UNITED STATES REPORTS.

UNITED STATES SUPREME COURT.

Butler v. Horwitz.

(From The Pittsburgh Legal Journal.)

In contracts for the payment of a certain sum in gold and silver coin made prior to the passage of the acts of Congress making United States notes legal tender, the damages for non-payment must be assessed in coin according to the contract, and judgment rendered accordingly.

The principles determined in Bronson v. Rodes (4 Legal Jour., N. S., p. 278), reasserted and held to govern this case.

The question of the constitutionality of the acts of Congress making United States notes legal tender not decided.

Error to the Court of Common Pleas for the State of Maryland.

Daniel Bowly, on the 18th of February, 1791, leased to Conrad Orendor a lot of ground on Water street, in the city of Baltimore, for 99 years, renewable forever, reserving rent in the following words, "yielding and paying therefor to the said Daniel Bowley, his heirs and assigns, the yearly rent or sum of £15, current money of Maryland, payable in English golden guineas weighing five pennyweights and six grains, at thirty-five shillings each, and other gold and silver at their present established weight and rate according to act of Assembly, on the 1st day of January in each and every year during the continuance of the present demise."

On the 1st of January, 1866, Mr. Horwitz was the owner of the rent and reversion, and Mr. Butler of the leasehold interest in the lot. Mr. Butler tendered the amount of the annual rent ($40) then due, in currency, which Mr. Horwitz refused to receive, and brought suit to recover the value of the gold, in currency, on the 1st of January, 1866, which was $58. Judge King, of the Court of Common Pleas, before whom the case was argued, gave judgment in favor of Mr. Horwitz for that amount, with interest. Mr Butler then applied for a writ of error, taking the case to the Supreme Court of the United States, there being involved in the case the construction of an United States statute, which was decided adversely to the party claiming its benefit, as he had a right to do, under the act of Congress of 1789.

Chief Justice Chase, in delivering the opinion of the Supreme Court, substantially affirmed the opinion and judgment of the Court of Common Pleas, the only difference being in the practical method of carrying out the views entertained alike by both Courts—the Baltimore Court reduced the gold to currency, and the Supreme Court determining that the judgment should be entered for the amount claimed, with interest, in gold.

The case was argued in the Supreme Court by J. R. Quinn, Esq., for plaintiff in error, and by Benjamin F. Horwitz, Esq., for defendant in error.

Chase, C. J.—The principles which determined the case of Bronson v. Rodes will govern our judgment in this case. The record shows a suit for breach of the covenant for payment of rent in a lease of certain premises in the city of Baltimore, made in 1791 for 99 years, renewable forever, upon an annual rent of £15, current money of Maryland, payable in English golden guineas, weighing five pennyweights sixteen grains, at 35 shillings each, and this gold and silver at their present weight and rate established by act of Assembly.

The obvious intent of the contract was to secure payment of a certain rent in gold and silver, and thereby avoid the fluctuations to which the currency of the country, in the days which preceded and followed the establishment of our independence, had been subject, and also all future fluctuations incident to arbitrary or uncertain measures of value, whether introduced by law or usage.

It was argued in the court below that the rent due upon the lease reduced to current gold and silver coin was, on the 1st of January, 1866, $40, and judgment was rendered on the 27th of June, 1866, for $59.17. This judgment was rendered as the legal result of two propositions:

1st. That the covenant in the lease required the delivery of a certain amount of gold and silver in payment of rent; and,

2d. That damages for non-performance must be assessed in the legal tender currency.

The first of these propositions is, in our judgment, correct; the second is, we think, erroneous

It is not necessary to go at length into the grounds of this conclusion. We will only state briefly the general proposition on which it rests, most of which has been stated more fully in Bronson v. Rodes.

A contract to pay a certain sum in gold and silver is in substance and legal effect a contract to deliver a certain weight of gold and silver, of a certain fineness, to be ascertained by count Damages for non-payment of such a contract may be recovered at law as for non-performance of a contract to deliver bullion, or any other commodity; but whether the contract be for delivery or payment of coin, or bullion or other property, damages for non-performance must be assessed in lawful money; that is to say, in money declared to be legal tender in payment, by a law made in pursuance of the Constitution of the United States.

It was not necessary in the case of Bronson v. Rodes, nor is it necessary now, to decide the question whether the acts making United States notes legal tender are warranted by the Constitution. We express no opinion on that point, but assume for the present the constitutionality of these acts. Proceeding upon this presumption, we find two descriptions of lawful money in use under the acts of Congress, in either of which damages for non-performance of contracts, whether made before or since the passage of the Currency acts, may be properly assessed in the absence of any different understanding or agreement between the parties; but the obvious intent in contracts for payment in coin to guard against fluctuations in the medium of payment warrants the inference that it was the understanding of the parties that such contracts should be satisfied, whether before or after the judgment, only by tender of coin; while the absence of any express stipulation as to description in contracts