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A TRIFLE in contemplation of law must be something extremely small. Nearly every famous legal decision rests upon a comparatively insignificant base. In the Dartmouth College case the matter in dispute was the right to replevin a corporation seal and minute book. In Marbury vs. Madison, the litigation arose over the certificate of appointment of a justice of the peace which was *functus officio* at the time of the decision, the term of the appointment having expired. The Dred Scott case turned upon a demurrer to the jurisdiction, the historic part of the decision being merely dicta. It appears that in the higher brackets of judicature the more trivial the subject-matter of the suit the more far-reaching the effect of the decision.

For support of the above syllabus see infra.

In 1860 in the State of Kentucky, a Mrs. Hepburn gave her note for $11,250, to one Griswold, due in two years. When the note matured it was put in judgment and Mrs. Hepburn tendered in payment treasury notes of the United States. Congress, while the note was maturing, had passed, in the exigent crisis of Civil War, an act providing that paper money, not supported by coin in the treasury, was legal tender for all purposes.

Salmon P. Chase was secretary of the United States Treasury at the time the overwhelming necessity of the war situation caused congress to issue the paper dollars and no one was so insistent upon that act as he. When Hepburn vs. Griswold* was argued in the United States Supreme Court, Salmon P. Chase was Chief Justice. Chase the Chief Justice did not agree with Chase the cabinet officer and he wrote an opinion concurred in by four of the other seven justices holding that congress under its grant of power to "coin money and regulate the value thereof," could not make Griswold accept anything but gold or silver in payment for his judgment.

When this decision was rendered in 1870 the parity of the legal tender notes with gold had been so nearly restored that the amount in dispute was extremely small. Mr. Justice

*8 Wall. 603.

Miller rendered an opinion opposite from that of the Chief Justice and was supported therein by Justices Swayne and Davis.

Two years went by.

Meanwhile a Mrs. Lee secured a judgment against one Knox in Texas for $7,376. The right of Knox to discharge his obligation in the same kind of money that Mrs. Hepburn had tendered to Griswold was passed on by the United States Supreme Court in January, 1872. At that time the premium of gold over the United States legal tender notes, in spite of the decision in Hepburn vs. Griswold, was so small as to be negligible.

Since Chief Justice Chase wrote the opinion in Hepburn vs. Griswold, Mr. Justice Grier had resigned and Mr. Justice Strong and Mr. Justice Bradley were added to the court, by appointment by President Grant under an act of congress increasing the number of judges to nine. The object of this increase seemed to be to prevent all the justices being wrong at the same time. The entire question of the power of congress to issue paper promises and give them a legal tender character was then re-examined pursuant, it was claimed, to the high behest of the demands of justice. The two new justices took the view of the legal tender notes held by Justices Miller, Swayne and Davis, and the former decision of the Chief Justice and Justices Clifford, Field and Nelson was reversed.

Chief Justice Chase's opinion was based upon the fact that making the notes legal tender gave them no additional value, hence to give them that character was not of such absolute necessity as he had supposed in 1862.* He held that the legal tender notes were not money in the sense the constitution conferred on congress the right to coin the same; and also that their issue impaired the obligation of existing contracts and deprived persons of their property without due process of law.

Mr. Justice Strong who wrote the reversing opinion held that congress alone was the judge of whether the war time necessity had existed and its conclusion could not be disturbed by the court. He pointed out that the absence of direct au-

*$1,250,000,000 in legal tender currency was issued when war expenses exceeded $2,000,000 a day.

thority in the constitution to make the notes legal tender did not prove a lack of such power; that there was, for example, no authority in the constitution to punish crime, except counterfeiting and treason; that the Federal Bankruptcy Act directly impaired the obligation of contracts which power was not prohibited to congress by the constitution but to the states; that the government could not be carried on, the tariff revised, or war declared without greatly affecting the value of property without process of law. Both opinions drew freely on the decisions of Chief Justice Marshall, seeming to find there, as in the Scriptures, material which anyone might quote to his purpose.

Much of what appears in the opinions in the Legal Tender Cases* is pertinent to the present attempt of congress to create a delicatessen dollar as it is termed by the President's chief party rival. They also contain arguments for and against relaxing the restraint of the constitution in case of what appears to be necessity in peace time. The fact that Chief Justice Chase was cordially receptive to the presidential nomination in 1872 or that Justices Strong and Bradley were disposed to give aid and comfort to his enemies could, of course, have nothing to do with the soundness of the arguments used.

The interesting fact is that all the lucubrations of the learned judges did not seem to greatly affect the value of the treasury promises. When they were legal tender they sank to $2.85 in paper to $1.00 in gold; after Chief Justice Chase's opinion deprived them of their legal tender quality they steadily rose to a practical parity with the precious metal. While the constitutional questions were being settled, Mesdames Hepburn and Lee probably compromised with their adversaries concerning the insignificant percentage at issue and were doubtless greatly astonished to see such prodigious judicial oaks grown from such small acorns.

The importance of decisions on constitutional questions seem to be in inverse proportion to their subject matter. Doubtless it is such trifles of which the law, in the sense of the Latin maxim, is so oblivious.

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*12 Wall. 457.