as already said, till 1868, ten years after this correspondence, no further notice was taken of this subject, and no attempt by the reporter, by act or protest, to interfere with the exercise of the right of the publishers to publish and sell.

APPEAL from a decree of the Circuit Court for the Southern District of New York; the case being thus:

Congress by a copyright law of 31st May, 1790,* enacted that the author and authors of any book or books, "and his or their executors, administrators, or *assigns*," should have

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* 1 Stat. at Large, 124.