

## LEGAL TENDER NOTES BEFORE THE SUPREME COURT.

in that sense any impressible material, even paper, is susceptible of literal coinage. But the true construction unquestionably is, that the more common mode of creating money is here, by a figure of speech, put for the whole, and that "coining" money means nothing more than *making* money. For unless we do adopt this construction, there is no power by which money of gold and silver can be made in any other mode except coinage. It could not be done by weight, in the form of bars or bullion, or by stamping pieces of gold or silver, short of coinage, or by any other known or newly-discovered device. Such a narrow and literal construction of language would never be adopted in regard to the interpretation of other written instruments. The *endorsement* of notes and bills, which literally imports an assignment upon the *back* of the instrument, may just as well be upon the face of the instrument, as has been often decided. So also a contract for the *manufacture* of cloth, or machinery or any other thing, where it was susceptible of being done, either by hand, as the word literally imports, or by machinery, would never be received in a strict literal sense. All that is implied is, that it shall be so made as to answer the ordinary purposes and objects of such fabrics in the market. These illustrations might be carried to any extent. Any court which should assume to give language any such literal construction, in regard to an incidental and collateral matter, only implied from the etymology of the terms used upon any other subject, would shock the common instincts and common sense of mankind. And why that strict and extremely literal construction of this clause of the Constitution should be so strenuously insisted upon on this subject, any more than upon other portions of the instrument, is not easily explainable. If one of the most accurate of English writers could speak of "coining blood for drachmas," why may not a nation coin money in all the modes known at the time the power is created, and thus stamp its own paper with the quality of lawful money? Few men will argue that the government might not stamp the quality of money upon gold and silver without literally coining it, and if so, why may it not effect the same thing with its own paper, as no limitation is found, surely, in regard to the material of which money shall be made by the national authority? It may be of any metal or other material susceptible of coinage. The same thing may be effected by stamping such material. Is paper, therefore, certainly excluded? Can that be fairly said when it was one of the known modes of making money at the time, and present to the minds of the farmers? If money may be coined out of paper, it is surely none the worse for containing the promise of the government.

It may undoubtedly be fairly argued that this power of emitting bills of credit and stamping them with the qualities of lawful money, was not intended to be given as the ordinary

mode of making money. It was not expected the nation would attempt to do, under ordinary circumstances, what all nations regarded as destructive policy, except in times of war or extreme emergencies. The same is true of borrowing money, which is one of the express powers granted in terms most unquestionable. No nation can borrow money for its ordinary current expenses and not come to ruin and bankruptcy, any more than an individual could do the same and not lose credit. Current expenses must be met by current income or all credit and character is lost, both personal and national.

To argue that no power to emit bills of credit and stamp them as lawful money was intended to be given to the nation, but that still this may be done in all great emergencies, when it is impracticable to maintain the national life in any other way, seems to us very nearly equivalent to saying that the power is not given at all as an ordinary function of government: but it may be resorted to, by way of spasmodic convulsions, in the last throes of existence. This seems to be an admission that it is not given but may be assumed in *articulo mortis*, the same as the people may resort to the inherent right of revolution when the oppressions of the existing government become intolerable! This is a species of legal construction not judicial in its character as it seems to us. We would sooner presume it, as a necessary incident of national sovereignty.

Such an argument seems to us rather political than legal; a function of the legislative or executive authority, rather than of the judiciary. If the power to emit bills of credit and stamp them as money is not given in the function of borrowing money and coining money, it seems to me, with submission, that it is not given at all. But it seems very clear to us that these express powers of borrowing money and making money must be supposed to have been given to be exercised, not only in all the then known and usual modes of doing those things, which will cover the present issue of treasury notes, but also in all future modes and emergencies which might be desirable as they should arise. This is the only mode of construing the Constitution which will make it answer the purpose of its adoption. Upon any other mode of construction a written constitution must become an intolerant hamper and impediment to the just development and growth of the national life, which should surely be avoided if the courts possess the power of rising to the demands of the exigencies of advancing time, which is one of the indispensable functions of judicial construction, and which can alone render written laws enduring.

I. F. R.