

In neither branch of this case is the complainant entitled to relief. The decree of the court below will therefore be affirmed.

Decree affirmed.

16 Tenn. 242, 8 Yerg. 242

**LOWRY v. MCGHEE AND McDERMOTT.**

Knoxville, July, 1835.

**REDEMPTION—TENDER OF MONEY TO REDEEM MUST BE IN GOLD AND SILVER.** The purchaser is the legal owner of the land sold under execution, subject to the equitable right of the debtor to repurchase it upon the terms specified in the act, and the condition must be strictly performed by the day: and as, by the constitution of the United States, nothing but gold and silver coin is a legal tender, a tender in bank-notes of the Bank of the United States, if objected to for that reason, although equal to coin, will not be good. [Acc. upon the strict performance of the conditions of redemption, *Reynolds v. Baker*, 6 Coldw. 226, and *Hill v. Walker*, 6 Coldw. 429, both citing this case. It is also cited in *Wood v. Morgan*, 4 Humph. 372, and *Morton v. Sloan*, 11 Humph. 280, on the point that the time of redemption runs from the confirmation of a chancery sale, a point taken for granted in this case.]

[242] A tract of land of six hundred and forty acres, belonging to the complainant, was, by a decree of this court, ordered to be sold, and the proceeds to be applied to certain debts mentioned in the decree, one of which, of three thousand dollars, was due to the defendant McGhee. The land was sold as directed, and at the sale the defendant McDermott became the purchaser for the sum of three thousand five hundred dollars. This sale was confirmed by this court, and two years from that time allowed to complainant to redeem, in the same manner as if the sale had been by execution at law. McDermott sold and conveyed the land to the defendant McGhee. A few days before the two years expired the complainant tendered to the defendant McGhee the amount of McDermott's bid, together with ten per cent. interest thereon, in United [243] States Bank notes, but McGhee refused to receive bank-notes, and demanded specie. No offer was made to pay in gold and silver. Upon McGhee's refusal to receive the bank-notes this bill was filed to enjoin the execution of a writ of possession, and compel McGhee to relinquish the land and receive his money.

*R. M. Anderson*, for complainant, contended—

1st. That the true construction of the act of 1820, ch. 11, authorized a redemption of lands sold at execution sale, upon payment or tender of bank-notes; that it in express terms said such bank-notes should be received as were by law authorized to be received upon judgments and executions, and that by the act of 1819, ch. 19, bank-notes were directed to be received in payment of executions, etc.

2d. That, if this were so, the tender in the present case was a good

one, unless the law was unconstitutional as violative of sec. 10, art. 1, of the Constitution of the United States. This provision, he contended, was only applicable to laws which operated upon contracts made before their passage. Such laws were undoubtedly void, because they impaired the obligation of the contract. But, where the contract was made after the passage of the act, the law cannot be said to be unconstitutional, because the contract was then made in reference to the existing law, and was governed by it; and in such case it was an implied condition that the judgment might be discharged in such bank-notes as were by the act made receivable in discharge of executions. He cited *Ogden v. Sanders*, 12 Wheaton's Rep.

3d. He contended that, if the tender were insufficient, yet, according to the principles which govern a court of equity, the gold and silver could yet be ordered to be paid by the court, and the land redeemed; that a court of equity does not regard time, in cases of redemption; that [244] it will relieve against mistakes, and from penalties and forfeitures, when compensation can be decreed, and that in this case it could be decreed by ordering the amount now due to be paid in gold and silver.

*R. J. Meigs* and *S. Jarnagan*, for defendants.

The defendants insist that complainant is not entitled to relief, because—

1st. He did not pay or make a legal tender of the amount due within the time limited for the redemption of the land. A tender in bank-notes, particularly when objected to, is not a valid one. Constitution of the United States, sec. 10, article 1; 8 Term Rep. 524; 1 Bos. & Pul. 526; *Chitty on Bills*, 340. The act of 1819, ch. 19, authorizing bank-notes to be received in discharge of executions, has been declared by this court to be unconstitutional. *Townsend v. Townsend*, Peck's Rep. 1.

2d. The complainant cannot now redeem. He has no right to do so after the expiration of two years from the sale. Act of 1820, ch. 11.

*GREEN, J.*, delivered the opinion of the court.

1st. The first question for consideration is whether this was a good tender.

By the Constitution of the United States nothing can be a tender in payment of debt but gold and silver coin. It is insisted, however, that by the act of 1820, ch. 11, sec. 2, a redemption is authorized on the payment or tender of the money bid at the sale, and ten per cent. interest thereon, in such bank-notes as were receivable on executions, and that, as by the act of 1819, ch. 19, sec. 1, notes on the Bank of the State of Tennessee and its branches, and notes on the Nashville Bank and its branches, and such other notes as passed at par with them, were made receivable on executions, consequently, the notes tendered in the case now under consideration passing at par [245] with those enumerated above, the tender of them was lawful.