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NORMAN v. BALTIMORE & O. R. CO.

UNITED STATES et al. v. BANKERS' TRUST CO. et al. (two cases).

Nos. 270, 471, 472.

Argued Jan. 8, 9, 10, 1935.
Decided Feb. 18, 1935.

1. Constitutional law ⚷47

In determining validity of Joint Resolution providing for discharge of gold clause obligations by payment in gold coin or currency constituting legal tender at time of payment, resolution must be considered in its legislative setting and in light of other measures in pari materia (Gold Repeal Joint Resolution § 1 [31 USCA § 463]).

2. Railroads ⚷174

Gold clauses in railroad bonds issued respectively in 1903 and 1930 *held* not contracts for payment in gold coin as a commodity or in bullion, but were contracts for payment of money intended to afford definite standard or measure of value and thus to protect against depreciation of currency and against discharge of obligations by payment of lesser value than prescribed, and such contracts were not repugnant to federal law when made.

The bonds issued in 1903 severally provided for the payment of $1,000 gold coin of the United States of the present standard of weight and fineness, with interest from date at rate of 4 per cent. per annum payable in like gold coin semiannually, and the bond dated February 1, 1930, provided that payment of principal and interest would be made in gold coin of United States of, or equal to, standard of weight and fineness existing on February 1, 1930.

3. United States ⚷34

Broad and comprehensive national authority over revenue, finance, and currency is derived from aggregate of powers granted to Congress, embracing taxing and borrowing power, powers conferred by commerce and money and weights and measures clauses, and express power to make laws to execute enumerated powers (Const. art. 1, § 8, cls. 1, 2, 3, 5, 18).

4. United States ⚷34

Constitution was designed to provide same currency having uniform legal value in all states (Const. art. 1, § 8, cl. 5).

5. United States ⚷34

Power over currency is vested in Congress to exclusion of states (Const. art. 1, § 8, cl. 5).

6. Payment ⚷3
United States ⚷34

Congress has power to issue obligations in such form, and impress on them such qualities as currency for purchase of merchandise and payment of debts, as accord with usage of sovereign government, and its authority to impose requirements of uniformity and parity is essential feature of its control of currency (Const. art. 1, § 8, cl. 5).

7. United States ⚷34

By virtue of power of Congress over money and currency, there attach to ownership of gold and silver those limitations which public policy may require because of their quality as legal tender and as medium of exchange (Const. art. 1, § 8, cl. 5).

8. Constitutional law ⚷115

Contracts between private parties and contract obligations of states and municipalities or their political subdivisions cannot fetter constitutional authority of Congress when dealing with subject lying within its control, such as monetary policy (Const. art. 1, § 8, cl. 5).

9. Constitutional law ⚷115

Congress may expressly prohibit and invalidate contract provisions, though previously made and valid when made, when such contracts interfere with carrying out of policy Congress was free to adopt under Constitution, and such principle applies to congressional power to regulate currency and establish monetary system (Const. art. 1, § 8, cl. 5).

10. Constitutional law ⚷70(3)

If law invalidating gold clauses in existing obligations is, as applied to nonfederal obligations, an appropriate means to the legitimate end of preventing interference with monetary policy of Congress, decision of Congress as to necessity for adoption of such means is final, and court, in action by obligee invoking Fifth Amendment, may inquire only whether congressional action in such respect is arbitrary or capricious (Gold Repeal Joint Resolution § 1 [31 USCA § 463]; Const. Amend. 5).

11. Constitutional law ⚷47

Huge volume of existing obligations with gold clause could be considered by Congress in determining whether existence of such clause substantially obstructed its monetary policy so as to warrant law invalidating such clause (Gold Repeal Joint Resolution § 1 [31 USCA § 463]; Const. art. 1, § 8, cl. 5).

12. Evidence ⚷18

It is common knowledge that states, municipalities, and railroads and public utili-

ties, while receiving their income under new devalued dollar standard, have generally outstanding bonds with gold clause, and that similar situation exists with respect to numerous industrial corporations which have issued gold bonds and must receive payment for products in existing currency, as respects validity of Joint Resolution in effect abrogating gold clauses in existing obligations (Gold Repeal Joint Resolution § 1 [31 USCA § 463]).

13. Constitutional law ⇔47

In passing on validity of Joint Resolution in effect abrogating gold clause in existing obligations, court is not concerned with consequences in sense that consequences, however serious, may excuse invasion of constitutional rights, but is concerned solely with question whether such obligations, if enforceable, would frustrate constitutional power of Congress over monetary system (Gold Repeal Joint Resolution § 1 [31 USCA § 463]; Const. art. 1, § 8, cl. 5).

14. Constitutional law ⇔278(1)
Eminent domain ⇔2(1)
Payment ⇔3
United States ⇔34

Joint Resolution declaring gold clause in obligations to be against public policy, and providing for discharge of such obligations on payment, dollar for dollar, of legal tender coin or currency at time of payment, *held* valid as applied to pre-existing nonfederal obligations, and holders of pre-existing railroad gold bonds were not thereby deprived of property in violation of Fifth Amendment, since Congress, in view of huge volume of gold obligations, did not act arbitrarily in determining that such clauses interfered with its monetary policy, notwithstanding fact that, while gold had been largely withdrawn from circulation when resolution was passed, gold dollar was not actually devalued until shortly thereafter (Gold Repeal Joint Resolution, § 1 [31 USCA § 463]; Gold Reserve Act of 1934, § 12 [31 USCA § 821]).

Mr. Justice McREYNOLDS, Mr. Justice VAN DEVANTER, Mr. Justice SUTHERLAND, and Mr. Justice BUTLER, dissenting.

On Writ of Certiorari to the Supreme Court of the State of New York.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

Two proceedings, the first being an action by Norman C. Norman against the Baltimore & Ohio Railroad Company, commenced in the Supreme Court of the state of New York, and the other being a reorganization proceeding instituted by the Missouri Pacific Railroad Company, as debtor, in the United States District Court for the Eastern District of Missouri under Bankruptcy Act § 77, as added by Act March 3, 1933, c. 204, § 1 (11 USCA § 205). In the action in the state court, a judgment of the Appellate Division (241 App. Div. 803, 270 N. Y. S. 928), which affirmed a judgment of the Special Term for plaintiff in an amount less than demanded, was affirmed by the Court of Appeals of the state of New York (265 N. Y. 37, 191 N. E. 726), and plaintiff brings certiorari. In the reorganization proceeding, the Bankers' Trust Company and another, trustees under a mortgage executed by the St. Louis, Iron Mountain & Southern Railway Company, whose property had been transferred to the debtor, intervened, praying that income of the property be applied against the mortgage debt and alleging that the debt was payable in gold coin of the standard of weight and fineness on May 1, 1903, and the Reconstruction Finance Corporation and the United States intervened jointly in opposition. The court found that the intervening trustees were entitled only to payment, dollar for dollar, of principal of each bond in money constituting legal tender (In re Missouri Pac. R. Co., 7 F.Supp. 1), and, while appeals from the decree entered accordingly were pending in the Circuit Court of Appeals, certiorari was granted by this court.

Affirmed.

See, also, Nortz v. United States, 294 U. S. 317, 55 S. Ct. 428, 79 L. Ed. 907; Perry v. United States, 294 U. S. 330, 55 S. Ct. 432, 79 L. Ed. 912.

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*Mr. Frederick H. Wood, of New York City, for respondent Baltimore & O. R. Co.

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*Mr. Homer S. Cummings, Atty. Gen., for the United States.

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*Mr. Stanley Reed, of Washington, D. C., for petitioner Reconstruction Finance Corporation.

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*Mr. Edward J. White, of St. Louis, Mo., for petitioners Trustees of Missouri Pacific Railroad Co.

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*Messrs. James H. McIntosh and Edward W. Bourne, both of New York City, for respondents.

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*Mr. Chief Justice HUGHES delivered the opinion of the Court.

These cases present the question of the validity of the Joint Resolution of the Congress, of June 5, 1933, with respect to the "gold clauses" of private contracts for the payment of money. 48 Stat. 112 (31 USCA §§ 462, 463).

This resolution, the text of which is set forth in the margin,[1] declares that "every
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provision contained in or *made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby" is "against public policy." Such provisions in obligations thereafter incurred are prohibited. The resolution provides that "Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts."

In No. 270, the suit was brought upon a coupon of a bond made by the Baltimore & Ohio Railroad Company under date of February 1, 1930, for the payment of $1,000 on February 1, 1960, and interest from date at
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the rate *of 4½ per cent. per annum, payable semiannually. The bond provided that the payment of principal and interest "will be made * * * in gold coin of the United States of America of or equal to the standard of weight and fineness existing on February 1, 1930." The coupon in suit, for $22.50, was payable on February 1, 1934. The complaint

1 "Joint Resolution.

"To assure uniform value to the coins and currencies of the United States.

"Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

"Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

"(b) As used in this resolution, the term 'obligation' means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

"Sec. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled 'An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes', approved May 12, 1933, is amended to read as follows:

" 'All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight.'

"Approved, June 5, 1933, 4:40 p. m."

alleged that on February 1, 1930, the standard weight and fineness of a gold dollar of the United States as a unit of value "was fixed to consist of twenty-five and eight-tenths grains of gold, nine-tenths fine," pursuant to the Act of Congress of March 14, 1900 (31 Stat. 45, § 1, 31 USCA § 314), and that by the Act of Congress known as the Gold Reserve Act of 1934 (January 30, 1934, 48 Stat. 337), and by the order of the President under that act, the standard unit of value of a gold dollar of the United States "was fixed to consist of fifteen and five-twenty-firsts grains of gold, nine-tenths fine," from and after January 31, 1934. On presentation of the coupon, defendant refused to pay the amount in gold, or the equivalent of gold in legal tender of the United States which was alleged to be, on February 1, 1934, according to the standard of weight and fineness existing on February 1, 1930, the sum of $38.10, and plaintiff demanded judgment for that amount.

Defendant answered that by acts of Congress, and, in particular, by the Joint Resolution of June 5, 1933, defendant had been prevented from making payment in gold coin "or otherwise than dollar for dollar, in coin or currency of the United States (other than gold coin and gold certificates)," which at the time of payment constituted legal tender. Plaintiff, challenging the validity of the Joint Resolution under the Fifth and Tenth Amendments, and article 1, § 1, of the Constitution of the United States, moved to strike the defense. The motion was denied. Judgment was entered for plaintiff for $22.50, the face of the coupon, and was affirmed upon appeal. The Court of Appeals of the state considered

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the federal question and *decided that the Joint Resolution was valid. 265 N. Y. 37, 191 N. E. 726, 92 A. L. R. 1523. This Court granted a writ of certiorari October 8, 1934, 293 U. S. 546, 55 S. Ct. 103, 79 L. Ed. —.

In Nos. 471 and 472, the question arose with respect to an issue of bonds, dated May 1, 1903, of the St. Louis, Iron Mountain & Southern Railway Company, payable May 1, 1933. The bonds severally provided for the payment of "One Thousand Dollars gold coin of the United States of the present standard of weight and fineness," with interest from date at the rate of 4 per cent. per annum, payable "in like gold coin semi-annually." In 1917, Missouri Pacific Railroad Company acquired the property of the obligor subject to the mortgage securing the bonds. In March, 1933, the United States District Court, Eastern District of Missouri, approved a petition filed by the latter company under section 77 of the Bankruptcy Act (11 USCA § 205). In the following December, the trustees under the mortgage asked leave to intervene, seeking to have the income of the property applied against the mortgage debt, and alleging that the debt was payable "in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903." Later, the Reconstruction Finance Corporation and the United States, as creditors of the debtor, filed a joint petition for leave to intervene, in which they denied the validity of the gold clause contained in the mortgage and bonds. Leave to intervene specially was granted to each applicant on April 5, 1934, and answers were filed. On the hearing, the District Court decided that the Joint Resolution of June 5, 1933, was constitutional and that the trustees were entitled, in payment of the principal of each bond, to $1,000 in money constituting legal tender. In re Missouri Pac. R. Co., 7 F. Supp. 1. Decree was entered accordingly, and the trustees (respondents here) took two appeals to the Unit-

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ed States Circuit Court of Appeals.[2] *While these appeals were pending, this Court granted writs of certiorari November 5, 1934. U. S. v. Bankers' Trust Co., 293 U. S. 548, 55 S. Ct. 145, 79 L. Ed. —.

The Joint Resolution of June 5, 1933, was one of a series of measures relating to the currency. These measures disclose not only the purposes of the Congress but also the situations which existed at the time the Joint Resolution was adopted and when the payments under the "gold clauses" were sought. On March 6, 1933, the President, stating that there had been "heavy and unwarranted withdrawals of gold and currency from our banking institutions for the purpose of hoarding" and "extensive speculative activity abroad in foreign exchange" which had resulted "in severe drains on the Nation's stocks of gold," and reciting the authority conferred by section 5 (b) of the Act of October 6, 1917 (40 Stat. 411 [50 USCA Appendix § 5 note]), declared "a bank holiday" until March 9, 1933. On the same date, the Secretary of the Treasury, with the President's approval, issued instructions to the Treasurer of the United

2 One appeal was allowed by the District Judge, and the other by the Circuit Court of Appeals.

States to make payments in gold in any form only under license issued by the Secretary.

On March 9, 1933, the Congress passed the Emergency Banking Relief Act, 48 Stat. 1. All orders issued by the President or the Secretary of the Treasury since March 4, 1933, under the authority conferred by section 5 (b) of the Act of October 6, 1917, were confirmed. That section was amended (12 USCA § 95a) so as to provide that, during any period of national emergency declared by the President, he might "investigate, regulate, or prohibit," by means of licenses or otherwise, "any transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the President, and export, hoarding, melting, or earmarking of gold or silver coin or bullion or currency, by any person within the United States or any place subject to the jurisdiction thereof." The act also amended section 11 of the Federal Reserve Act (39 Stat. 752, 12 USCA § 248 (n) so as to authorize the Secretary of *296 the Treasury to *require all persons to deliver to the Treasurer of the United States "any or all gold coin, gold bullion, and gold certificates" owned by them, and that the Secretary should pay therefor "an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States." By Executive Order of March 10, 1933 (No. 6073), 12 USCA § 95 note, the President authorized banks to be reopened, as stated, but prohibited the removal from the United States, or any place subject to its jurisdiction, of "any gold coin, gold bullion, or gold certificates, except in accordance with regulations prescribed by or under license issued by the Secretary of the Treasury." By further Executive Order of April 5, 1933 (No. 6102), 12 USCA § 248 note, forbidding hoarding, all persons were required to deliver, on or before May 1, 1933, to stated banks, "all gold coin, gold bullion, and gold certificates," with certain exceptions, the holder to receive "an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States." Another Order of April 20, 1933 (No. 6111), 12 USCA § 95 note, contained further requirements with respect to the acquisition and export of gold and to transactions in foreign exchange.

By section 43 of the Agricultural Adjustment Act of May 12, 1933 (48 Stat. 51 [31 USCA § 821]), it was provided that the President should have authority, upon the making of prescribed findings and in the circumstances stated, "to fix the weight of the gold dollar in grains nine tenths fine and also to fix the weight of the silver dollar in grains nine tenths fine at a definite fixed ratio in relation to the gold dollar at such amounts as he finds necessary from his investigation to stabilize domestic prices or to protect the foreign commerce against the adverse effect of depreciated foreign currencies," and it was further provided that the "gold dollar, the weight of which is so fixed, shall be the standard unit of value," and that "all forms of money * * * shall be maintained at a parity with *297 this standard," but *that "in no event shall the weight of the gold dollar be fixed so as to reduce its present weight by more than 50 per centum."

Then followed the Joint Resolution of June 5, 1933. There were further Executive Orders of August 28, 1933, (No. 6260), 12 USCA § 95 note, and August 29, 1933 (No. 6261), October 25, 1933 (No. 6359), 12 USCA § 248 note, and January 12 and 15, 1934 (Nos. 6556, 6560), 12 USCA § 95 note, relating to the hoarding and export of gold coin, gold bullion, and gold certificates, to the sale and export of gold recovered from natural deposits, and to transactions in foreign exchange, and orders of the Secretary of the Treasury, approved by the President, on December 28, 1933, and January 15, 1934, for the delivery of gold coin, gold bullion and gold certificates to the United States Treasury.

On January 30, 1934, the Congress passed the "Gold Reserve Act of 1934" (48 Stat. 337) which, by section 13 (12 USCA § 212) ratified and confirmed all the actions, regulations and orders taken or made by the President and the Secretary of the Treasury under the Act of March 9, 1933, or under section 43 of the Act of May 12, 1933, and, by section 12 (31 USCA § 821) with respect to the authority of the President to fix the weight of the gold dollar, provided that it should not be fixed "in any event at more than 60 per centum of its present weight." On January 31, 1934, the President issued his proclamation declaring that he fixed "the weight of the gold dollar to be $15\frac{5}{21}$ grains nine tenths fine," from and after that date (No. 2072), 31 USCA § 821 note.

[1] We have not attempted to summarize all the provisions of these measures. We are not concerned with their wisdom. The question before the Court is one of power, not of policy. And that question touches the validity of these measures at but a single point; that is, in relation to the Joint Resolution deny-

ing effect to "gold clauses" in existing contracts. The resolution must, however, be considered in its legislative setting and in the light of other measures in pari materia.

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*[2] *First. The Interpretation of the Gold Clauses in Suit.*—In the case of the Baltimore & Ohio Railroad Company, the obligor considers the obligation to be one "for the payment of money and not for the delivery of a specified number of grains or ounces of gold"; that it is an obligation payable in money of the United States and not less so because payment is to be made "in a particular kind of money"; that it is not a "commodity contract" which could be discharged by "tender of bullion." At the same time, the obligor contends that, while the Joint Resolution is constitutional in either event, the clause is a "gold coin" and not a "gold value" clause; that is, it does not imply "a payment in the 'equivalent' of gold in case performance by payment in gold coin is impossible." The parties, runs the argument, intended that the instrument should be negotiable and hence it should not be regarded as one "for the payment of an indeterminate sum ascertainable only at date of payment." And in the reference to the standard of weight and fineness, the words "equal to" are said to be synonymous with "of."

In the case of the bonds of the St. Louis, Iron Mountain & Southern Railway Company, the government urges that by providing for payment in gold coin the parties showed an intention "to protect against depreciation of one kind of money as compared with another, as for example, paper money compared with gold, or silver compared with gold"; and, by providing that the gold coin should be of a particular standard, they attempted "to assure against payment in coin of lesser gold content." The clause, it is said, "does not reveal an intention to protect against a situation where gold coin no longer circulates and all forms of money are maintained in the United States at a parity with each other"; apparently, "the parties did not anticipate the existence of conditions making it impossible and illegal to procure gold coin with which to meet the obligations." In view of that impossibility, asserted to exist both in

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fact and in law, the *government contends that "the present debtor would be excused, in an action on the bonds, from the obligation to pay in gold coin," but, "as only one term of the promise in the gold clause is impossible to perform and illegal," the remainder of the obligation should stand, and thus the obligation "becomes one to pay the stated number of dollars."

The bondholder in the first case, and the trustees of the mortgage in the second case, oppose such an interpretation of the gold clauses as inadequate and unreasonable. Against the contention that the agreement was to pay in gold coin if that were possible, and not otherwise, they insist that it is beyond dispute that the gold clauses were used for the very purpose of guarding against a depreciated currency. It is pointed out that the words "gold coin of the *present* standard" show that the parties contemplated that, when the time came to pay, there might be gold dollars of a new standard, and, if so, that "gold coin of the present standard" would pass from circulation; and it is taken to be admitted, by the government's argument, that, if gold coins of a lesser standard were tendered, they would not have to be accepted unless they were tendered in sufficient amount to make up the "gold value" for which, it is said, the contract called. It is insisted that the words of the gold clause clearly show an intent "to establish a measure or standard of value of the money to be paid if the particular kind of money specified in the clause should not be in circulation at the time of payment." To deny the right of the bondholders to the equivalent of the gold coin promised is said to be not a construction of the gold clause, but its nullification.[3]

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*The decisions of this Court relating to clauses for payment in gold did not deal with situations corresponding to those now pre-

[3] As illustrating the use of such clauses as affording a standard or measure of value, counsel refer to article 262 of the Treaty of Versailles with respect to the monetary obligations of Germany which were made payable in gold coins of several countries, with the stated purpose that the gold coins mentioned "shall be defined as being of the weight and fineness of gold as enacted by law on January 1, 1914." Reference is also made to the construction of the gold clause in the bonds before the House of Lords in Feist, appellant, and Société Intercommunale Belge d'Electricité, Respondents, L. R. (1934) A. C. 161, 173, and to the decisions of the Permanent Court of International Justice in the cases of the Serbian and Brazilian loans (Publications of the Permanent Court of International Justice, Series A, Nos. 20/21), where the bonds provided for payment in gold francs.

sented. Bronson v. Rodes, 7 Wall. 229, 19 L. Ed. 141; Butler v. Horwitz, 7 Wall. 258, 19 L. Ed. 149; Dewing v. Sears, 11 Wall. 379, 20 L. Ed. 189; Trebilcock v. Wilson, 12 Wall. 687, 20 L. Ed. 460; Thompson v. Butler, 95 U. S. 694, 24 L. Ed. 540; Gregory v. Morris, 96 U. S. 619, 24 L. Ed. 740. See, also, The Vaughan and Telegraph, 14 Wall. 258, 20 L. Ed. 807; The Emily Souder, 17 Wall. 666, 21 L. Ed. 683. The rulings, upholding gold clauses and determining their effect, were made when gold was still in circulation and no act of the Congress prohibiting the enforcement of such clauses had been passed. In Bronson v. Rodes, supra, page 251 of 7 Wall., the Court held that the Legal Tender Acts of 1862 and 1863, apart from any question of their constitutionality, had not repealed or modified the laws for the coinage of gold and silver or the statutory provisions which made those coins a legal tender in all payments. It followed, said the Court, 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." Accordingly, the contract of the parties for payment in one sort of dollars, which was still in lawful circulation, was sustained. The case of Trebilcock v. Wilson, supra, was decided shortly after the Legal Tender Acts had been held valid. The Court again concluded (pages 695, 696 of 12 Wall.) that those acts applied only

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to debts which were payable *in money generally, and that there were, "according to that decision, two kinds of money, essentially different in their nature, but equally lawful." In that view, said the Court, "contracts payable in either, or for the possession of either, must be equally lawful, and, if lawful, must be equally capable of enforcement."

With respect to the interpretation of the clauses then under consideration, the Court observed, in Bronson v. Rodes, supra, page 250 of 7 Wall., that "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." The Court thought that it was not distinguishable, in principle, "from a contract to deliver an equal weight of bullion of equal fineness." That observation was not necessary to the final conclusion. The decision went upon the 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." Id. page 251 of 7 Wall.

In Trebilcock v. Wilson, supra, where a note was payable "*in specie*," the Court said (pages 694, 695 of 12 Wall.) that the provision did not "assimilate the note to an instrument in which the amount stated is payable in chattels; as, for example, to a contract to pay a specified sum in lumber, or in fruit, or grain"; that the terms "*in specie*" were "merely descriptive of the kind of dollars in which the note is payable, there being different kinds in circulation, recognized by law"; that they meant "that the designated number of dollars in the note shall be paid in so many gold or silver dollars of the coinage of the United States." And in Thompson v. Butler, supra, pages 696, 697 of 95 U. S., the Court adverted to the statement made in Bronson v. Rodes, and concluded that, "notwithstanding this, it is a contract to pay money, and none the less

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so because *it designates for payment one of the two kinds of money which the law has made a legal tender in discharge of money obligations." Compare Gregory v. Morris, supra.

We are of the opinion that the gold clauses now before us were not contracts for payment in gold coin as a commodity, or in bullion, but were contracts for the payment of money. The bonds were severally for the payment of $1,000. We also think that, fairly construed, these clauses were intended to afford a definite standard or measure of value, and thus to protect against a depreciation of the currency and against the discharge of the obligation by a payment of lesser value than that prescribed. When these contracts were made, they were not repugnant to any action of the Congress. In order to determine whether effect may now be given to the intention of the parties in the face of the action taken by the Congress, or the contracts may be satisfied by the payment dollar for dollar, in legal tender, as the Congress has now prescribed, it is necessary to consider (1) the power of the Congress to establish a monetary system and the necessary implications of that power; (2) the power of the Congress to invalidate the provisions of existing contracts which interfere with the exercise of its constitutional author-

ity; and (3) whether the clauses in question do constitute such an interference as to bring them within the range of that power.

Second. The Power of the Congress to Establish a Monetary System.—It is unnecessary to review the historic controversy as to the extent of this power, or again to go over the ground traversed by the Court in reaching the conclusion that the Congress may make Treasury notes legal tender in payment of debts previously contracted, as well as of those subsequently contracted, whether that authority be exercised in course of war

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or in time of *peace. Knox v. Lee (Legal Tender Cases), 12 Wall. 457, 20 L. Ed. 287; Juilliard v. Greenman (Legal Tender Cases), 110 U. S. 421, 4 S. Ct. 122, 28 L. Ed. 204. We need only consider certain postulates upon which that conclusion rested.

[3] The Constitution grants to the Congress power "To coin Money, regulate the Value thereof, and of foreign Coin." Article 1, § 8, par. 5. But the Court in the legal tender cases did not derive from that express grant alone the full authority of the Congress in relation to the currency. The Court found the source of that authority in all the related powers conferred upon the Congress and appropriate to achieve "the great objects for which the government was framed"—"a national government, with sovereign powers." McCulloch v. Maryland, 4 Wheat. 316, 404–407, 4 L. Ed. 579; Knox v. Lee, supra, pages 532, 536 of 12 Wall.; Juilliard v. Greenman, supra, page 438 of 110 U. S., 4 S. Ct. 122, 125. The broad and comprehensive national authority over the subjects of revenue, finance, and currency is derived from the aggregate of the powers granted to the Congress, embracing the powers to lay and collect taxes, to borrow money, to regulate commerce with foreign nations and among the several states, to coin money, regulate the value thereof, and of foreign coin, and fix the standards of weights and measures, and the added express power "to make all laws which shall be necessary and proper for carrying into execution" the other enumerated powers. Juilliard v. Greenman, supra, pages 439, 440 of 110 U. S., 4 S. Ct. 122, 125.

[4-7] The Constitution "was designed to provide the same currency, having a uniform legal value in all the States." It was for that reason that the power to regulate the value of money was conferred upon the federal government, while the same power, as well as the power to emit bills of credit, was withdrawn from the states. The states cannot declare what shall be money, or regulate its value. Whatever power there is over the currency is vested in the Congress. Knox v. Lee, supra, page 545 of 12 Wall. Another postulate of the decision in that case is that

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the Congress has *power "to enact that the government's promises to pay money shall be, for the time being, equivalent in value to the representative of value determined by the coinage acts, or to multiples thereof." Id., page 553 of 12 Wall. Or, as was stated in the Juilliard Case, supra, page 447 of 110 U. S., 4 S. Ct. 122, 129, the Congress is empowered "to issue the obligations of the United States in such form, and to impress upon them such qualities as currency for the purchase of merchandise and the payment of debts, as accord with the usage of sovereign governments." The authority to impose requirements of uniformity and parity is an essential feature of this control of the currency. The Congress is authorized to provide "a sound and uniform currency for the country," and to "secure the benefit of it to the people by appropriate legislation." Veazie Bank v. Fenno, 8 Wall. 533, 549, 19 L. Ed. 482.

Moreover, by virtue of this national power, there attaches to the ownership of gold and silver those limitations which public policy may require by reason of their quality as legal tender and as a medium of exchange. Ling Su Fan v. United States, 218 U. S. 302, 310, 31 S. Ct. 21, 23, 54 L. Ed. 1049, 30 L. R. A. (N. S.) 1176. Those limitations arise from the fact that the law "gives to such coinage a value which does not attach as a mere consequence of intrinsic value." Their quality as legal tender is attributed by the law, aside from their bullion value. Hence the power to coin money includes the power to forbid mutilation, melting, and exportation of gold and silver coin—"to prevent its outflow from the country of its origin." Id., page 311 of 218 U. S., 31 S. Ct. 21, 23.

Dealing with the specific question as to the effect of the Legal Tender Acts upon contracts made before their passage, that is, those for the payment of money generally, the Court, in the legal tender cases, recognized the possible consequences of such enactments in frustrating the expected performance of contracts—in rendering them "fruitless, or partially fruitless." The Court

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pointed out *that the exercise of the powers of Congress may affect "apparent obliga-

tions" of contracts in many ways. The Congress may pass bankruptcy acts. The Congress may declare war, or, even in peace, pass nonintercourse acts, or direct an embargo, which may operate seriously upon existing contracts. And the Court reasoned that, if the Legal Tender Acts "were justly chargeable with impairing contract obligations, they would not, for that reason, be forbidden, unless a different rule is to be applied to them from that which has hitherto prevailed in the construction of other powers granted by the fundamental law." The conclusion was that contracts must be understood as having been made in reference to the possible exercise of the rightful authority of the government, and that no obligation of a contract "can extend to the defeat" of that authority. Knox v. Lee, supra, pages 549–551 of 12 Wall.

On similar grounds, the Court dismissed the contention under the Fifth Amendment forbidding the taking of private property for public use without just compensation or the deprivation of it without due process of law. That provision, said the Court, referred only to a direct appropriation. A new tariff, an embargo, or a war, might bring upon individuals great losses; might, indeed, render valuable property almost valueless—might destroy the worth of contracts. "But whoever supposed" asked the Court, "that, because of this, a tariff could not be changed or a nonintercourse act, or embargo be enacted, or a war be declared." The Court referred to the Act of June 28, 1834 (4 Stat. 699), by which a new regulation of the weight and value of gold coin was adopted, and about 6 per cent. was taken from the weight of each dollar. The effect of the measure was that all creditors were subjected to a corresponding loss, as the debts then due "became solvable with six per cent. less gold than was required to pay them before." But it had never been imagined that there was a taking of private property without compensation
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or without due *process of law. The harshness of such legislation, or the hardship it may cause, afforded no reason for considering it to be unconstitutional. Id., pages 551, 552 of 12 Wall.

The question of the validity of the Joint Resolution of June 5, 1933, must be determined in the light of these settled principles.

[8, 9] *Third. The Power of the Congress to Invalidate the Provisions of Existing Contracts Which Interfere with the Exercise of Its Constitutional Authority.*—The instant cases involve contracts between private parties, but the question necessarily relates as well to the contracts or obligations of states and municipalities, or of their political subdivisions; that is, to such engagements as are within the reach of the applicable national power. The government's own contracts—the obligations of the United States—are in a distinct category and demand separate consideration. See Perry v. United States, 294 U. S. 330, 55 S. Ct. 432, 79 L. Ed. 912, decided this day.

The contention is that the power of the Congress, broadly sustained by the decisions we have cited in relation to private contracts for the payment of money generally, does not extend to the striking down of express contracts for gold payments. The acts before the Court in the legal tender cases, as we have seen, were not deemed to go so far. Those acts left in circulation two kinds of money, both lawful and available, and contracts for payments in gold, one of these kinds, were not disturbed. The Court did not decide that the Congress did not have the constitutional power to invalidate existing contracts of that sort, if they stood in the way of the execution of the policy of the Congress in relation to the currency. Mr. Justice Bradley, in his concurring opinion, expressed the view that the Congress had that power and had exercised it. Knox v. Lee, supra, pages 566, 567 of 12 Wall. And, upon that ground, he dissented from the opinion of the Court in Trebilcock v. Wilson, supra,
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page 699 of 12 Wall., as to the *validity of contracts for payment "*in specie*." [4] It is significant that Mr. Justice Bradley, referring to this difference of opinion in the legal tender cases, remarked (in his concurring opinion) that "of course" the difference arose "from the different construction given to the legal tender acts." "I do not understand," he said, "the majority of the court to decide that an act so drawn as to embrace, in terms, contracts payable in specie, would not be consti-

[4] Mr. Justice Miller also dissented in Trebilcock v. Wilson, 12 Wall. pages 699, 700, 20 L. Ed. 460, upon the ground "that a contract for gold dollars, in terms, was in no respect different, in legal effect, from a contract for dollars without the qualifying words, specie or gold, and that the legal tender statutes had, therefore, the same effect in both cases."

tutional. Such a decision would completely nullify the power claimed for the government. For it would be very easy, by the use of one or two additional words, to make all contracts payable in specie."

Here, the Congress has enacted an express interdiction. The argument against it does not rest upon the mere fact that the legislation may cause hardship or loss. Creditors who have not stipulated for gold payments may suffer equal hardship or loss with creditors who have so stipulated. The former, admittedly, have no constitutional grievance. And, while the latter may not suffer more, the point is pressed that their express stipulations for gold payments constitute property, and that creditors who have not such stipulations are without that property right. And the contestants urge that the Congress is seeking, not to regulate the currency, but to regulate contracts, and thus has stepped beyond the power conferred.

This argument is in the teeth of another established principle. Contracts, however express, cannot fetter the constitutional authority of the Congress. Contracts may create rights of property, but, when contracts deal with a subject-matter which lies within the

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control of the Con*gress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them. See Hudson County Water Co. v. McCarter, 209 U. S. 349, 357, 28 S. Ct. 529, 52 L. Ed. 828, 14 Ann. Cas. 560.

This principle has familiar illustration in the exercise of the power to regulate commerce. If shippers and carriers stipulate for specified rates, although the rates may be lawful when the contracts are made, if Congress through the Interstate Commerce Commission exercises its authority and prescribes different rates, the latter control and override inconsistent stipulations in contracts previously made. This is so, even if the contract be a charter granted by a state and limiting rates, or a contract between municipalities and carriers. New York v. United States, 257 U. S. 591, 600, 601, 42 S. Ct. 239, 66 L. Ed. 385; United States v. Village of Hubbard, 266 U. S. 474, 477, note, 45 S. Ct. 160, 69 L. Ed. 389. See, also, Armour Packing Co. v. United States, 209 U. S. 56, 80–82, 28 S. Ct. 428, 52 L. Ed. 681; Union Dry Goods Co. v. Georgia Public Service Corporation, 248 U. S. 372, 375, 39 S. Ct. 117, 63 L. Ed. 309, 9 A. L. R. 1420.

In Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 229, 230, 20 S. Ct. 96, 103, 44 L. Ed. 136, the Court raised the pertinent question, if certain kinds of private contracts directly limit or restrain, and hence regulate interstate commerce, why should not the power of Congress reach such contracts equally with legislation of a State to the same effect? "What sound reason," said the Court, "can be given why Congress should have the power to interfere in the case of the state, and yet have none in the case of the individual? Commerce is the important subject of consideration, and anything which directly obstructs and thus regulates that commerce which is carried on among the states, whether it is state legislation or private contracts between individuals or corporations, should be subject to the power of Congress in the regulation of that commerce."

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*Applying that principle, the Court held that a contract, valid when made (in 1871) for the giving of a free pass by an interstate carrier, in consideration of a release of a claim for damages, could not be enforced after the Congress had passed the Act of June 29, 1906, 34 Stat. 584. Louisville & Nashville Railroad Company v. Mottley, 219 U. S. 467, 31 S. Ct. 265, 270, 55 L. Ed. 297, 34 L. R. A. (N. S.) 671.[5] Quoting the statement of the general principle in the legal tender cases, the Court decided that the agreement must necessarily be regarded as having been made subject to the possibility that, at some future time, the Congress "might so exert its whole constitutional power in regulating interstate commerce as to render that agreement unenforceable, or to impair its value." The Court considered it inconceivable that the exercise of such power "may be hampered or restricted to any extent by contracts previously made between individuals or corporations." "The framers of the Constitution never intended any such state of things to exist." Id. page 482 of 219 U. S., 31 S. Ct. 265, 270. Accordingly, it has been "authoritatively settled" by decisions of this Court that no previous contracts or combinations can prevent the application of the Anti-Trust Acts (15 USCA § 1 et seq.) to compel the discontinuance of combinations declared to be illegal. Addyston Pipe & Steel Co. v. United States, supra;

[5] Compare New York Central & Hudson R. R. Co. v. Gray, 239 U. S. 583, 36 S. Ct. 176, 60 L. Ed. 451; Calhoun v. Massie, 253 U. S. 170, 176, 40 S. Ct. 474, 64 L. Ed. 843.

United States v. Southern Pacific Company, 259 U. S. 214, 234, 235, 42 S. Ct. 496, 66 L. Ed. 907. See, also, Calhoun v. Massie, 253 U. S. 170, 176, 40 S. Ct. 474, 64 L. Ed. 843; Omnia Commercial Co. v. United States, 261 U. S. 502, 509, 43 S. Ct. 437, 67 L. Ed. 773; Stephenson v. Binford, 287 U. S. 251, 276, 53 S. Ct. 181, 77 L. Ed. 288, 87 A. L. R. 721.

The principle is not limited to the incidental effect of the exercise by the Congress of its constitutional authority. There is no constitutional ground for denying to the Congress the power expressly to prohibit and invalidate contracts although previously made,
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and valid when made, *when they interfere with the carrying out of the policy it is free to adopt. The exercise of this power is illustrated by the provision of section 5 of the Employers' Liability Act of 1908 (35 Stat. 65, 66 [45 USCA § 55]) relating to any contract the purpose of which was to enable a common carrier to exempt itself from the liability which the act created. Such a stipulation the act explicitly declared to be void. In the Second Employers' Liability Cases (Mondou v. New York, N. H. & H. R. Co.), 223 U. S. 1, 52, 32 S. Ct. 169, 176, 56 L. Ed. 327, 38 L. R. A. (N. S.) 44, the Court decided that, as the Congress possessed the power to impose the liability, it also possessed the power "to insure its efficacy by prohibiting any contract, rule, regulation, or device in evasion of it." And this prohibition the Court has held to be applicable to contracts made before the act was passed. Philadelphia, Baltimore & Washington R. R. Co. v. Schubert, 224 U. S. 603, 32 S. Ct. 589, 56 L. Ed. 911. In that case, the employee suing under the act was a member of the "Relief Fund" of the railroad company under a contract of membership, made in 1905, for the purpose of securing certain benefits. The contract provided that an acceptance of those benefits should operate as a release of claims, and the company pleaded that acceptance as a bar to the action. The Court held that the Employers' Liability Act (45 USCA §§ 51-59) supplied the governing rule and that the defense could not be sustained. The power of the Congress in regulating interstate commerce was not fettered by the necessity of maintaining existing arrangements and stipulations which would conflict with the execution of its policy. The reason is manifest. To subordinate the exercise of the federal authority to the continuing operation of previous contracts would be to place to this extent the regulation of interstate commerce in the hands of private individuals and to withdraw from the control of the Congress so much of the field as they might choose by "prophetic discernment" to bring within the range of their agreements. The Constitution recognizes no such limitation. Id. pages 613, 614 of 224 U. S., 32 S.
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Ct. 589. See, *also, United States v. Southern Pacific Company, supra; Sproles v. Binford, 286 U. S. 374, 390, 391, 52 S. Ct. 581, 76 L. Ed. 1167; Federal Radio Commission v. Nelson Brothers Bond & Mortgage Co., 289 U. S. 266, 282, 53 S. Ct. 627, 77 L. Ed. 1166.

The same reasoning applies to the constitutional authority of the Congress to regulate the currency and to establish the monetary system of the country. If the gold clauses now before us interfere with the policy of the Congress in the exercise of that authority, they cannot stand.

[10] *Fourth. The Effect of the Gold Clauses in Suit in Relation to the Monetary Policy Adopted by the Congress.* Despite the wide range of the discussion at the bar and the earnestness with which the arguments against the validity of the Joint Resolution have been pressed, these contentions necessarily are brought, under the dominant principles to which we have referred, to a single and narrow point. That point is whether the gold clauses do constitute an actual interference with the monetary policy of the Congress in the light of its broad power to determine that policy. Whether they may be deemed to be such an interference depends upon an appraisement of economic conditions and upon determinations of questions of fact. With respect to those conditions and determinations, the Congress is entitled to its own judgment. We may inquire whether its action is arbitrary or capricious, that is, whether it has reasonable relation to a legitimate end. If it is an appropriate means to such an end, the decisions of the Congress as to the degree of the necessity for the adoption of that means, is final. McCulloch v. Maryland, supra, pages 421, 423, of 4 Wheat.; Juilliard v. Greenman, supra, page 450 of 110 U. S., 4 S. Ct. 122; Stafford v. Wallace, 258 U. S. 495, 521, 42 S. Ct. 397, 66 L. Ed. 735, 23 A. L. R. 229; James Everard's Breweries v. Day, 265 U. S. 545, 559, 562, 44 S. Ct. 628, 68 L. Ed. 1174.

[11-14] The Committee on Banking and Currency of the House of Representatives
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stated in its report recommending *favorable action upon the Joint Resolution (H. R. Rep. No. 169, 73d Cong. 1st Sess.):

"The occasion for the declaration in the resolution that the gold clauses are contrary to public policy arises out of the experiences of the present emergency. These gold clauses render ineffective the power of the Government to create a currency and determine the value thereof. If the gold clause applied to a very limited number of contracts and security issues, it would be a matter of no particular consequence, but in this country virtually all obligations, almost as a matter of routine, contain the gold clause. In the light of this situation two phenomena which have developed during the present emergency make the enforcement of the gold clauses incompatible with the public interest. The first is the tendency which has developed internally to hoard gold; the second is the tendency for capital to leave the country. Under these circumstances no currency system, whether based upon gold or upon any other foundation, can meet the requirements of a situation in which many billions of dollars of securities are expressed in a particular form of the circulating medium, particularly when it is the medium upon which the entire credit and currency structure rests."

And the Joint Resolution itself recites the determination of the Congress in these words:[6]

"Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent *313 with the *declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts."

Can we say that this determination is so destitute of basis that the interdiction of the gold clauses must be deemed to be without any reasonable relation to the monetary policy adopted by the Congress?

The Congress in the exercise of its discretion was entitled to consider the volume of obligations with gold clauses, as that fact, as the report of the House Committee observed, obviously had a bearing upon the question whether their existence constituted a substantial obstruction to the congressional policy. The estimates submitted at the bar indicate that, when the Joint Resolution was adopted, there were outstanding seventy-five billion dollars or more of such obligations, the annual interest charges on which probably amounted to between three and four billion dollars. It is apparent that, if these promises were to be taken literally, as calling for actual payment in gold coin, they would be directly opposed to the policy of Congress, as they would be calculated to increase the demand for gold, to encourage hoarding, and to stimulate attempts at exportation of gold coin. If there were no outstanding obligations with gold clauses, we suppose that no one would question the power of the Congress, in its control of the monetary system, to endeavor to conserve the gold resources of the Treasury, to insure its command of gold in order to protect and increase its reserves, and to prohibit the exportation of gold coin or its use for any purpose inconsistent with the needs of the Treasury. See Ling Su Fan v. United States, supra. And, if the Congress would have that power in the absence of gold clauses, principles beyond dispute compel the conclusion that private parties, or states or municipali- *314 ties, *by making such contracts, could not prevent or embarrass its exercise. In that view of the import of the gold clauses, their obstructive character is clear.

But, if the clauses are treated as "gold value" clauses, that is, as intended to set up a measure or standard of value if gold coin is not available, we think they are still hostile to the policy of the Congress, and hence subject to prohibition. It is true that, when the Joint Resolution was adopted on June 5, 1933, while gold coin had largely been withdrawn from circulation and the Treasury had declared that "gold is not now paid, nor is it available for payment, upon public or private debts,"[7] the dollar had not yet been devalued. But devaluation was in prospect and a uniform currency was intended.[8] Section 43 of the Act of May 12, 1933 (48 Stat. 51 [31 USCA

[6] See note 1.

[7] Treasury Statement of May 26, 1933.

[8] The Senate Committee on Banking and Currency, in its Report of May 27, 1933, stated: "By the Emergency Banking Act and the existing Executive orders gold is not now paid, or obtainable for payment, on obligations public or private. By the Thomas amendment currency was intended to be made legal tender for all debts. However, due to the language used doubt has arisen whether it has been made legal tender for payments on gold clause obligations, public and pri-

§ 821]), provided that the President should have authority, on certain conditions, to fix the weight of *the gold dollar as stated, and that its weight as so fixed should be "the standard unit of value" with which all forms of money should be maintained "at a parity." The weight of the gold dollar was not to be reduced by more than 50 per centum. The Gold Reserve Act of 1934 (January 30, 1934, 48 Stat. 337), provided that the President should not fix the weight of the gold dollar at more than 60 per cent. of its present weight. The order of the President of January 31, 1934, fixed the weight of the gold dollar at $15\frac{5}{21}$ grains nine-tenths fine as against the former standard of $25\frac{8}{10}$ grains nine-tenths fine. If the gold clauses interfered with the congressional policy, and hence could be invalidated, there appears to be no constitutional objection to that action by the Congress in anticipation of the determination of the value of the currency. And the questions now before us must be determined in the light of that action.

The devaluation of the dollar placed the domestic economy upon a new basis. In the currency as thus provided, states and municipalities must receive their taxes; railroads, their rates and fares; public utilities, their charges for services. The income out of which they must meet their obligations is determined by the new standard. Yet, according to the contentions before us, while that income is thus controlled by law, their indebtedness on their "gold bonds" must be met by an amount of currency determined by the former gold standard. Their receipts, in this view, would be fixed on one basis; their interest charges, and the principal of their obligations, on another. It is common knowledge that the bonds issued by these obligors have generally contained gold clauses, and presumably they account for a large part of the outstanding obligations of that sort. It is also common knowledge that a similar situation exists with respect to numerous industrial corporations that have issued their "gold bonds" and must now receive payments for their products in the existing currency. It requires no acute analysis or profound economic inquiry to disclose the dislocation of the domestic economy which would be caused by such a disparity of conditions in which, it is insisted, those debtors under gold clauses should be required to pay *$1.69 in currency while respectively receiving their taxes, rates, charges, and prices on the basis of $1 of that currency.

We are not concerned with consequences, in the sense that consequences, however serious, may excuse an invasion of constitutional right. We are concerned with the constitutional power of the Congress over the monetary system of the country and its attempted frustration. Exercising that power, the Congress has undertaken to establish a uniform currency, and parity between kinds of currency, and to make that currency, dollar for dollar, legal tender for the payment of debts. In the light of abundant experience, the Congress was entitled to choose such a uniform monetary system, and to reject a dual system, with respect to all obligations within the range of the exercise of its constitutional authority. The contention that these gold clauses are valid contracts and cannot be struck down proceeds upon the assumption that private parties, and states and municipalities, may make and enforce contracts which may limit that authority. Dismissing that untenable assumption, the facts must be faced. We think that it is clearly shown that these clauses interfere with the exertion of the power granted to the Congress, and certainly it is not established that the Congress arbitrarily or capriciously decided that such an interference existed.

The judgment and decree, severally under review, are affirmed.

No. 270. Judgment affirmed.

Nos. 471 and 472. Decree affirmed.

*Mr. Justice McREYNOLDS, dissenting.

Mr. Justice VAN DEVANTER, Mr. Justice SUTHERLAND, Mr. Justice BUTLER, and I conclude that, if given effect, the enactments here challenged will bring about confiscation of property rights and repudiation of national obligations. Acquiescence in the decisions just an*nounced is impossible; the circumstances demand statement of our views. "To let oneself slide down the easy slope offered by the course of events and to dull one's mind against the extent of the danger, * * * that is precisely to fail in one's obligation of responsibility."

vate. This doubt should be removed. These gold clauses interfere with the power of Congress to regulate the value of the money of the United States and the enforcement of them would be inconsistent with existing legislative policy." Sen. Rep. No. 99, 73d Cong., 1st Sess.

Just men regard repudiation and spoliation of citizens by their sovereign with abhorrence; but we are asked to affirm that the Constitution has granted power to accomplish both. No definite delegation of such a power exists; and we cannot believe the farseeing framers, who labored with hope of establishing justice and securing the blessings of liberty, intended that the expected government should have authority to annihilate its own obligations and destroy the very rights which they were endeavoring to protect. Not only is there no permission for such actions; they are inhibited. And no plenitude of words can conform them to our charter.

The federal government is one of delegated and limited powers which derive from the Constitution. "It can exercise only the powers granted to it." Powers claimed must be denied unless granted; and, as with other writings, the whole of the Constitution is for consideration when one seeks to ascertain the meaning of any part.

By the so-called gold clause—promise to pay in "United States gold coin of the present standard of value," or "of or equal to the present standard of weight and fineness"—found in very many private and public obligations, the creditor agrees to accept and the debtor undertakes to return the thing loaned or its equivalent. Thereby each secures protection, one against decrease in value of the currency, the other against an increase.

The clause is not new or obscure or discolored by any sinister purpose. For more than 100 years our citizens have employed a like agreement. During the War between the States, its equivalent "payable in coin" aided
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*in surmounting financial difficulties. From the housetop men proclaimed its merits while bonds for billions were sold to support the World War. The Treaty of Versailles recognized it as appropriate and just. It appears in the obligations which have rendered possible our great undertakings—public works, railroads, buildings.

Under the interpretation accepted here for many years, this clause expresses a definite enforceable contract. Both by statute and long use the United States have approved it. Over and over again they have enjoyed the added value which it gave to their obligations. So late as May 2, 1933, they issued to the public more than $550,000,000 of their notes, each of which carried a solemn promise to pay in standard gold coin. (Before that day this coin had in fact been withdrawn from circulation, but statutory measure of value remained the gold dollar of 25.8 grains.)

The Permanent Court of International Justice interpreted the clause as this Court had done and upheld it. Cases of Serbian and Brazilian Loans, Publications P. C. I. J., Series A, Nos. 20, 21 (1929). It was there declared: "The gold clause merely prevents the borrower from availing itself of a possibility of discharge of the debt in depreciated currency," and "The treatment of the gold clause as indicating a mere modality of payment, without reference to a gold standard of value, would be, not to construe but to destroy it."

In Feist v. Societe Intercommunale Belge d'Electricite, [1934] A. C. 161, the House of Lords expressed like views.

Gregory v. Morris (1878) 96 U. S. 619, 624, 625, 24 L. Ed. 740—last of similar causes—construed and sanctioned this stipulation. In behalf of all, Chief Justice Waite there said:

"The obligation secured by the mortgage or lien under which Morris held was for the payment of gold coin, or, as was said in Bronson v. Rodes (1869) 7 Wall. 229, 19 L. Ed. 141,
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'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,' and is not distinguishable 'From a contract to deliver an equal weight of bullion of equal fineness.' * * * We think it clear that, under such circumstances, it was within the power of the court, so far as Gregory was concerned, to treat the contract as one for the delivery of so much gold bullion; and, if Morris was willing to accept a judgment which might be discharged in currency, to have his damages estimated according to the currency value of bullion."

Earlier cases—Bronson v. Rodes, 7 Wall. 229, 19 L. Ed. 141; Butler v. Horwitz, 7 Wall. 258, 19 L. Ed. 149; Dewing v. Sears, 11 Wall. 379, 20 L. Ed. 189; Trebilcock v. Wilson, 12 Wall. 687, 20 L. Ed. 460; Thompson v. Butler, 95 U. S. 694, 24 L. Ed. 540—while important, need not be dissected. Gregory v. Morris is in harmony with them, and the opinion there definitely and finally stated the doctrine which we should apply.

It is true to say that the gold clauses "were intended to afford a definite standard or measure of value, and thus to protect against a depreciation of the currency and against

the discharge of the obligation by payment of less than that prescribed." Furthermore, they furnish means for computing the sum payable in currency if gold should become unobtainable. The borrower agrees to repay in gold coin containing 25.8 grains to the dollar; and, if this cannot be secured, the promise is to discharge the obligation by paying for each dollar loaned the currency value of that number of grains. Thus, the purpose of the parties will be carried out. Irrespective of any change in currency, the thing loaned or an equivalent will be returned—nothing more nothing less. The present currency consists of promises to pay dollars of $15\frac{5}{21}$ grains; the government procures gold
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bullion on that *basis. The calculation to determine the damages for failure to pay in gold would not be difficult. Gregory v. Morris points the way.

Under appropriate statutes the United States for many years issued gold certificates, in the following form: "This certifies that there have been deposited in the Treasury of The United States of America One Thousand Dollars in gold coin payable to the bearer on demand. This certificate is a legal tender in the amount thereof in payment of all debts and dues public and private."

The certificates here involved—series 1928—were issued under section 6, Act March 14, 1900, 31 Stat. 47, as amended. See USCA, title 31, § 429.[1]

In view of the statutory direction that gold coin for which certificates are issued shall be held for their payment on demand "and used for no other purpose," it seems idle to argue (as counsel for the United States did) that other use is permissible under the ancient Act of March 3, 1863 (12 Stat. 709).

By various orders of the President and the Treasury from April 5 to December 28, 1933, persons holding gold certificates were required to deliver them, and accept "an equivalent amount of any form of coin or currency
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coined *or issued under the laws of the United States designated by the Secretary of the Treasury." Heavy penalties were provided for failure to comply.

That the holder of one of these certificates was owner of an express promise by the United States to deliver gold coin of the weight and fineness established by statute when the certificate issued, or if such demand was not honored to pay the holder the value in the currency then in use, seems clear enough. This was the obvious design of the contract.

The Act of March 14, 1900, 31 Stat. c. 41, pp. 45, 47, § 1, and § 6, as amended, in effect until January 31, 1934, provided: "The dollar consisting of twenty-five and eight tenths grains of gold nine-tenths fine shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard," and also "the Secretary of the Treasury is authorized and directed to receive deposits of gold coin with the Treasurer * * * in sums of not less than $20, and to issue gold certificates therefor in denominations of not less than $10, and the coin so deposited shall be retained in the Treasury and held for the payment of such certificates on demand, and used for no other purpose." See USCA, title 31, §§ 314, 429.

The Act of February 4, 1910, 36 Stat. c. 25, p. 192, § 1 (see 31 USCA § 768), directed that "any bonds and certificates of indebtedness of the United States issued after February 4, 1910, shall be payable, principal and interest, in United States gold coin of the present standard of value."

By Executive Orders, Nos. 6102, 6111, April 5, and April 20, 1933 (12 USCA §§ 95 note, 248 note), the President undertook to require owners of gold coin, gold bullion, and gold certificates, to deliver them on or before May 1st to a Federal Reserve Bank, and to prohibit the exportation of gold coin, gold bullion, or
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gold *certificates. As a consequence, the United States were off the gold standard, and their paper money began a rapid decline in the markets of the world. Gold coin, gold certificates, and gold bullion were no longer

[1] In his Annual Report, 1926, 80, 81, the Secretary of the Treasury said: "Gold and silver certificates are in fact mere 'warehouse receipts' issued by the Government in exchange for gold coin or bullion deposited in the one case, or standard silver dollars deposited in the other case, or against gold or standard silver dollars, respectively withdrawn from the general fund of the Treasury. * * * Gold certificates, United States notes, Treasury notes of 1890, and Federal reserve notes are directly redeemable in gold." In his letter with the Annual Report, for 1933, 375, he showed that on June 30, 1933, $1,230,717,109 was held in trust against gold certificates and Treasury notes of 1890. The Treasury notes of 1890 then outstanding did not exceed about $1,350,000. Tr. Rep. 1926, 80.

obtainable. "Gold is not now paid nor is it available for payment upon public or private debts" was declared in Treasury statement of May 27, 1933; and this is still true. All gold coins have been melted into bars.

The Agricultural Adjustment Act of May 12, 1933, 48 Stat. c. 25, pp. 31, 52, 53, entitled "An act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes" by section 43 (see 31 USCA § 821) provides that "such notes [United States notes] and all other coins and currencies heretofore or hereafter coined or issued by or under the authority of the United States shall be legal tender for all debts public and private." Also that the President by proclamation may "fix the weight of the gold dollar * * * as he finds necessary from his investigation to stabilize domestic prices or to protect the foreign commerce against the adverse effect of depreciated foreign currencies." And, further, "such gold dollar, the weight of which is so fixed, shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity with this standard and it shall be the duty of the Secretary of the Treasury to maintain such parity, but in no event shall the weight of the gold dollar be fixed so as to reduce its present weight by more than 50 per centum."

The Gold Reserve Act of January 30, 1934, 48 Stat. c. 6, pp. 337, 342, § 12 (31 USCA § 821) undertook to ratify preceding presidential orders and proclamations requiring surrender

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of gold, *but prohibited him from establishing the weight of the gold dollar "at more than 60 per centum of its present weight." By proclamation, January 31, 1934 (31 USCA § 821 note), he directed that thereafter the standard should contain $15\frac{5}{21}$ grains of gold, nine-tenths fine. (The weight had been 25.8 grains since 1837.) No such dollar has been coined at any time.

On June 5, 1933, Congress passed a "Joint Resolution to assure uniform value to the coins and currencies of the United States." 48 Stat. c. 48, p. 112 (31 USCA §§ 462, 463). This recited that holding and dealing in gold affect the public interest and are therefore subject to regulation; that the provisions of obligations which purport to give the obligee the right to require payment in gold coin or in any amount of money of the United States measured thereby obstruct the power of Congress to regulate the value of money, and are inconsistent with the policy to maintain the equal value of every dollar coined or issued. It then declared that every provision in any obligation purporting to give the obligee a right to require payment in gold is against public policy, and directed that "every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts."

Four causes are here for decision. Two of them arise out of corporate obligations containing gold clauses—railroad bonds. One is based on a United States Fourth Liberty Loan bond of 1918, called for payment April 15, 1934, containing a promise to pay "in United States gold coin of the present standard of value" with interest in like gold coin. Another involves gold certificates, series 1928, amounting to $106,300.

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*As to the corporate bonds the defense is that the gold clause was destroyed by the Joint Resolution of June 5, 1933; and this view is sustained by the majority of the Court.

It is insisted that the agreement, in the Liberty bond, to pay in gold, also was destroyed by the Act of June 5, 1933. This view is rejected by the majority; but they seem to conclude that, because of the action of Congress in declaring the holding of gold unlawful, no appreciable damage resulted when payment therein or the equivalent was denied.

Concerning the gold certificates, it is ruled that, if upon presentation for redemption gold coin had been paid to the holder, as promised, he would have been required to return this to the Treasury. He could not have exported it or dealt with it. Consequently he sustained no actual damage.

There is no challenge here of the power of Congress to adopt such proper "Monetary Policy" as it may deem necessary in order to provide for national obligations and furnish an adequate medium of exchange for public use. The plan under review in the Legal Tender Cases was declared within the limits of the Constitution, but not without a strong dissent. The conclusions there announced are not now questioned; and any abstract dis-

cussion of congressional power over money would only tend to befog the real issue.

The fundamental problem now presented is whether recent statutes passed by Congress in respect of money and credits were designed to attain a legitimate end. Or whether, under the guise of pursuing a monetary policy, Congress really has inaugurated a plan primarily designed to destroy private obligations, repudiate national debts, and drive into the Treasury all gold within the country in exchange for inconvertible promises to pay, of much less value.

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*Considering all the circumstances, we must conclude they show that the plan disclosed is of the latter description, and its enforcement would deprive the parties before us of their rights under the Constitution. Consequently the Court should do what it can to afford adequate relief.

What has been already said will suffice to indicate the nature of these causes, and something of our general views concerning the intricate problems presented. A detailed consideration of them would require much time and elaboration; would greatly extend this opinion. Considering also the importance of the result to legitimate commerce, it seems desirable that the Court's decision should be announced at this time. Accordingly, we will only undertake in what follows to outline with brevity our replies to the conclusions reached by the majority and to suggest some of the reasons which lend support to our position.

The authority exercised by the President and the Treasury in demanding all gold coin, bullion, and certificates is not now challenged; neither is the right of the former to prescribe weight for the standard dollar. These things we have not considered. Plainly, however, to coin money and regulate the value thereof calls for legislative action.

Intelligent discussion respecting dollars requires recognition of the fact that the word may refer to very different things. Formerly the standard gold dollar weighed 25.8 grains; the weight now prescribed is $15\frac{5}{21}$ grains. Evidently promises to pay one or the other of these differ greatly in value, and this must be kept in mind.

From 1792 to 1873 both the gold and silver dollar were standard and legal tender, coinage was free and unlimited. Persistent efforts were made to keep both in circulation. Because the prescribed relation between them

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got out of *harmony with exchange values, the gold coin disappeared, and did not in fact freely circulate in this country for 30 years prior to 1834. During that time business transactions were based on silver. In 1834, desiring to restore parity and bring gold back into circulation, Congress reduced somewhat (6 per cent.) the weight of the gold coin and thus equalized the coinage and the exchange values. The silver dollar was not changed. The purpose was to restore the use of gold as currency—not to force up prices or destroy obligations. There was no apparent profit for the books of the Treasury. No injury was done to creditors; none was intended. The legislation is without special significance here. See Hepburn on Currency.

The money under consideration in the Legal Tender Cases, decided May 1, 1871, 12 Wall. 457, 20 L. Ed. 287, and 110 U. S. 421, 4 S. Ct. 122, 28 L. Ed. 204, were promises to pay dollars, "bills of credit." They were "a pledge of the national credit," promises "by the government to pay dollars" "the standard of value is not changed." The expectation, ultimately realized, was that in due time they would be redeemed in standard coin. The Court was careful to show that they were issued to meet a great emergency in time of war, when the overthrow of the government was threatened and specie payments had been suspended. Both the end in view and the means employed, the Court held were lawful. The thing actually done was the issuance of bills endowed with the quality of legal tender in order to carry on until the United States could find it possible to meet their obligations in standard coin. This they accomplished in 1879. The purpose was to meet honorable obligations—not to repudiate them.

The opinion there rendered declares: "The legal tender acts do not attempt to make paper a standard of value. We do not rest their validity upon the assertion that their emission is coinage, or any regulation of the value of money; nor do we assert that Congress

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may make any*thing which has no value money. What we do assert is, that Congress has power to enact that the government's promises to pay money shall be, for the time being, equivalent in value to the representative of value determined by the coinage acts, or to multiples thereof." What was said in those causes of course must be read in the light of all the circumstances. The opinion gives no support to what has been attempted here.

This Court has not heretofore ruled that Congress may require the holder of an obliga-

tion to accept payment in subsequently devalued coins, or promises by the government to pay in such coins. The legislation before us attempts this very thing. If this is permissible then a gold dollar containing one grain of gold may become the standard, all contract rights fall, and huge profits appear on the Treasury books. Instead of $2,800,000,000 as recently reported, perhaps $20,000,000,000, maybe, enough to cancel the public debt, maybe more!

The power to issue bills and "regulate values" of coin cannot be so enlarged as to authorize arbitrary action, whose immediate purpose and necessary effect is destruction of individual rights.[2] As this Court has said a "power to regulate is not a power to destroy." Reagan v. Farmers' Loan & Trust Co., 154 U. S. 362, 398, 14 S. Ct. 1047, 1054, 38 L. Ed. 1014. The Fifth Amendment limits all governmental powers. We are dealing here with a debased standard, adopted with the definite purpose to destroy obligations. Such arbitrary and oppressive action is not within any congressional power heretofore recognized.

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*The authority of Congress to create legal tender obligations in times of peace is derived from the power to borrow money; this cannot be extended to embrace the destruction of all credits.

There was no coin—specie—in general circulation in the United States between 1862 and 1879. Both gold and silver were treated in business as commodities. The Legal Tender Cases arose during that period.

Corporate Bonds.

The gold clauses in these bonds were valid and in entire harmony with public policy when executed. They are property. Lynch v. United States, 292 U. S. 571, 579, 54 S. Ct. 840, 78 L. Ed. 1434. To destroy a validly acquired right is the taking of property. Osborn v. Nicholson, 13 Wall. 654, 662, 20 L. Ed. 689. They established a measure of value and supply a basis for recovery if broken. Their policy and purpose were stamped with affirmative approval by the government when inserted in its bonds.

The clear intent of the parties was that in case the standard of 1900 should be withdrawn, and a new and less valuable one set up, the debtor could be required to pay the value of the contents of the old standard in terms of the new currency, whether coin or paper. If gold measured by prevailing currency had declined the debtor would have received the benefit. The Agricultural Adjustment Act of May 12th discloses a fixed purpose to raise the nominal value of farm products by depleting the standard dollar. It authorized the President to reduce the gold in the standard, and further provided that all forms of currency shall be legal tender. The result expected to follow was increase in nominal values of commodities and depreciation of contractual obligations. The purpose of section 43 incorporated by the Senate as an amendment to the House Bill was clearly

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stated by the *Senator who presented it.[3] It was the destruction of lawfully acquired rights.

In the circumstances existing just after the Act of May 12th, depreciation of the standard dollar by the presidential proclamation would not have decreased the amount required to meet obligations containing gold clauses. As to them the depreciation of the standard would have caused an increase in the number of dollars of depreciated currency. General reduction of all debts could only be secured by first destroying the contracts evidenced by the gold clauses; and this the resolution of June 5th undertook to accomplish. It was aimed directly at those contracts and had no definite relation to the power to issue bills or to coin or regulate the value of money.

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[2] "It may well be doubted whether the nature of society and of government does not prescribe some limits to the legislative power; and, if any be prescribed, where are they to be found, if the property of an individual, fairly and honestly acquired, may be seized without compensation." Chief Justice Marshall in Fletcher v. Peck, 6 Cranch. 87, 135, 3 L. Ed. 162.

[3] He said: "This amendment has for its purpose the bringing down or cheapening of the dollar, that being necessary in order to raise agricultural and commodity prices. * * * The first part of the amendment has to do with conditions precedent to action being taken later.

"It will be my task to show that if the amendment shall prevail it has potentialities as follows: It may transfer from one class to another class in these United States value to the extent of almost $200,000,000,000. This value will be transferred, first, from those who own the bank deposits. Secondly, this value will be transferred from those who own bonds and fixed investments." Cong. Record, April, 1933, pp. 2004, 2216, 2217, 2219.

To carry out the plan indicated as above shown in the Senate, the Gold Reserve Act followed—January 30, 1934. This inhibited the President from fixing the weight of the standard gold dollar above 60 per cent. of its then existing weight. (Authority had been given for 50 per cent. reduction by the Act of May 12th.) On January 31st he directed that the standard should contain 15 5/21 grains of gold. If this reduction of 40 per cent. of all debts was within the power of Congress and if as a necessary means to accomplish that end, Congress had power by resolution to *375 destroy the *gold clauses, the holders of these corporate bonds are without remedy. But we must not forget that if this power exists Congress may readily destroy other obligations which present obstruction to the desired effect of further depletion. The destruction of all obligations by reducing the standard gold dollar to one grain of gold, or brass or nickel or copper or lead will become an easy possibility. Thus we reach the fundamental question which must control the result of the controversy in respect of corporate bonds. Apparently in the opinion of the majority the gold clause in the Liberty bond withstood the June 5th Resolution notwithstanding the definite purpose to destroy them. We think that in the circumstances Congress had no power to destroy the obligations of the gold clauses in private obligations. The attempt to do this was plain usurpation, arbitrary, and oppressive.

The oft-repeated rule by which the validity of statutes must be tested is this: "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate which are plainly adapted to that end which are not prohibited but consistent with the letter and spirit of the Constitution are constitutional."

The end or objective of the Joint Resolution was not "legitimate." The real purpose was not "to assure uniform value to the coins and currencies of the United States," but to destroy certain valuable contract rights. The recitals do not harmonize with circumstances then existing. The act of 1900 which prescribed a standard dollar of 25.8 grains remained in force; but its command that "all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard" was not being obeyed. Our currency was passing at a material discount; all gold had been sequestrated; none was attainable. The resolution made no provision for restoring parity with the old standard; it established no new one.

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*This resolution was not appropriate for carrying into effect any power entrusted to Congress. The gold clauses in no substantial way interfered with the power of coining money or regulating its value or providing an uniform currency. Their existence, as with many other circumstances, might have circumscribed the effect of the intended depreciation and disclosed the unwisdom of it. But they did not prevent the exercise of any granted power. They were not inconsistent with any policy theretofore declared. To assert the contrary is not enough. The Court must be able to see the appropriateness of the thing done before it can be permitted to destroy lawful agreements. The purpose of a statute is not determined by mere recitals—certainly they are not conclusive evidence of the facts stated.

Again, if effective, the direct, primary, and intended result of the resolution will be the destruction of valid rights lawfully acquired. There is no question here of the indirect effect of lawful exercise of power. And citations of opinions which upheld such indirect effects are beside the mark. This statute does not "work harm and loss to individuals indirectly," it destroys directly. Such interference violates the Fifth Amendment; there is no provision for compensation. If the destruction is said to be for the public benefit, proper compensation is essential; if for private benefit, the due process clause bars the way.

Congress has power to coin money, but this cannot be exercised without the possession of metal. Can Congress authorize appropriation without compensation of the necessary gold? Congress has power to regulate commerce, to establish post roads, etc. Some approved plan may involve the use or destruction of A's land or a private way. May Congress authorize the appropriation or destruction of these things without adequate *377 payment? Of *course not. The limitations prescribed by the Constitution restrict the exercise of all power.

Ling Su Fan v. United States, 218 U. S. 302, 31 S. Ct. 21, 54 L. Ed. 1049, 30 L. R. A. (N. S.) 1176, supports the power of the Legislature to prevent exportation of coins without compensation. But this is far from saying that the Legislature might have ordered destruction of the coins without compensating the owners or that they could have been required to deliver them up and accept what-

ever was offered. In United States v. Lynah, 188 U. S. 445, 471, 23 S. Ct. 349, 357, 47 L. Ed. 539, this Court said: "If any one proposition can be considered as settled by the decisions of this court it is that, although in the discharge of its duties the government may appropriate property, it cannot do so without being liable to the obligation cast by the 5th Amendment of paying just compensation."

Government Bonds.

Congress may coin money; also it may borrow money. Neither power may be exercised so as to destroy the other; the two clauses must be so construed as to give effect to each. Valid contracts to repay money borrowed cannot be destroyed by exercising power under the coinage provision. The majority seem to hold that the Resolution of June 5th did not affect the gold clauses in bonds of the United States. Nevertheless, we are told that no damage resulted to the holder now before us through the refusal to pay one of them in gold coin of the kind designated or its equivalent. This amounts to a declaration that the government may give with one hand and take away with the other. Default is thus made both easy and safe.

Congress brought about the conditions in respect of gold which existed when the obligation matured. Having made payment in this metal impossible, the government cannot defend by saying that if the obligation had been met the creditor could not have re-

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tained the gold; con*sequently he suffered no damage because of the nondelivery. Obligations cannot be legally avoided by prohibiting the creditor from receiving the thing promised. The promise was to pay in gold, standard of 1900, otherwise to discharge the debt by paying the value of the thing promised in currency. One of these things was not prohibited. The government may not escape the obligation of making good the loss incident to repudiation by prohibiting the holding of gold. Payment by fiat of any kind is beyond its recognized power. There would be no serious difficulty in estimating the value of 25.8 grains of gold in the currency now in circulation.

These bonds are held by men and women in many parts of the world; they have relied upon our honor. Thousands of our own citizens of every degree not doubting the good faith of their sovereign have purchased them. It will not be easy for this multitude to appraise the form of words which establishes that they have suffered no appreciable damage; but perhaps no more difficult for them than for us. And their difficulty will not be assuaged when they reflect that ready calculation of the exact loss suffered by the Philippine government moved Congress to satisfy it by appropriating, in June 1934, $23,862,750.78 to be paid out of the Treasury of the United States.[4] And see Act May 30,

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1934, 48 Stat. 817, 834, § 5, appro*priating $7,438,000 to meet losses sustained by officers and employees in foreign countries due to appreciation of foreign currencies in their relation to the American dollar.

Gold Certificates.

These were contracts to return gold left on deposit; otherwise to pay its value in the currency. Here the gold was not returned; there arose the obligation of the government to pay its value. The Court of Claims has jurisdiction over such contracts. Congress made it impossible for the holder to receive and retain the gold promised him; the statute prohibited delivery to him. The contract being broken, the obligation was to pay in currency the value of 25.8 grains of gold for

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4 An Act relating to Philippine currency reserves on deposit in the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed, when the funds therefor are made available, to establish on the books of the Treasury a credit in favor of the Treasury of the Philippine Islands for $23,862,750.78, being an amount equal to the increase in value (resulting from the reduction of the weight of the gold dollar) of the gold equivalent at the opening of business on January 31, 1934, of the balances maintained at that time in banks in the continental United States by the Government of the Philippine Islands for its gold standard fund and its Treasury certificate fund less the interest received by it on such balances.

Section 2. There is hereby authorized to be appropriated, out of the receipts covered into the Treasury under section 7 of the Gold Reserve Act of 1934, by virtue of the reduction of the weight of the gold dollar by the proclamation of the President on January 31, 1934, the amount necessary to establish the credit provided for in section 1 of this Act.

Approved, June 19, 1934. 48 Stat. 1115.

each dollar called for by the certificate. For the government to say, we have violated our contract but have escaped the consequences through our own statute, would be monstrous. In matters of contractual obligation the government cannot legislate so as to excuse itself.

These words of Alexander Hamilton ought not to be forgotten: "When a government enters into a contract with an individual, it deposes, as to the matter of the contract, its constitutional authority, and exchanges the character of legislator for that of a moral agent, with the same rights and obligations as an *380 individual. Its promises may be *justly considered as excepted out of its power to legislate, unless in aid of them. It is in theory impossible to reconcile the idea of a promise which obliges, with a power to make a law which can vary the effect of it." 3 Hamilton's Works, 518, 519.

These views have not heretofore been questioned here. In the Sinking Fund Cases, 99 U. S. 700, 719, 25 L. Ed. 496, Chief Justice Waite, speaking for the majority, declared: "The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citizen. No change can be made in the title created by the grant of the lands, or in the contract for the subsidy bonds, without the consent of the corporation. All this is indisputable."

And in the same cause (pages 731, 732 of 99 U. S., 25 L. Ed. 496) Mr. Justice Strong, speaking for himself, affirmed: "It is as much beyond the power of a legislature, under any pretence, to alter a contract into which the government has entered with a private individual, as it is for any other party to a contract to change its terms without the consent of the person contracting with him. As to its contract the government in all its departments has laid aside its sovereignty, and it stands on the same footing with private contractors."

Can the government, obliged as though a private person to observe the terms of its contracts, destroy them by legislative changes in the currency and by statutes forbidding one to hold the thing which it has agreed to deliver? If an individual should undertake to annul or lessen his obligation by secreting or manipulating his assets with the intent to place them beyond the reach of creditors, the attempt would be denounced as fraudulent, wholly ineffective.

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*Counsel for the government and railway companies asserted with emphasis that incalculable financial disaster would follow refusal to uphold, as authorized by the Constitution, impairment and repudiation of private obligations and public debts. Their forecast is discredited by manifest exaggeration. But, whatever may be the situation now confronting us, it is the outcome of attempts to destroy lawful undertakings by legislative action; and this we think the Court should disapprove in no uncertain terms.

Under the challenged statutes it is said the United States have realized profits amounting to $2,800,000,000.[5] But this assumes that gain may be generated by legislative fiat. To such counterfeit profits there would be no limit; with each new debasement of the dollar they would expand. Two billions might be ballooned indefinitely—to twenty, thirty, or what you will.

Loss of reputation for honorable dealing will bring us unending humiliation; the impending legal and moral chaos is appalling.

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[5] In radio address concerning the plans of the Treasury, August 28, 1934, the Secretary of Treasury, as reported by the Commercial and Financial Chronicle of September 1, 1934, stated:

"But we have another cash drawer in the Treasury, in addition to the drawer which carries our working balance. This second drawer I will call the 'gold' drawer. In it is the very large sum of $2,800,000,000, representing 'profit' resulting from the change in the gold content of the dollar. Practically all of this 'profit' the Treasury holds in the form of gold and silver. The rest is in other assets.

"I do not propose here to subtract this $2,800,000,000 from the net increase of $4,400,000,000 in the national debt—thereby reducing the figure to $1,600,000,000. And the reason why I do not subtract it is this: for the present this $2,800,000,000 is under lock and key. Most of it, by authority of Congress, is segregated in the so-called stabilization fund, and for the present we propose to keep it there. But I call your attention to the fact that ultimately we expect this 'profit' to flow back into the stream of our other revenues and thereby reduce the national debt."