

No. 14659

Supreme Court of Illinois

Hull

vs.

Kohlsaat

71641  7

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No.

165

J. W. Middleton & Co., Stationers, 196 Lake St.

Hull

vs

Kohlsaat

1864

Randy

(1)

State of Illinois
Jo Daviess County
Fourth Judicial Circuit

Placed in the
Circuit Court. in and
for the County of Jo Daviess and State
of Illinois begun and held at Galena
in the said Jo Daviess County, on the
Second Monday of March A.D. 1864
To-wit on the fourteenth day of March
A.D. 1864. before the Hon. Perry A. Sheldon
Sole judge of said fourth judicial
Circuit —

Wm Cary Pros Atty Pro. Tem.
W R Rowley Clerk
John C Hawkins Sheriff.

Alfred Hull }
vs }
Jacob Kohlsaat. } Debs.

As if understood
that heretofore to-wit on
the Third day of March. A.D. 1864 The
Plaintiff above named by D. Sheldon
Esq his attorney, filed in the Office
of the Circuit Clerk of said County
his Bond for costs. together with a
declaration and process for summons
in the above entitled cause. —

The Bond for costs filed by the
Plaintiff herein is in the words and
figures following to-wit:

(2)
State of Illinois
County of Davis

In the Davis County
Circuit Court March Term 1864.

Alfred Hull Plaintiff

vs

Jacob Kohlraas Defendant

3

3 In Decy.

I do hereby enter my
self security for costs in this cause
and acknowledge myself bound to
pay or cause to be paid all costs
which may accrue in this action.
either to the opposite party or to any of
the officers of this Court in pursuance
of the laws of this State.

Dated at Galena this 3^d day of March
A.D. 1864.

David Shean Esq

Approved.

W R Rowley

Clerk of Davis County Circuit Court

by J R Bird deputy.

Endorsed

Filed March 3^d 1864

W R Rowley Clerk

by J R Bird deputy.

The declaration and process are in the
words and figures following to-wit:

(3)

In the Franklin County Circuit Court Illinois

OF THE

March

TERM, A. D. 1864.

STATE OF ILLINOIS, }
Franklin COUNTY, } ss.Alfred Hull thePlaintiff in this suit, ~~vs.~~ Andrey complains ofJacob Rohlsaat - the defendant in this suit of a plea
that he owes to the said Plaintiff the sum of two
hundred dollars lawful money of the United States. Defendantwho summoned, &c, in a plea of trespass on the case on promises: And that whereas thesaid Defendant herebefore, to wit: on the day of in theyear of our Lord One Thousand Eight Hundred and atto wit, at in said County of Franklin, made certain promissuance Note in writing, bearing date the day and year aforesaid, and then and there delivered the same toand in and by whichsaid note, said Defendant, by the name, style and description ofpromised to pay to the order of the said which he owesto and unjustly detains from himThat whereas the said defendant heretoforeon the first day of April A.D. 1862 to wit: at the Court of saidCounty and State of Illinois made his certain promissory note inwriting bearing date a certain day and year therein mentionedto wit: the day and year aforesaidfor value received. And the saidto whom or to whose order said note was payable, then and there indorsed, and under his hand assigned thesaid note to the said Plaintiff and then and there delivered the same, so indorsed, to the said Plaintiff.By means whereof, and by force of the statute in such case made and provided, the said Defendant becameliable to pay said Plaintiff said sum of money mentioned in said note, and being so liable, in considerationthereof, then and there undertook and promised to pay the same to the said Plaintiff according to the tenorand effect, true intent and meaning of the said note, and of the indorsement aforesaid, to wit, at the placeaforesaid. And then and there delivered the said noteto the said plaintiff, by which said note he the saiddefendant then and there promised to pay six monthsafter the date thereof to the said plaintiff or order thesum of seventy five dollars in American Gold withinterest at the rate of ten per cent per annum forvalue received, by means whereof and by force of the statutein such case made and provided, the said defendantthen and there became liable to pay to the said plaintiffthe said sum of money in said promissory notementioned with the said interest. Therefore in Amer--ican gold according to the tenor and effect of said promissory noteAnd whereas also the said defendant afterwardsto wit on the day and year last aforesaid to wit: atthe County and State aforesaid made his certainagreement in writing in the words andfigures following to wit:

875¹⁰⁰/₁₀₀ State of Illinois Jo Davie's County Town of Woodburn
April 1st 1862
Six months after date I promise to pay to Alfred Hull
or order seventy five dollars without defalcation, with
ten per cent interest for value received in
American gold Jacob Hohlsoat (Seal)

And then and there delivered the said agreement in
writing to the said plaintiff by which said agreement the said
defendant became liable when the same was due
to pay to the said plaintiff the said sum of seventy five
dollars with said interest thereon in American gold
or its equivalent in legal tender treasury notes of the
United States. And although the said sum of money
above specified in said note and said agreement in
writing hath been long since due and payable ac-
cording to the tenor and effect of said note and said agree-
ment in writing yet the said plaintiff in fact saith
that the said defendant although often requested to
do so did not nor would pay the said sums of money
in American gold nor its equivalent in legal
tender treasury notes of the United States nor any
part thereof to the said plaintiff in manner
aforesaid or otherwise however but he the defendant
wholly neglected and refused so to do whereby an
action hath accrued to the said plaintiff to demand and
have paid from the said defendant the said sum
of two hundred dollars parcel of the said sum
above demanded

AND WHEREAS, also; the said Defendant, afterwards, to wit, on the second day of
March in the year of our Lord One Thousand Eight Hundred and fifty four
to wit, at in said County, became and was indebted unto the Plaintiff in a
large sum of money, to wit, the sum of two hundred dollars
dollars, for money before that time lent and advanced to, and paid, laid out and expended for said Defendant
by said Plaintiff, at said Defendant request; and for money before that time had and received by said De-
fendant to and for the use of said Plaintiff; and also in like sum for goods, wares and merchandise, before
that time sold and delivered by said Plaintiff to said Defendant at like special instance and request; and
also in like sum for the labor, care, and diligence of said Plaintiff before that time done and performed by
said Plaintiff; for said Defendant, and at the like instance and request of said Defendant, and also in
like sum, then and there found due and owing said Plaintiff on an account stated between them, and being
so indebted, said Defendant, in consideration thereof, then and there became liable and agreed
Plaintiff said last mentioned sum of money, when thereunto afterwards requested.

Yet the said Defendant, not regarding said promises and undertakings, but cunningly, &c., al-
though often requested to do, has not said Plaintiff either of said sums of money above mentioned, or any
part thereof, but so to do has hitherto wholly neglected and refused, and still does neglect and refuse, to the
damage of said Plaintiff of two hundred
dollars, and therefore he brings this suit, &c.,

David Shuman
Attorney for Plaintiff

(5)

COPY OF INSTRUMENT AND ACCOUNT SUED UPON.

\$75⁰⁰/₁₀₀

State of Illinois for Daviess County
Town of Woodbine April 1st 1862
Six months after date I promise to pay
to Alfred Hull or order seventy five dollars
without defalcation with ten per cent
interest for value received in American
gold

Jacob Kohlraat *Real*

Jacob Kohlraat

To Alfred Hull

Dr.

March 3
1864

To money lent and advanced		\$ 200 ⁰⁰ / ₁₀₀
To money expended and paid out for	Kohlraat	\$ 200 ⁰⁰ / ₁₀₀
To money received for use of	Alfred Hull	\$ 200 ⁰⁰ / ₁₀₀
To Goods, Wares and Merchandise		\$ 200 ⁰⁰ / ₁₀₀
To labor and services		\$ 200 ⁰⁰ / ₁₀₀
To balance on account stated		\$ 200 ⁰⁰ / ₁₀₀

Alfred Hull
vs.
Jacob Hohlfaat

Entered ~~FILED~~
March 1864

Filed this day of

Wm M Rowley
Clerk

TO DEFT.
Take notice that a declaration, of which the within is a copy, has been duly filed in the office of the Clerk of the and that upon the filing thereof a rule was entered in the above entitled cause, requiring you to plead to said declaration within ten days after the service of a copy thereof, and notice of said rule, or that judgment, by default, will be entered against you for want of such plea.

Dated, 1864

David Shuman
Att'ys for Plff.

Alfred Hull
vs
Jacob Hohlfaat

(6) In the Goddards County Circuit Court of the March Term 1864

To Wm M Rowley clerk of said court

Upon the filing of this precept & foregoing declaration please issue a summons to the said defendant according to law in an action of debt - Debt \$200⁰⁰ Damages \$200⁰⁰

David Shuman
Attorney for plff

(7)

Upon the filing of which said
last Bond, Declaration and Process
There issued out of the Office of our
said ~~Residing~~ ^{of Circuit Court} Clerk a summons in
the words and figures following
to-wit:

State of Illinois)
Jo Daviess County)
The People of the State
of Illinois to the Sheriff of said County
Greeting
We command you to summon
Jacob Kohlsaat to appear before
the Circuit Court of Jo Daviess County
at the next term to be holden at Galena
on the second Monday of March inst.
to answer Alfred Hull, in a plea
of Debt - Debt Two Hundred Dollars.
Damages Two Hundred Dollars
and have your then and there return.
Witness William R Rowley Clerk
of the Circuit Court of Jo Daviess
County Illinois and the seal
Thereof at Galena this 3^d day
of March. 1864.
attest: W R Rowley Clerk
By T R Bird deputy

Seal

Which said summons was duly
returned into Court with the following
return endorsed thereon to-wit:

Executed the within summons by reading
the same to the within named Jacob
Kohlsaat. this 4th day of March A.D.
1864.

J. C. Hawkins Sheriff J. D. Co. Ill.
By Murty Eugene. Deputy.

Endorsed

Filed in Circuit Court this 14th
day of March A.D. 1864

W. A. Rowley Clerk
By J. R. Bird deputy.

And afterwards to wit on the 28th
day of March A.D. 1864. as yet of
the March Term A.D. 1864 of said
J. D. Davis County Circuit Court in
the record of the proceedings thereof
in the above entitled cause, appears
the following entry to wit

59 Alfred Hull 2
vs 3
Jacob Kohlsaat 3 The Defendants
by W. J. Johnson Esq
his attorney at this day comes and files
his plea.

The Plea referred to in the last
above recited entry were the words
and figures following to wit:

(9)

Kull 3 Cir Court. Mar. Term. 1864.
as 3
Kohlsaat 3 and now at this day
 comes the said debt. and for
plea in this behalf says he is not
indebted in manner and form as is
alleged by said Plff.

and of this he puts himself upon
the Country.

M. G. Johnson.

and Plff doth the like

D Sheaw.

atty for Plff.

Endorsed

Filed 28th Mar. 1864

W. R. Rowley clerks

By E. R. Bird deputy.

and afterwards took on the 24th day of
March A.D. 1864 as yet of the March Term.
A.D. 1864 of said Circuit Court in the record
of the proceedings thereof in the above
entitled cause appears the following entry
to-wit:

59. Alfred Kull 3
as 3 Debt.
Jacob Kohlsaat 3 Now at this day
 came the parties herein
by their attorneys. and upon being joined
they waive the intervention of a jury and
for trial put themselves upon the Court.

and the Court after ⁽¹⁰⁾hearing the evidence
in the cause finds the issues for the Plaintiff
and finds the amount of Debt to be the sum
of Seventy five dollars. and the amount
of damages to be the sum of Fourteen
dollars and eighty five cents. Making in
all the sum of Eighty nine dollars and
eighty five cents. Debt and Damages.

And the Plaintiff by his attorney,
moves the Court for a new trial, and
files his motion and reasons therefor.

The motion and reasons for a new trial
referred to in the last above recited entry
is in the words and figures following
to-wit:

Alfred Hull 3d in the 1st District Court
vs 3d Circuit Court of the 1st District
Jacob Kohlsaat. 3 Term 1864.

Now at this
day comes the said Plaintiff by D. Shuman
his attorney, and moves the Court here
to grant a new trial, in the above
entitled cause. and for cause therefor
shows to the Court here the following
reasons to-wit:

1st The finding of the Court, is contrary
to the law.

2^d. The finding of the Court is contrary
to the evidence.

3^d. The finding of the Court should

(11)
have been for the amount of the value
of the golds as proved by the witness
4th The evidence showed that the
plaintiff is entitled to a larger finding
5th The finding of the court is against
the law and the evidence.
6th The instrument sued on and
introduced as evidence, is a special
contract. and the finding of the
Court does not enforce the contract.

Wherefore said plaintiff prays
that the said finding of the Court may
be set aside. and a new trial granted.

D. Sheean

Atty for Plff.

Endorsed

Filed March 24th 1864.

W^m A Rowley Clerk
By F R Bird deputy.

And afterwards took on the 24th day of
March A D 1864. as yet of the March Term
A D 1864 of said Circuit Court, in the record
of the proceedings thereof in the above
entitled cause. appears the following
entry taken:

54 Alfred Hull vs Jacob Kohlsaat. Debt.

Now at this day
came on to be heard
the motion heretofore filed by the Plaintiff
for a new trial in this cause. which

(12)

said motion is overruled by the Court.
It is thereupon considered by the Court.
That the Plaintiff have and recover
of the defendant the sum of Seventy five
dollars Debt and fourteen dollars and
eighty five ^{cents} ~~dollars~~ damages. as heretofore
found by the Court herein. together with
his costs by him in this behalf expended
and that he have execution against
the said defendant therefor.

To which overruling of motion for
new trial and rendition of judgment.
the ~~def~~ Plaintiff by his attorney then and
there excepts. and files his bill of exceptions
herein which is certified by the Court.

And the plaintiff prays an appeal to
the Supreme Court of the which is granted.
conditioned that he enter into and file
with the Clerk of this Court. a good and
sufficient appeal bond properly condi-
tioned. in the sum of One hundred dollars.
within five days from this date. with
David Shearer as surety.

The bill of exceptions referred to in
the last above recited entry, is in the
words and figures following to-wit:

State of Illinois of Jackson County Circuit
vs David County Clerk. of the March Term A.D. 1864.
Alfred Kull
vs
Jacob Kohlsaat } Be it remembered

(13)

That on the twenty fourth day of March A.D. 1864. being the first of the March Term of the 1st District Court of the County of St. Louis, Mo. came on for trial the above entitled cause before the Hon. Rufus A. Sheldon. Judge of said Court, a jury being waived by Plaintiff and defendant.

And the said plaintiff to prove and maintain the issues on his part, offered the following testimony and evidence to wit:

Plaintiff first introduced and reads as evidence the following instrument of writing to wit:

\$75^{00/100} State of Illinois, 1st District Court,
County of St. Louis, Mo., April 1st 1864.
Six months after date I promise to
pay to Alfred Bull. or order Seventy
five dollars. with ten per cent interest,
without defalcation, for value received
in American Gold.

Jacob Koehlsaat. *(Signature)*

Alfred Bull was then duly sworn,
and testified as follows. I am Teller
in the Bank of Galena. in this City.
The value of American Gold here
compared with U.S. Treasury notes,
is fifty eight per cent premium
over United States legal tender Treasury
notes, that is one hundred dollars

in American Gold \$¹⁰⁰ is worth one hundred and fifty eight dollars. in United States legal tender notes.

Cross examined. One dollar in Gold. is worth its face in gold.

This was all the evidence in the case, both on the part of Plaintiff and defendant. After argument of counsel for Plaintiff and defendant. the Court found for the Plaintiff. in the sum of Seventy five dollars. debt. and fourteen dollars and eighty five cents damages.

Whereupon the Plaintiff made a motion for a new trial. and filed said motion and reasons therefor. in the words and figures following to-wit:
(motion & reasons for new trial heretofore copied in this record) But the Court overruled said motion, and the said plaintiff then and there excepted to the said decision of the Court.

The Court then rendered judgment on the finding. and the plaintiffs excepted to the rendition of said judgment and prayed an appeal to the supreme Court of this State

Benj. A. Sheldon *Clk*

Endorsement

Filed March 26th 1880.

Wm. A. Channing *clks*

By J. R. Wood deputy

(15)
And afterwards ⁽¹⁵⁾ took on the 29th day of
March A.D. 1864, as yet of the March Term
A.D. 1864, of said Circuit Court. in the record
of the proceedings in of in the above
entitled cause, appeared the following entry
to-wit:

59 Alfred Hull 3
as 3 Deft
Jacob Kohlsaat 3 The Plaintiff by
his attorney at this
day comes and files his appeal bond
herein.

The appeal bond referred to in
the last above recited entry is in the
words and figures following to-wit:

Know all men by these presents. that
we Alfred Hull and David Shearn
of the County of Jo Daviess and State
of Illinois, are held and firmly bound
unto Jacob Kohlsaat also of the same
County and State in the penal sum
of One hundred dollars. lawful money
of the United States for the payment of
which well and truly to be made
we bind ourselves, our heirs, executors
and administrators, jointly, severally
and firmly by these presents.

Witness our hands and seals this 28th
day of March A.D. 1864. The condition
of the above obligation is such that

(16)

whereas the above bounden Alfred Hull
did on the 21st day of March A.D. 1864.
in the Circuit Court in and for the
County and State aforesaid recover a
judgment against the said
Jacob Kohlsaat. for the sum of twenty five
dollars debt. and fourteen $\frac{85}{100}$ dollars
damages. and costs of suit. from which
said judgment of the said Circuit Court
the said Alfred Hull has prayed for
and obtained and appeal to the Supreme
Court of said State. Now if the said
Alfred Hull shall duly prosecute
his said appeal with effect. and
shall moreover pay the amount of the
judgment, costs, interest and damages
rendered and to be rendered against him
in case the said judgment shall be affirmed
in ^{the} said Supreme Court. then the
above obligation to be void. Otherwise
to remain in full force and virtue.

Alfred Hull *Seal*
by D. Shean his atty in fact.
David Shean. *Seal*

Taken and entered into before me at my Office
this 29th day of March A.D. 1864 at Galena Ill.

J. A. Rowley Clerk of said Circuit Court

By T. R. Bird deputy

Endorsed

Filed March 29th 1864

J. A. Rowley Clerk
By T. R. Bird deputy

(17)

State of Illinois
J. Davis County
I, W. R. Rowley
Clerk of the Circuit Court in and
for said County in the State aforesaid
do hereby certify the foregoing to be a
full true and correct Transcript
of the Record and Proceedings in
the above entitled cause of Alfred
Hull vs Jacob Kohlsaat, as the same
appear of Record and in file in my
office

Witness my hand and the
seal of said Court in my office
in Galena this 30th day of
March A.D. 1864.

Attest: W. R. Rowley Clerk
By J. R. Kirk deputy.

fee for Transcript \$2⁵⁰
Pd by Cliffs atty.

And now at this day comes the said Appel-
lant and says that there are manifest
errors in the records and proceedings in the
Circuit Court in the above entitled records
and shows to the Court the following

- 1st The finding of the Court is contrary to the law.
- 2^d. The finding of the Court is contrary to the evidence.
- 3^d. The finding of the Court should have been for the amount
of the value of the plot as proved by the witnesses.



- 4th. The evidence showed that plaintiff is entitled to a larger finding.
 - 5th. The finding of the Court is against the law and the evidence.
 - 6th. The instrument sued on and introduced in evidence is a special contract, and the finding of the Court does not enforce the contract.
 - 7th. The Court erred in overruling the motion for a new trial.
 - 8th. The Court erred in not enforcing the by its judgment.
 - 9th. The Court erred in not rendering judgment for the value of the gold as proved.
- Wherefore he prays that the same may be reversed and remanded in pursuance to law.

L. Shessler & D. Sheean
Attorneys for
Appellant.

And the said Appellee comes & defends and says there is no error in the record and proceedings in the above case and the same should be affirmed in all things to

M. J. Johnson
Atty for Appellee

165

46

Alfred Hull

7

Jacob Kohlsaat

Reed & Evers

Filed Apr. 18. 1864.

L. L. L.

Clk.

(No 165-)

Hull } Sup^t Court of Illinois
vs }
Hobbsat } Thro Grand Jurors
April Term 1864

The Record in this cause, presents two questions

1st Is the law of Congress making Treasury notes a legal tender a Constitutional law.

We maintain that the law is unconstitutional, and that the plaintiff is entitled by law, to collect his Judgment in current coin of the United States, and therefore has nothing to complain of in the Judgment of the Circuit Court, the Judgment being for money

11-

If the law is Constitutional, can the plaintiff recover the value of the gold in Treasury notes. Having shown on the trial that Gold is at a premium of 58 per cent over legal tender notes

In other words, Whether a party holding a Gold contract is entitled to a Judgment for the value of the Gold, or is it to be treated as a money bond that may be satisfied

in legal tender notes

We hold the Judgment is proper
it is for the amount of money named
in the Contract, and if Congress pass
-es a law, making paper equivalent
to Gold on contracts, no matter if
it is one hundred per cent discount
as a matter of fact, yet as a mat-
=ter of law, it is equal to Gold, and
must be taken in satisfaction
When he made the contract for
Gold, it was subject to any legislation
that might be made

In either event the Judge should
be affirmed

M G Johnson
Atty for Appellor

¹⁶⁵
a Hull

²

I Kohlraat

Left Brief and
argument

Filed April 22, 1884
L. Leland
Clerk

State of Illinois---Supreme Court

Third Grand Division,
APRIL TERM, A. D. 1864.

ALFRED HULL, Appellant,	} Appeal from Jo Davies County.
vs JACOB KOHLSAAT, Appellee.	

ABSTRACT OF RECORD.

Record. This was an action of debt. Declaration contains one
p. 3 usual count. Also one special count claiming the value of
4 American gold in legal tender Treasury notes. Also the
general common count.

9 The general issue only pleaded. Both parties waive the in-
tervention of a jury, and the cause is tried by the court.

10 The court finds in the sum of \$75 debt, and \$14.85
damages.

Motion for new trial made by plaintiff. Reasons for new
trial as follows:

1st. The finding of the court is contrary to the law.

2nd. The finding of the court is contrary to the evidence.

11 3rd. The finding of the court should have been for the
amount of the value of the gold as proved by the witness.

4th. The evidence showed that plaintiff is entitled to a
larger finding.

5th. The finding of the court is against the law and the
evidence.

6th. The instrument sued on and introduced in evidence,
is a special contract, and the finding of the court does not
enforce the contract.

12 The court overruled the motion for new trial, and rendered
judgment on the finding. Plaintiff excepted to overruling of
said motion and to the rendition of the judgment, and prayed
an appeal, which is granted.

PLAINTIFF'S EVIDENCE.

13 The following instrument was introduced and read in

Walter Ford being duly sworn, testified: I am Teller in the Bank of Galena in this city. The value of American gold here compared with United States treasury notes, is fifty-eight per cent. premium—one hundred dollars in American gold is worth one hundred and fifty-eight dollars in United States legal tender notes.

CROSS EXAMINED. One dollar in gold is worth its face in gold.

This was all the evidence in the case, both on the part of the plaintiff and of the defendant. The evidence, testimony, finding of the court, motion and reasons for new trial, the overruling of said motion and exception taken, the rendition of the judgment and exception taken, are all preserved in the Bill of Exceptions.

15 Appeal Bond entered into and filed as required by the court.

ERRORS ASSIGNED.

1st. The Court erred in overruling the motion for a new trial.

2nd. The Court erred in rendering the judgment for ONLY \$75.00 debt and \$14.85 damages.

3rd. The Court erred in not enforcing the contract by its judgment.

4th. The Court erred in not rendering judgment for the amount of the value of the gold as proved.

BRIEF OF APPELLANT.

I.

In this case, we ask the Court to reverse the decision of the Circuit Court on several grounds.

The finding of the Court was contrary to the law.

The finding of the Court was contrary to the evidence.

The finding of the Court should have been for the amount of the value of gold as proved.

The instrument sued on and introduced in evidence, is a special contract, and the finding of the Court does not enforce the contract.

The evidence in the case shows that the appellee entered into a written contract to pay to the appellant \$75.00 in American gold. On the trial Walter Ford testified, that he was Teller of the Bank of Galena, that the value of American gold as compared with United States Treasury notes, was 58 per cent. premium over United States legal tender Treasury notes—that is, one hundred dollars in American gold is worth one hundred and fifty-eight dollars in United States legal

tender notes.

The Court rendered a judgment for plaintiff for \$75.00 debt, and \$14.85 damages.

But in no event can the law authorizing the issue of United States tender notes be decided CONSTITUTIONAL, and at the same time, the judgment below be held correct.

II.

We then proceed to the first inquiry. Has Congress the power under the Constitution to pass the act making United States Treasury notes legal tender for private and public debts?

The Constitution of the United States, Article 1, Section 8, paragraph 5, grants to Congress the power "To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures."

This clause does not authorize Congress to issue paper money. The word coin is used in its obvious and natural sense. The entire clause is designed to operate on a metallic currency. Congress is empowered to regulate the value of foreign coin—this does not include foreign paper money.

Congress in 6th clause is granted the power to pass laws for the punishment of counterfeiting the securities and current coin of the United States, clearly showing that their paper evidences of debt in the nature of securities, are not coin.

No State shall coin money, or shall emit bills of credit.—Here again the Constitution separates and discriminates, showing they are two entirely different things.

This clause, we think, grants no power to Congress to pass paper money at all, much less to make it a "legal tender."

The only other clause granting power to Congress on which an argument can be based to support a "paper tender," is the 2nd clause, section 8, article 1, which declares:

Congress shall have power "To borrow money on the credit of the United States." The credit of the United States may be in the nature of bonds or certificates of indebtedness, which

of course will only bring what they are worth in market. To borrow, presupposes the consent of the lender—but to force the lender to part with his money, is in the nature of forced contributions, which is in direct violation of the guarantees thrown around the enjoyment of private property. To borrow money, does not mean to issue certificates of indebtedness, and compel men to take them. This grant of power, designed for a good purpose, to borrow money on bonds of the government, would thus be converted into an engine of wrong and oppression.

Nor can the general clause authorizing Congress to pass all laws necessary to carry these provisions into effect, enlarge, change or pervert these specific grants of power. If the Supreme Court holds that Congress has no power to pass this law and it is unconstitutional, that gold and silver are the only tender for debts, and the money which can be demanded on the collection of judgments, then we shall be satisfied.

As the Constitution grants no power to Congress to declare paper currency a tender for debts, and since it denies to the States the right to make anything but gold and silver coin a legal tender, is it not a fair implication that gold and silver coin ONLY can be made a tender for the payment of debts, under the Constitution of the United States.

III.

But if this Court hold the "paper tender" law to be constitutional, then we insist that the Circuit Court erred in not rendering judgment for the value of the gold in the paper currency, as proved on the trial.

As a specific contract, there is nothing unlawful in it: such as to prohibit the parties from making it. With gold coin only can we carry on commercial relations with other countries. The United States government has regarded gold as the subject of special contract in the issuing of 5-20 bonds bearing interest payable in gold, and the principal sum to be paid in gold. The United States collectors at various ports have been authorized to issue certificates receivable as gold, or the value of gold at the custom house, on the payment of \$150 in greenbacks for \$100 in gold, or whatever may be its market value at $\frac{1}{4}$ per cent. below such current market value of gold. See the following order:

"U. S. Treasury, N. Y., March 28, 1864.

By direction of the Secretary of the Treasury, notice is hereby given, that until further orders, I will issue to importers for payment of duties on goods imported by them, certificates of deposit of gold coin to the credit of the collector of any port as desired, in exchange for treasury notes, at a quarter of one per cent. below the current market value of gold. These certificates are not assignable, but will be received by the collector from the party to whom they are issued.

Signed,

J. J. COOKE,
Ass't. U. S. Treasurer."

This shows that the government recognizes a distinction between gold and paper tender, and discriminates in their value.

If the government can and does recognize such a distinction, certainly individuals can do the same thing. The law does not forbid contracts in gold; it simply declares that a man cannot compel a debtor to pay in anything except paper tender. The result has been, that gold has ceased to be a circulating medium, and has become an article of merchandise. When this contract was entered into, these parties made a difference in value between gold and paper tender, and the appellee, under his seal, agreed and promised to pay gold. Gold has a positive, intrinsic value, paper currency has none. Gold is regarded by the commercial world as a positive measure of values, as a universal medium of exchange. An agreement to pay seventy-five dollars in gold, is subject to the same rules of construction as a contract to pay seventy-five pounds of cotton, or seventy-five pounds of lead. In either case, the promisser knows he must furnish these articles, or their value in such currency as the law allows to be collected on judgments.

Suppose the appellee contracted to pay ten Eagles, American coin, could the appellee liquidate it by ten photographs in green of President Lincoln, of unredeemable promises to pay? The appellee contracted to pay gold, not "promises to pay," or certificates of indebtedness of the United States.—Treasury notes are simply promissory notes; and bank notes, promissory notes of individuals, corporations or commonwealths, and all other kinds of paper currency, are worth just what they will bring, and no more. These greenbacks pretend to be promises to pay certain amounts, at a particular place, but they are not redeemed, and are a fraud and deception on their face.

Congress in this "paper tender" law does not say that one gold dollar shall be worth no more than a greenback of the denomination of one dollar. The Almighty made metals, man makes greenbacks. While our worthy Secretary of the Treasury can create greenbacks, and thus limit or increase their QUANTITY at will, he cannot create the precious metals.

Congress says that greenbacks shall be a paper tender for all debts. The debt is not and cannot be known, until the market value of the gold is ascertained.

The design of Congress was to obtain money, or the representative of money. It could not get gold and silver without difficulty, therefore it changed the circulating medium of the country, creating an entire radical change, by manufacturing paper currency, and in order to give it a forced value, this paper currency was declared to be a tender for the payment of public and private debts. But when Congress descended from the basis of gold and silver, which have a positive intrinsic value, to a paper currency that has none, then they permitted gold to rise and seek its own value, as any other article or commodity. Recent legislation shows the construction which Congress has placed upon this paper tender law. The act of Congress authorizing the Secretary of the Treasury

to sell the surplus gold in the U. S. Treasury, requires that it should be sold at the current market value of gold coin. If the gold cannot be sold at less than its current market value, it is clear that Congress no longer regards it as money, but simply as a commodity or article of merchandise. If it is not regarded as an article of merchandise, but current money under the law, then the government of the United States is in the disgraceful position of going into the market, and buying up its own paper at a heavy discount. Since the government construes the law to regard gold as an article of merchandise, certainly the citizen can do likewise, and make gold a matter of special contract. These contracts will become more frequent as the paper tender depreciates in value, and men will endeavor to convert it into gold, which has an intrinsic value. Already have the repeated expansions of this paper currency caused it to depreciate to such an extent, that a man who goes to bed at night has to look to Wall street in the morning to ascertain what his paper currency is worth.

An argument may be addressed to the Court, that the appellant may obtain a judgment for \$132, and that it may remain unsatisfied for years, and that ultimately there will be a return to gold and silver basis. Grant it, but when the appellee made his contract, he took these chances. He has the advantage of even a further depreciation of the judgment, and to pay it when the paper tender may sink to ten or twenty cents on the dollar, perhaps become as worthless as Continental money. Every day that the appellant is kept out of his money, every day is the judgment rendered on the written contract becoming more precarious in value.

If the appellee could liquidate such written contracts, by paying the precise amount called for in the same number of treasury notes, then he could go around, purchase gold as he would any other commodity, and make a special contract to repay the gold with ten per cent. interest. He could sell the gold for fifty-eight per cent. premium, and come in at the end of the year, pay \$100 in treasury notes, and have \$48 clear profit on each \$100 of gold. Such conduct would be a fraud and swindle by the appellee on the lender, and the law would thus hold out a bounty to rogues, and legalize wrong and injustice.

For these reasons we maintain the judgment of the Circuit Court is erroneous, and we ask that it be reversed and remanded.

L. SHISSLER AND D. SHEEAN,
ATTORNEYS FOR APPELLANT.

A Hull

vs
J. Gohlscant

Abstract +

Brief

remanded.
 Court is erroneous and we ask that it be reversed and
 for these reasons we maintain the judgment of the Circuit
 inferior.
 This bill on a promissory note, and assigns wrong and
 and assigns for the assignee on the note and the law wrong
 bills on even \$100 of bill. This contract would be a bill
 of the law, but \$100 in currency notes and have \$100 of
 bill for this eight per cent premium and come in at the end
 of the bill with ten per cent interest. The bill will be
 wrong and other contracts, and make a special contract to
 receive notes, then he could go wrong, because he is
 holding the bills amounting for in the same number of
 it, the bills could be paid and such written contracts, by
 contract becoming more numerous in value.
 The money, each bill is the judgment rendered on the written
 money note. Now, if a bill is assigned is held on, or
 is assigned, the bill is assigned to some one, and the bill is
 and to pay it when the paper tender may sink to ten or ten
 hundredths of even a further depreciation of the judgment,
 he would make his contract, he took these contracts. He has the
 a return to bill and silver bills. (Grant it, but when the ob-
 ject is assigned for value and the judgment, there will be
 judgment now obtain a judgment for \$100 and that it may be
 an amount only, he assigned to the Court that the ob-
 ject is assigned his paper currency is wrong.
 To pay he might not be able to pay to him, and in the morning, for
 cause it is given up to such an extent that a man who does
 wisely have the besting experience of the paper currency
 to convert to convert it into gold, which has an intrinsic value
 of silver currency. These contracts will become more the
 property of the citizen and go forward and make bill a matter
 of the law to make bill as an article of merchandise, and
 in his own paper as a paper currency. Since the Government
 the question of location of gold into the market and making
 the bill, the bill is the currency of the United States is in
 currency as an article of merchandise, but currency notes are
 simply as a currency or article of merchandise. It is not
 it is clear that Congress no longer makes it as money, and
 the bill cannot be sold as less than its current market value, and
 the bill is sold at the current market value of gold coin, it
 is the bill and the bill in the U. S. Treasury, reduces the

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 J. G. HULL (vs) J. G. HULL

Filed Apr 18, 1864
 L. Leland