

Thayer v. Hedges and Another.

BRUMBACK v. PAUL.

APPEAL from the *Elkhart* Common Pleas.

Per Curiam.—The judgment in this case is reversed, with costs, cause remanded, &c., for the reasons given in *Warren v. Paul*, at this term, the questions in the two cases being alike.

Robert Lowry, for the appellant.

John H. Baker, for the appellee.

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CONSTITUTIONAL LAW.—1. At the adoption of the Constitution, all governmental power was in the States; and in the division of it made by the adoption of the Constitution, the Federal Government received only what was granted to it, the States retaining the residuum, except so far as it was extinguished entirely by prohibitions upon the States.

SAME.—2. The prohibition of a power to the States did not of itself, operate as a grant of the power to the Federal Government, but rather as an extinguishment of the power as a governmental one where a grant of it was not made in the Constitution to the Federal Government.

SAME—LEGAL TENDER.—3. The power to coin money is one power, and the power to declare anything a legal tender is another, and different power; both were possessed by the States severally at the adoption of the Constitution; by that adoption, the power to coin money was delegated to the Federal Government, while the power to declare a legal tender was not, but was retained by the States with a limitation, thus: "Congress shall have power to coin money," &c. "No State shall coin money"; and "no

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State shall make anything but gold and silver coin a legal tender," &c. States, then, though they can not coin money, can declare that gold or silver coin, or both, whether coined by the Federal, or the Spanish, or the Mexican Government, shall be legal tender. And as Congress was authorized to make money only out of coin, and the States were forbidden to make anything but coin a legal tender, a specie currency was secured in both the Federal and State Governments. There was thus no need of delegating to Congress the power of declaring a legal tender in transactions within the domain of Federal legislation. The money coined by it was the necessary medium.

SAME.—4. The words delegating to Congress power "to coin money," regulate the value thereof and "of foreign coin," do not include the right to make coined money out of paper. If they do, then the States have a right to make such money a legal tender. It does violence to the language to give it such a meaning.

SAME.—5. The power to declare paper a legal tender is not incidental to any power delegated by the Constitution.

APPEAL from the *Boone* Circuit Court.

PERKINS, J.—This suit was instituted upon a promissory note of the following tenor:

"\$500.

March 26, 1862.

"Four months after date we promise to pay to *Oel Thayer*, or order, 500 dollars in gold, value received, without any relief whatever from valuation or appraisement laws.

"JOHN W. HEDGES,
MARTIN C. KLEIGER."

The plaintiff prayed for a special judgment for the gold or its equivalent.

The defendant answered, alleging a tender of the amount due, before suit commenced, &c., in legal tender treasury notes, at their face.

A demurrer was overruled to this answer.