

LEGAL TENDER NOTES BEFORE THE SUPREME COURT.

Constitution would have been rejected. This might have been the prevailing reason which induced the convention not to embrace that specific provision in the frame of government submitted. It merely shows then, that, for some reason, the convention could not agree to submit that express provision.

But it by no means leaves the Constitution, as adopted, subject to any implications against the provisions being virtually implied in what was submitted and adopted, because this express provision was not embraced in it. The people had no knowledge of the discussions of the convention, or of the propositions discussed by it and not embodied in the Constitution, but acted upon the document as presented to them; and it is therefore fairly entitled to receive its construction upon what appears in it, without reference to any discussions or propositions before the convention and which did not result in any affirmative action. It is much like the case of a contract, since the passing of the Legal Tender Act, in which the parties, in their preliminary action, had attempted to define the currency, either gold or greenback, in which it should be payable, but could not agree, and therefore left it to legal implication. There would surely be no ground of argument, in such a case, that the parties had virtually fixed the currency in which payment should be made, or that because the parties failed to agree either upon gold or currency, both must be excluded. No principal of legal construction is more familiar, than that none of the preliminary negotiations can be received or considered in fixing the construction of a contract. And the same is true in regard to any written instrument, whether a contract, a testament, or a constitution. Each must speak by its own words, construed with reference to its subject-matter and the purpose of its creation.

If then the United States Constitution, like ordinary written instruments, is entitled to be construed by its language, with reference to those allowable aids to which resort is always made in such cases, we shall find less embarrassment in reaching a satisfactory conclusion than if we were compelled to regard the views of the framers or of the people, then or now, or any other outside influences, in the matter. No doubt tradition, or contemporary history, may, in many instances, afford great aid in learning the import of terms, or the general purpose and intent of an act or instrument, or contract.

In that view the known and declared facts recited in the preamble of the Constitution, wherein the transaction is declared to be the work or act of the people of the whole United States, is a very significant intimation that the purpose was to create a national sovereignty, and not a mere confederation among the states. The other portions of the preamble look in the same direction. "To form a more perfect union, establish justice, insure domestic tranquility, provide for the common

defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity," are all objects not to be expected from anything less than the establishment of a national and consolidated sovereignty.

Then the general frame of the instrument shows that the government was expected to embrace all the important, certainly all the indispensable powers and functions of national sovereignty, and that it was to be automatic, possessing all the functions and resources of sovereign states, viz., executive, legislative, and judicial.

As showing too the paramount and supreme power of the newly-created national government, the national judiciary is given the supreme function of defining and measuring all the national powers, and at the same time of defining and measuring the powers reserved to the several states under the National Constitution, by allowing writs of error to the highest judicial tribunal in the state from the Supreme Court of the nation in all matters affecting any power or function derived from or under any Act of Congress or the National Constitution, or where it was claimed that any conflict had arisen in regard to the validity of any state law by reason of its conflict with the powers and functions of the national government under its Constitution, and the decisions of the state court had been adverse to the national claim of authority.

Under such a distribution of the powers of sovereignty, it would be natural to find that the power of making money and declaring the value of the same should be reposed in the national government, as a clearly national function. This we do find to be the fact, either fully or subject to limitations. There can be no doubt that before creating the national sovereignty the general and unlimited power of making money, in all modes known to the law of free states, did exist in the fullest possible form in each of the states. And although the history of free states shows, that for commercial purposes a circulating medium of the precious metals is regarded as the most desirable, and the only desirable one, yet it is certain this has never been regarded as the exclusive currency of even commercial states. Almost all the European states have, in emergencies of great pressure, during war or in other great commercial crises, resorted to the issue of national bills of credit, by declaring them part of the money or circulating medium of the country. This question was incidentally involved in a recent case in the English courts of equity, where the Emperor of Austria sought to enjoin Louis Kossuth and one Day, the manufacturers, from preparing and issuing bills of credit in the name of the kingdom, or the king of Hungary. No question seems there seriously to have been made by counsel or entertained by the court but that such bills, when lawfully issued, would constitute a portion of the lawful money of the empire.