Fordham Law Review

Volume 4 | Issue 2 Article 6

1935

The Satisfaction of Gold Clause Obligations by Legal Tender Paper

lishing a crime, a legislature must fix an ascertainable standard of guilt, so that those subject thereto may regulate their conduct in accordance with the act.[91] In the recovery acts, however, the filing of the codes will have established the standard of guilt, and it is recognized that the legislatures may delegate the power to make rules and regulations and provide that violations shall constitute a crime.[92]

THE SATISFACTION OF GOLD CLAUSE OBLIGATIONS BY LEGAL TENDER PAPER. Not until 1867 did anyone seriously litigate[1] what Charles Pinckney meant when he successfully urged upon the Constitutional Convention[2] that the document it was then formulating confer upon the Congress the power "To coin money" and "regulate the value thereof."[3] During that year and those that have followed, however, the Supreme Court of the United States on four occasions[4] has been called upon to declare what this government's founders contemplated when they incorporated this provision into the paramount law of the land.[5] Confessedly, numerous other powers delegated in terms to the national

91. United States v. Cohen Grocery Co., 255 U. S. 81 (1921); Connally v. General Const. Co., 269 U. S. 385 (1926); Cline v. Frink Dairy Co., 274 U. S. 445 (1926); Champlain Rfg. Co. v. Commission, 286 U. S. 210 (1931).

92. United States v. Grimaud, 220 U. S. 506, 522 (1911). ("A violation of reasonable rules regulating the use and occupancy of the property is made a crime, not by the Secretary, but by Congress. The statute, not the Secretary, fixes the penalty."). *Accord:* Avent v. United States 266 U. S. 127 (1924); Hampton & Co. v. United States, 276 U. S. 394 (1928); *cf.* Broadbine v. Inhabitants of Town of Revere, 182 Mass. 598, 66 N. E. 607 (1903).

1. Hepburn v. Griswold, 75 U. S. 603 (1869), was first argued before the United States Supreme Court during the December term of 1867. It is scarcely necessary to remark that the question had already been determined in state courts as well as inferior federal tribunals.

2. In the draft of the Constitution proposed by Mr. Pinckney there appeared a coinage clause virtually identical with that ultimately adopted. See 1 ELLIOT, DEBATES (2d ed. 1836) 184.

3. While other litigation, not unrelated to this grant of power, arose at substantially the same time and resulted in a line of decisions of which Bronson v. Rodes, 74 U. S. 229 (1868), may be regarded as the parent, it was considerably narrower in scope and concerned chiefly an interpretation of the terms of the Legal Tender Acts, the Court holding the provisions thereof were not intended to extend to contracts expressly made payable in gold and silver coin.

4. Hepburn v. Griswold, 75 U. S. 603 (1869); Legal Tender Cases, Knox v. Lee, Parker v. Davis, 79 U. S. 457 (1871); Juilliard v. Greenman, 110 U. S. 421 (1884); Gold Clause Cases, 55 Sup. Ct. 407 (1935). These last decisions are divided as follows: Norman v. Baltimore & Ohio R. R., United States et al. v. Bankers' Trust Co. et al. (two cases), *ibid.;* Nortz v. United States, *id.* at 428; Perry v. United States, *id.* at 432. For the dissenting opinion of Mr. Justice McReynolds, applicable to all the cases, see *id.* at 419.

5. U. S. CONST. Art. I, § 8. "The Congress shall have the power . . . To coin money, regulate the value thereof, and of foreign coin. . . ."

legislative body were considered in determining the constitutionality of the application of definitely artificial stimuli to the currency, but the coinage clause, even when not the turning point of the controversy, is still either a strong citadel about which the defense is deployed, or a hostile fortress against which the attack must be levelled.

Although the *Legal Tender Cases*[6] furnished the starting point for the Supreme Court's review of the authorities[7] in the *Gold Clause Cases*,[8] to pursue such a course is actually to commence in the middle of the chain of cases,—a series having its true source in the opinion delivered by the minority in *Hepburn v. Griswold*.[9] There Mr. Justice Miller raised his voice in argument so vigorous and cogent that in two years an objection became a decision, a protest became a judgment, a dissent became a momentous prevailing opinion.[10] There have been the scoffers—the "debunkers" of judicial impartiality—who have caused scandal to rear its ugly head and loudly proclaim that political pragmatism and economic expediency, through the instrumentality of an increased bench, were responsible for the reversal of front by the Court, a change in which legal principle played no part.[11] But the present Court, divided perhaps bitterly upon most of the issues involved, endorsed without reservation the holdings of Justice Miller and his associates[12] who stoutly maintained that the power to make paper currency legal tender for the payment of debts incurred anterior to the enactment was, under the proper conditions,[13] resident in the Congress, a position consistently adhered to by the high Court after an irresolute start.

Resulting Powers

While the ability to impart to paper money the character of legal tender must be implied[14] from the Constitution today, just as it was sixty-five years

6. 79 U. S. 457 (1871).

7. Again prescinding from the Bronson v. Rodes group of cases. See note 3, *supra*.

8. 55 Sup. Ct. 407 (1935).

9. 75 U. S. 603 (1869).

10. Legal Tender Cases, 79 U. S. 457 (1871).

11. The baseless nature of the harsh and scandalous interpretations of this reversal is considered *infra* pp. 294-295.

12. Mr. Justice Miller's words are found in the dissent in Hepburn v. Griswold, 75 U. S. 603, 626 (1869) while those of his colleagues appear in the opinion of the Court and the concurring opinion in the Legal Tender Cases, 79 U. S. 457, 554 (1871).

13. Inasmuch as this power was not expressly granted by the Constitution, there must be found the three requirements laid down by Chief Justice Marshall in McCulloch v. Maryland, 17 U. S. 159, 206 (1819), and unfailingly approved by subsequent decisions; namely, the end must be within the purview of the Constitution, the means must be appropriate to the achievement of this design, and they must not be forbidden by the letter or spirit of the Constitution.

14. It was urged in the Legal Tender Cases, 79 U. S. 457, 550 (1871), that powers existing under the last clause of U. S. CONST. Art. I, § 8, to wit, "The Congress shall have the power . . . To make all laws which shall be necessary and proper for the carrying into execution of the foregoing powers, and all other powers vested by this Constitution in the government of the United States or in any department or officer thereof", are express in that they are mentioned generally, although not named in detail. It is submitted that such a contention involves a contradiction in terms.

ago, it is manifest that, in the terms of the recognized standards[15] set up for the implication of auxiliary powers, the end of the action is now different and the means more extensive in scope. But whether the aim of the law is to effectuate the expressed power of supporting an army, the design predominant when the first two tests[16] of this power arose, or the intent is to actualize several such grants,[17] there has been only one serious contention that the end is without the limits of the supreme law. This occurred when Mr. Justice McReynolds, in his dissent in the *Norman Case*,[18] inveighed against the rectitude of the legislature's aim in the gold clause abrogation acts, asserting with emphasis that its intention was not to establish a monetary system but to reduce sacred obligations of state and citizen to so low an estate that they might be met by "inconvertible promises to pay [paper money], of much less value."[19] It is submitted that in searching for ulterior motives he failed to appreciate that man may act with several ends in view. To seize upon the most illegal possibility and to ignore a legitimate goal toward which one may well be striving is hardly calculated to give rise to unshakable conviction in the mind of the reader. Equally objectionable is the setting up of one effect of a broad plan (to wit, the transfer of part of the debtor's burden to the shoulders of the creditor) as the sole purpose for the comprehensive scheme, judicious or ill-advised though it may be, to revamp the monetary structure of this country to fit the demands to which it is now subject. It is respectfully suggested that the dissenting Justice has done one or both of these things, either of which is sufficient to vitiate his contention. But the means are invariably the troublesome point upon which the justices disagree, and here appears the widest divergence between the Legal Tender Acts[20] and the recent legislation relevant to gold, for the former did not undertake to enter the field of contracts payable in specie. This fact accounts for the existence of the two lines of cases[21] already alluded to, for when the facts did not concern payment in coin, the Court refused to consider the matter, and where the obligations were collectible in gold, the *Bronson v. Rodes*[22] series honored the plaintiff's claim to additional compensation because of the inextension of the acts to such situations. Yet these latter apparently simple and eminently sound[23] judgments were instinct with three concepts of great moment: (1) The nature of the gold clause as controlling the subject matter of the contract; (2) The value of the right to gold; and (3) The efficacy of legal tender in the extinction of debts. Aside from the first, these thoughts have been accorded but scant attention by the Court.

15. See note 13, *supra*.

16. Hepburn v. Griswold, 75 U. S. 603 (1869); Legal Tender Cases, 79 U. S. 457 (1871).

17. In Juilliard v. Greenman, 110 U. S. 421 (1884), the powers over revenue, finance, and currency were all invoked as a basis for the Court's implication.

18. Norman v. Baltimore & Ohio R. R., 55 Sup. Ct. 407, 419 (1935).

19. *Id.* at 423.

20. 12 STAT. 345 (1862), 31 U. S. C. A. §§ 198, 452, 453 (1926); 12 STAT. 532 (1862), 31 U. S. C. A. §§ 198, 452 (1926); 12 STAT. 709 (1863), 31 U. S. C. A. § 198 (1926).

21. The Hepburn v. Griswold and the Bronson v. Rodes groups.

22. 74 U. S. 229 (1868).

23. The conclusion as to soundness refers to result rather than to reasoning, for diverse paths were trod to arrive at the one conclusion.

I

The Commodity Theory

Weighing first that section of this tripartite problem which has most consumed the deliberation of the bench, reflection upon the nature of the gold clause contract is necessary. The lines of battle have been long since clearly drawn. On one side it is assailed as a mere agreement to pay dollars or currency, while upon the other it is defended as a pledge to deliver the stated amount of gold as a commodity, bullion. Chief Justice Hughes has adopted the definiteness which has characterized all the utterances of the Supreme Court on this topic and has declared[24] that the majority court "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." In his review of the authorities the Chief Justice confines himself to four, and while his solution to the problem seems to be the correct one, it is submitted that the method pursued is little calculated to induce conviction. The first case considered is *Bronson v. Rodes,* and the claim is made that, even though the Court said that the contract was not distinguishable in principle from an agreement to produce bullion of a given weight, this was *obiter dictum,* inasmuch as "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.' "[25] An impartial reading of the opinion cries out against the averment that the statements on the nature of the gold clause in the *Bronson Case* were not necessary to the opinion. After setting down his conclusion that it was a contract to pay gold as a commodity, Chief Justice Chase proceeded to assume that the undertaking was not what he had already decided it to be, and found further support for his stand in the intent of the Congress.[26] In fine, the learned Chief Justice had made his decision, but to make assurance doubly sure he indulged the assumption that he was wrong, and found another basis for his opinion. Conceding that it is sometimes difficult to ascertain upon what ground a decision is put, it is submitted that Chief Justice Hughes has adopted the far less probable of two possibilities and has gratuitously asserted it to be a fact. *Butler v. Horwitz,*[27] appearing on that page of the reports immediately following the *Bronson Case,* though mentioned in a string citation, is ignored by Chief Justice Hughes in his discussion, although it is most enlightening in that Chase, who wrote both opinions and is therefore the best able to know the foundation upon which the earlier

24. Norman v. Baltimore & Ohio R. R., 55 Sup. Ct. 407, 413 (1935).

25. *Ibid.*

26. 74 U. S. 229, 251 (1868). The following quotation demonstrates the ancillary nature of the discussion which is now averred to be the *ratio decidendi*: "Nor do we think it necessary now to examine the question whether the clauses of the currency acts, making the United States notes legal tender, are warranted by the Constitution.

"But we will proceed to inquire whether, upon the assumption that those clauses were so warranted, and upon the further 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, it can be maintained that a contract to pay coined money may be satisfied by a tender of United States notes.

"Is this a performance of the contract within the true intent of the acts?"

27. 74 U. S. 258 (1868).

ruling was built, declares that "The principles which determine the case of *Bronson v. Rodes,* [*sic*] will govern our judgment in this case."[28] He then proceeds unequivocally and forcibly to reaffirm that a contract to pay in coin is "in substance and legal effect" an agreement to furnish the promisee with a commodity.[29]

The discussion in the *Norman Case* then proceeds to *Trebilcock v. Wilson,*[30] which admittedly holds that the term "in specie" did not make the obligation payable in chattels, but rather was an indication of which of two kinds of money the contract demanded. *Thompson v. Butler*[31] seemingly adheres to the same doctrine, but the inimical theory again makes its appearance in the opinion of Chief Justice Waite[32] in *Gregory v. Morris.*[33] Chief Justice Hughes dismisses the latter case with "Compare Gregory v. Morris"! While on principle it is safe to say that the parties were bargaining for money, coin, or currency, rather than chattels, commodities, or bullion, it is submitted that the treatment in the *Norman Case* amounts to a strained construction in a rather dubious effort to align authority on the side of reason.

II

Value

It is, of course, clear that if the commodity theory prevails, the second part of this three-fold question, value, takes on added importance. Yet even aside from this, value plays a significant but misunderstood rôle in the *Gold Clause* decisions. It must be constantly remembered that in the post-Civil War times the obligees in the gold clause contracts were substantially harmed by the debased currency,[34] whereas the purchasing power of the present unit of value has not sunk below the worth of the dollar loaned.[35] This should be a con-

28. *Id.* at 259.

29. *Id.* at 260. "A contract to pay a certain sum in gold and silver coin 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-performance of such a contract may be recovered at law as for non-performance of a contract to deliver bullion or any other commodity."

30. 79 U. S. 687 (1871).

31. 95 U. S. 694 (1877).

32. It is noteworthy that Chief Justice Waite also wrote Thompson v. Butler, *ibid.*

33. 96 U. S. 619 (1877). The Chief Justice, *id.* at 625, says: "If the contract had been in terms for the delivery of so much gold bullion, there is no doubt but the court might have directed the jury to find the value of the bullion in currency and bring in a verdict accordingly. But we think, as was thought in Bronson v. Rodes, such a case is not really distinguishable from this."

34. Hepburn v. Griswold, 75 U. S. 603, 608 (1869). At varying times intermediate the Legal Tender Acts and 1869 the gold dollar was worth from $1.20 to $2.85 in paper money.

35. While it would be impossible to compare the prevailing index numbers with those in existence when each gold clause bond or agreement was executed, the substantial accuracy of this statement is generally conceded. The common view is that, if petitioners were being paid in accordance with the purchasing power of the dollar, they would receive less than the face value of their bonds.

trolling consideration because there is no free market for gold[36] in this country. It is fundamentally unfair, therefore, to measure damage, even under the commodity theory, by the price of gold obtaining in the United States, notwithstanding the fact that it was just in 1870, since the precious metal's sale is now hedged about with arbitrary restrictions. But realizing that the "market price" of gold affords no true norm of damage suffered through the legislative destruction of public and private agreements, the plaintiffs in the *Gold Clause Cases* have espoused a measure which finds no countenance or sanction in the past. To state the comparison is to expose the fallacy. The plaintiffs would adopt the total number of grains of gold receivable under the literal and rigorous interpretation of the contract as the dividend, and, employing the present quantity allotted to each dollar as the divisor, they would regard the quotient as the number of dollars to which they are entitled.[37] That the *Legal Tender Cases* stand for no such proposition is readily demonstrable. The notes then issued had no gold content, but were supported by the naked undertaking of the government.[38] Utilizing, then, zero as the divisor, no matter how few grains of gold the rigid construction of the contract exacted, the answer would always approach infinity. Clear it is that none was so misguided as to advance such a contention. Since the plaintiffs' gauge of injury gains no force from authority and must be rejected as inequitable on principle, it appears that the petitioners and the dissent which favors them derive meagre support from their declaration that they have not been awarded the proper "value" of their rights.

III

Legal Tender

Last in importance in the triparted question under consideration, if prolixity of judicial opinion is the criterion by which its significance is evaluated, but foremost in the rank of reasonable bases for the justification of the government's action in readjusting the monetary structure is the recognized principle[39] that anything will discharge a debt for which it is legal tender. Whether an article be precious metal or intrinsically worthless stone, illuminated parchment or un-

36. Perry v. United States, 55 Sup. Ct. 432, 438 (1935). It is submitted that gold is in a position somewhat analogous to that at least nominally occupied by intoxicants during the life of the Eighteenth Article of Amendment. After flourishing as a commodity in the days of the "Black Friday" of 1869 and later (even though it was at the same time legal tender), the precious metal has lost its exchange value, just as liquor did. *Cf.* Samuels v. McCurdy, 267 U. S. 188 (1925).

37. Illustrative of the general theory of the petitioners is Nortz v. United States, 55 Sup. Ct. 428, 429 (1935).

38. See Hepburn v. Griswold, 75 U. S. 603, 607 (1869). 2 BEARD AND BEARD, THE RISE OF AMERICAN CIVILIZATION (1927) 72.

39. Legal Tender Cases, 79 U. S. 457 (1871); Hull. v. Kohlsaat, 36 Ill. 109 (1864); Whetstone v. Colley, 36 Ill. 273 (1865); Hintrager v. Bates, 18 Iowa 174 (1864); Metropolitan Bank v. Van Dyck, 27 N. Y. 400 (1863); Hague v. Powers, 39 Barb. 427 (N. Y. 1683); Shollenberger v. Brinton, 52 Pa. 9 (1866). While the Hull, Whetstone, and Shollenberger Cases go too far in permitting obligations payable in gold to be discharged by paper currency under the Legal Tender Acts, this by no means lessens their force in respect to the point for which they are cited above.

adorned paper, if it is legal tender, a creditor is bound to accept it in satisfaction of his claim. Although the Legal Tender Acts provided that the paper money therein authorized be deemed legal tender for the payment of all debts, public and private, this was construed to refer to "all debts payable in money genrally,"[40] and so the cases arising under this statute supported the above proposition, the insufficiency of paper currency to liquidate gold clause obligations being attributable to the intent of the Congress rather than to any infirmity in legal tender as such. Even Mr. Justice McReynolds does not question the valid discharge of antecedent obligations by the newly created legal tender,[41] but vigorously challenges the legitimacy of the aim of the Congress in enacting this legislation.[42] Assuming temporarily, however, the soundness under the circumstances of the implication of the power utilized, it is insusceptible of contradiction that all debts,[43] whether calling for gold or not, may be satisfied in paper money, for the federal lawmakers have left no doubt that they meant the new, irredeemable currency to be legal tender for all obligations, without limitation or qualification.[44] Other considerations become collateral and academic. Whatever is due in dollars (of any kind) is payable in legal tender. No precatory words of the debtor need entreat the obligee to accept. It is now, as always,[45] the right of the obligor to demand that his offer be not rejected. It is, consequently, obligatory to conclude that since the petitioners' claims of unjust deprivation of value are without foundation, and inasmuch as these were not contracts for settled amounts of commodities, but for money and payable therefore in legal tender, the contested legislation constituted means not prohibited by the letter or spirit of the Constitution[46] for the attainment of the desired end.

40. This is the unanimous holding of the cases from Bronson v. Rodes, 74 U. S. 229 (1868), to the present. See Norman v. Baltimore & Ohio R. R., 55 Sup. Ct. 407, 413 (1935).

41. *Id.* at 422. "The plan under review in the Legal Tender Cases was declared within the limits of the Constitution. . . . The conclusions there announced are not now questioned. . . . "

42. *Id.* at 423.

43. This is not intended to include debts payable otherwise than in money, as, e.g., in chattels.

44. 48 STAT. 112 (1933), 31 U. S. C. A. § 463 (1934). *"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a). . . . Every obligation heretofore or hereafter incurred . . . 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.

"(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. . . ."

This definition emphasizes the importance of showing the contracts to be for the payment of gold as money rather than as a commodity.

45. It is a part of the history of this country that the creditors, even from the earliest days, have not possessed the liberty to reject payment in legal tender. 1 MCMASTER, HISTORY OF THE PEOPLE OF THE UNITED STATES (1883) 285-286; 1 BEARD AND BEARD, THE RISE OF AMERICAN CIVILIZATION (1927) 306 *semble.*

46. While the Gold Clause Cases are devoid of attacks directed against the power of the government to issue paper money and, in addition to impart to it the magic of legal tender, it is necessary to concede that a powerful argument may be built up from the

The Propriety of the Means

It is vain, as a legal proposition, to meditate upon the appropriateness of the measures chosen by the Congress, for if they partake of this quality in any degree they are adequate.[47] To press further into the question would be to abandon the judicial forum and enter the legislative hall. The Court once went astray on this topic,[48] going into the necessity and suitability of the means, and, substituting the discretion of the bench for that of the legislature, found the Legal Tender Acts unconstitutional. The error was shortly righted,[49] but not without drawing down calumny and opprobrium upon the heads of the justices.[50] Thus to malign the reputations of the then incumbents is to villify despite rather than because of the facts.

During the Civil War decade the numerical constitution of the Supreme Court was in a state of flux.[51] The change from eight to nine justices in 1869[52] is not, therefore, to be looked upon as the solitary move of its kind with a sinister background, but rather as a final step in several endeavors to arrive at an ideal number. This is amply supported by the fact that the law making mandatory the enlarged bench was passed some months prior to the decision in *Hepburn v. Griswold,* and the appointments of Justices Strong and Bradley were

intent of the delegates to the Constitutional Convention. Many of these representatives expressed themselves in no uncertain terms as to their distrust and contempt for paper money. Apparently as a result of these bitter diatribes against printed currency, an express power "to emit bills of credit" was refused to the Congress. WARREN, THE MAKING OF THE CONSTITUTION (1928) 693-696. Mr. Justice Bradley, in his concurring opinion in the Legal Tender Cases, 79 U. S. 457, 554 (1871), as an explanation for the unwillingness to permit this grant to appear in the Constitution, maintains, *id.* at 559, that the unnecessary nature of the provision was as great a factor in its being withheld as was the hostility toward it. Whether or not this is the correct interpretation of the Convention's action, the fact is that the objection which it seeks to remove has been abandoned.

47. See McCulloch v. Maryland, 17 U. S. 159, 207 (1819). In the present situation, the entire absence of suitability of the means to the end desired cannot be seriously maintained.

48. Hepburn v. Griswold, 75 U. S. 603 (1869). It is interesting to note that Chief Justice Chase, who wrote the opinion undertaking to prove the unnecessary nature of the Legal Tender Acts, was the Secretary of the Treasury who, after some early doubts, counseled President Lincoln to adopt them as indispensable measures.

49. Legal Tender Cases, 79 U. S. 457 (1871).

50. After the Legal Tender Acts were declared unconstitutional by a vote of five to three in the Hepburn Case, Mr. Justice Grier, a member of the majority, retired because of ill health. The Congress had shortly prior to that time increased the number of justices from eight to nine, and so two appointments became necessary. When these two voted in the Legal Tender Cases with the former minority, making it a five to four majority, defamatory charges were hurled with abandon.

51. The Act of March 3, 1863, enlarged the Court from nine members to ten, but the subsequent enactment of July 23, 1866, provided for a reduction to seven by prohibiting further appointments until the number was sufficiently diminished. Then followed the act in controversy, that of April 10, 1869, which took effect on the first Monday of the succeeding December. Since the Hepburn Case was not decided even in conference until November 27, 1869, the guiltlessness of the Congress is evident.

52. See note 51, *supra.*

made a few hours before the disclosure of the decision,[53] the reversal of which is asserted to have been the predominant reason for their selection.[54] It is therefore clear almost to the point of demonstration that the President did not "pack" the Supreme Court in order to secure a reversal of *Hepburn v. Griswold*, —equally manifest it is that learned and able justices were selected, who knew their rights and appreciated their duties while retaining the courage to assert and perform them in a way perhaps impolitic but nevertheless legitimate.

While it would be indeed rash and precipitous to assume a dogmatic position upon a subject which provokes disagreement among the eminent jurists not only of this country but of the world,[55] yet in consideration of the legitimacy of the end, the appropriateness of the means, and the consistency thereof with the letter and spirit of the Constitution,—in view of the existence of all these essential elements, it is submitted that the gold clause legislation[56] represents a proper exercise of the auxiliary powers delegated by the Constitution to the Congress of the United States.

THE DECLINE OF *Caveat Emptor* IN THE SALE OF FOOD.—In recent years the law of sales of personal property has assumed an increasing importance. Modern methods of distribution and of large scale manufacture have rendered many long-tried rules inadequate to cope with the problems of the contemporary situation.[1] Not the least insistent of the new demands for readjustment relates to the measure of liability of the manufacturer or vendor for injuries resulting from the consumption of unwholesome foods. The vast increase in the sale of food in cans and sealed packages has deprived the consumer of the

53. 6 LEWIS, GREAT AMERICAN LAWYERS (1909) 359. There is no evidence of the egregious breach of ethics of disclosing the decision before it was read from the bench. *Id.* at 359-360.

54. A further manifestation of the innocence of the increment to this Court is that, prior to the ultimate selection of justices, Secretary of War Stanton and Attorney General Hoar were chosen by President Grant to fill the vacant posts. Mr. Stanton died before taking office and Mr. Hoar's appointment was refused confirmation by the Senate. With this disappears the last vestige of insidious plot attempted to be connected with the Strong-Bradley elevation to the Supreme Bench, since it could not have taken place without these almost unpredictable happenings.

55. The decisions of the House of Lords, Feist v. Société Intercommunale Belge d'Electricité, [1934] A. C. 161, and of the Permanent Court of International Justice, Cases of Serbian and Brazilian Loans, Publications P. C. I. J., Series A, Nos. 20-21 (1929), are regarded as indicative of a tendency hostile to the Gold Clause Cases, even apart from the absence of the background of the Constitutional Law of the United States.

56. The provisions relative to private bonds are the only ones in contemplation here.

1. See Hertzler v. Manshum, 228 Mich. 416, 200 N. W. 155, 156 (1924); Baxter v. Ford Motor Co., 168 Wash. 456, 12 P. (2d) 409, 412, (1932). (Recognizing the influence of modern advertising in creating a demand for goods.)