THE OLD NORTH STATE.

Tuesday Evening, May 5, 1868.

LEWIS HANES, Editor.

COUNTY COURT.

This tribunal is in session this week. On yesterday, a majority of the Justices being present, the ordinary County business was transacted. The County taxes, including those for the support of the poor, were assessed. The amount is equal to that for State purposes with 25 per cent. added thereto. The whole amount of taxes to be paid by the people of this County, State and County inclusive, will be 22½ cents on the $100 valuation of real estate, $2.25 on the poll, and all other subjects of taxation in the same proportion. A board of Wardens of the Poor were also appointed, with instructions to make equal provisions for the maintenance and support of paupers, without distinction of color.

The finances of the County appear to be in a very satisfactory condition. From the report of the Committee on Finance, we learn that the claims against the County passed by the committee and recommended to be paid amount to $2,322.25, which sum includes the claim of Sheriff Walton for last year scaled upon what the committee think a just principle.

The bonded debt of the County is one bond, payable in specie, for $1,000, and other bonds, payable in Confederate money, amounting to about $6,000. The committee recommend the Court to call in the Confederate bonds, and scale the principal and interest due thereon, and for the amount so scaled to issue new bonds, running from four to six years, and payable in the currency of the country. There is also a considerable sum due for Jury tickets and County Orders, issued upon the basis of the value of Confederate money, which the committee recommend shall be brought to the Clerk of the Court and be by him scaled, and the value in currency endorsed upon the back of each ticket or order, and that the Sheriff be allowed to take up such claims in the payment of taxes, at such amount as may be thus endorsed by the Clerk, as far as the financial condition of the County will admit.

All the recommendations of the committee were concurred in by the Court, and all persons holding any Jury tickets or other County Orders of the character mentioned, would do well to carry them to the Clerk soon and have them scaled, and the proper endorsement made thereon, so that they can use them in the payment of their taxes.

SHOCKING ACCIDENT.—A MAN ON FIRE.—An accident of a terrible character occurred in the basement of premises No. 482 Eighth avenue, on Saturday night. The police and the passers-by were apprised of the disaster by the appearance of a burning man rushing through the street, and screaming at the top of his voice. The night was quite dark, and the spectacle was of a most appalling character. They were suddenly astonished and alarmed at first by what appeared to be a column of fire about fifteen feet in height, bursting from the basement of the tenement mentioned, and rushing down the street at a fearful speed, accompanied by the most appalling screams, which appeared to issue from the very bosom of the burning shaft. The howling man of flame sped down the street, like an omen of death, for nearly an entire block, swaying to and fro, and finally falling to the ground. The police then became aware that the flaming column was a burning man, whose clothes had taken fire from the bursting of a kerosene lamp, occasioned by carelessness, in the basement of 482 Eighth avenue. The unfortunate man (Antoine Reich) was cared for, but it is not expected that he can recover. Two others, the proprietor and a man named George Delfman, were also dreadfully burned.—*New York Express.*

TO KEEP HAMS.—Mr. Brooks, of Tioga county, gives in the *Rural New Yorker*, a method of keeping hams which has never failed with him. He has fried them in salt, in grains, in pounded charcoal, in dry ashes and sewed up in cloth and whitewashe, but they would either mould or suffer injuries from flies or some other way. He then made sacks for them of a yard square of good sheeting, putting them up before infected by flies, one in a sack.—Sweet hay is cut up about one inch long, and put in the sacks, around the hams, keeping them from the bag. They are then tied up and hung in the smokehouse, or some cool, dry place; the hay and bag, will keep away the flies, and allow the escape of moisture, so that they will not mould. If well cured and thoroughly smoked, one may depend on having good hams as long as they last.

Governor Orr and other prominent citizens of Charleston, S. C., propose to organize the common school system for colored children.

A letter from San Antonia, Texas, says the Government camels, the descendants of the herd imported some fifteen years ago from Egypt, excite the curiosity of all strangers. They number about seventy, are all sizes and ages, some still unweaned. Only seven of the original lot are still alive.

General Braxton Bragg is living on a farm in Alabama, acting as agent for another person. He has lost all he owned before the war.

THE GOLD QUESTION.

Important Decision by the General Term of the Superior Court.

One Dollar In Greenback Fully Equivalent to 1 dollar in Gold.

All Debts Can be Satisfied by a Tender of Payment in United States Treasury Notes.

&c. &c. &c.

Superior Court—General Term.

Before Justices Monell, Garvin & Jones.

John Wilson and Others vs. Edwin D. Morgan and Others.—This is a most important decision, made by the General Term of the Superior Court, respecting the relative value of greenbacks and gold dollars. It will be seen that it decides that a one dollar greenback is fully equivalent to a gold dollar, and that all debts may be satisfied by tender of payment in United States Treasury notes. The facts of the case are as follows:—

The plaintiffs, owners of the British ship Atlanta, by their agents, George Henderson Co., in Calcutta, chartered the ship to Gillanders, Arbuthnot & Co., of Calcutta.

The charter party was made in Calcutta, and is dated January 20, 1863. It contains the following clause: 'The freight to be paid on unloading and right delivery of the cargo as follows, viz: if discharged in the United States of America, in silver and gold dollars, or by approved bills on London; if at a port in United States Kingdom, as customary.'

The defendants were consignees of the cargo.

Upon the arrival of the vessel at the port of New York in June, 1863, the defendants tendered payment of the freight, amounting to $32,630, in United States legal tender notes. The tender was refused and payment demanded in silver and gold dollars, as specified in the charter party, which was refused.

The action was tried by a referee, who found the tender of the United States legal tender, the market value thereof was thirty-three and one-eighth per cent less than that of gold or silver dollars.

By an arrangement between the parties the plaintiffs credited the defendants with the market value of the amount tendered, leaving a balance of $7,684 57 due.

The referee found the market value of such balance was, in the currency of the United States, $10,230 08.

Upon these facts the referee decided that the plaintiffs were entitled to recover said said sum of $10,230 08, with interest, and rendered judgment accordingly.

The defendants appealed. Mr. E. Terry appeared for appellants and Mr. A. F. Smith for respondents.

DECISION BY THE COURT.

Monell, J.—The act of Congress passed February 25, 1862, provides that the notes by that authorized to be issued shall be "lawful money, and a legal tender in payment of all debts, public and private, within the United States, except," &c. (12 United States Statutes at large, p. 711.) The validity of the act is not open for discussion in the State. (Metropolitan Bank versus Van Dyck, 27 N. Y. R., 400; Meyer versus Roosevelt, Id.) In those cases the tender of Treasury notes, made lawful money by the act of Congress, was held to satisfy a debt which had been contracted before the passage of the act to be paid in the then "lawful money of the United States." The general theory of these decisions of other courts upholding the power of Congress to create other lawful money than gold or silver coin, is, that by the omission in the constitution of the United States to declare what shall or shall not be a legal tender, and the prohibition to the States to make anything besides gold and silver a legal tender, the power, by necessary implication, is conferred on the general government. Hence, at different periods, Congress has designated what should be legal tender. In 1792 they established a mint for the coining of gold and silver, which, by the same act, was made lawful money for the payment of all debts. In 1793 they made certain foreign coin a legal tender, and from time to time have regulated the value of foreign and domestic coin. These acts have never been questioned; yet the power to pass them is not expressly given to Congress by any provision in the federal constitution. Hence they can be sustained only upon an implication of power. Congress is not confined to the exercise of powers expressly granted. The Supreme Court of the United States, in McCulloch vs. The State of Maryland, 4 Wheaton, 416, and Gibson vs. Ogden, 9 Id., 188, wholly rejects any such limitation, and the Court of Appeals, in the cases cited (*supra*), follows those decisions. The charter of the vessel in this case was made in January, 1863, nearly a year after the passage of the legal tender act, and the parties are presumed to have made their contract with reference to the existing law. (Denite vs. Brisbane, 16 N. Y. R., 508.) For purposes of construction and ascertaining the intention of parties, the place of performance is the place of the contract. It is therefore to be assumed that the parties were cognizant of the law of the United States making paper money a legal tender in payment of all debts, and were also cognizant of the interpretation of that law by our courts. It was substantially conceded on the argument by the respondent's counsel that if a debt existed in this case it could be satisfied by an offer of legal tender notes. That, it appears to me, was conceding too much, as it is entirely clear a debt did exist. A charter party is but a contract for the entire or some principal part of a ship for the conveyance of goods on a determined voyage, or for employment in other trade, and contains covenants by each party. In the charter before us it was mutually agreed that the freight should be paid on unloading and delivery of the cargo. The lien which the owners had for their charter freight was a mere security, and it might have been avoided; but the waiver would not have discharged the contract to pay freight. The right to collect freight by action has frequently been adjudged. In Clarkson vs. Edes., 4 Cow. 470, it was held that the owner might insist on his lien, or by action compel payment; and in Barker vs. Havens, 17 Johns, R. 234, an action to recover freight from the consignor was sustained after the goods had been delivered to the consignee without payment. And where freight is payable on delivery of the goods, the consignee by accepting the delivery renders himself personally liable for the freight, Cooke vs. Taylor, 13 East R. 399. The obligation to pay freight is a debt, whether the obligation arises from an express or an implied argument. Any agreement by which one party promises to pay money to another party is a debt. So also any agreement which expressedly or implicitly imposes an obligation to pay money is a debt. The freight due from the defendant's consignors, and for which an action could have been maintained, was a debt which they could have satisfied by payment. The defendants, as consignees of the cargo, were the mere factors or agents of the consignors. (Story Ag., § 33.) Payment by them would have discharged the debt of their principal. The argument of the respondent's counsel proceeds upon the ground that no debt existed as between the owners and consignees. He seemed to lose sight of the consignors' argument to pay freight (which agreement created a debt), and also of the duty, as well as right, of the consignees to satisfy such debt of their principal by payment. And the question is not changed by the position of the parties on the record, especially under the stipulation in the case. But the main question is, can a contract to pay in silver or gold dollars be satisfied by payment in any other kind of money? Congress, by the legal tender act, has made a paper dollar equivalent of a gold or silver dollar. Having the power to establish and regulate the value of coin, it has depreciated the value of gold and silver coin, for every purpose cognizable by courts, to the level of paper money, and has declared that one of its notes, representing the value of one hundred cents, shall be equal to a gold or silver dollar, representing the value of the same number of cents. The power is not confined to paper money.—Any other substance might be made the medium of exchange and declared lawful money.

The uncoined and unstamped bits of silvers of the ancients, which were weighed out, and not counted, and the wampum of the Indians, were money. Money is the mere representative or supposed representative of definite value. The precious metals among all civilized nations are the usual accepted representatives. Gold and silver are standards of value which regulate, in a greater or less degree, all other values. Any other standard of value would do the same thing. A ton of coal or a barrell of flour, if made by law the stannard of value, would regulate and adjust all other values, gold as well as merchandise. Gold and silver coin at their establishep value, for all legal purposes, do not change; they are never depreciated or appreciated. It is erroneous to say the market for gold fluctuates, except when it is trafficked in as a commodity. As coin, or a medium of currency, its value as fixed by law does not change with the mutations of trade and commerce. All other things rise or fall in the fluctuations of business by comparison merely. Congress having created paper money, and rendered it nominally, for all legal purposes, equal to gold, there no longer remains, in legal contemptation, any difference between them.—The practical or actual depreciation of the former below the value of gold is not produced by any law, but is occasioned by the laws of trade, of supply and demand, and other causes for which the law is not accountable. Used in commerce with foreign countries, gold and silver are the only accepted mediums of exchange, and their value is attributable to their universal appreciation and currency among all nations. In domestic commerce, however, they lose some of their impoetance by the substitution of other standards of value, which are made their equivalent. As an article for traffic, geld, either in coin or bullion, is regulated by the same rules that govern other commodities. Contracts for its purchase or sale are valid, and are regarded like contracts for the purchase or sale of merchandise. There is a wide difference, however, between gold or silver as merchandise and as money. A contract to buy or sell gold cannot be specially enforced—an action for damages being entirely adequate; the rule of damages being in such a case, probably, the market value of gold. As circulating mediums, gold and silver are not subjected to any of the rules or principles which regulate contracts. It is used only to purchase property, to discharge obligations and pay debts. A paper dollar having been made equal to a gold dollar, it must be accepted as such in satisfaction of any contract for the payment of money, and no form or force of words can be used by contracting parties tr give to a gold dollar a legal value as money above a puper dollar. A dollar is one hundred cents, no more, no less, whether it is silver, gold or paper, and when Congress declares that a paper dollar shall be current, and pass for and represent, and be of the ualue of one hundred cents, for all purposes of traffic and paying debts, it becomes the equivalent of one hundred cents in any other substance or form. It has been strongly urged that Congress, in declaring paper money a legal tender in payment of debts, has recognized and preserved a distinction between it and coin, and the exception in the statute, of duties on imports and interest on the public debt, is mainly relied on to establish such distinction. It is true that Congress has also, from time to time, authorized the issuing of bonds and notes, the interest and principle of which is expressly payable in coin. (12 U. S. Statutes at Large, 345, section 5; 709, section 1; 13 Id. 13.) Such bonds and notes, hogever, were to become a part of the public debt of the country, and were accordingly brought within the great leading principle of the government, of paying in specie, which has existed at intervals for more than three quarters of a century, having been originally enacted in 1789, re-enacted in 1840 and again in 1846.—The exception, therefore, in the statute, of duties on imports and interest on the public debt, as well as all subsequent legislation creating or prescribing the manner of payment of the public debt, are but re-enactments of the acts referred to, and especially of the act commonly denominated the Sub-Treasury act, passed by Congress in 1840—(5 U. S. Stat. at Large, 385)—and the act of August 5, 1846. (9 Id., 59.) Those acts provided that all sums accruing or becoming payable to the United States for duties, taxes, sales of public lands or other debts, should be paid in gold and silver only, and that all payments by the United States should also be made in gold and silver coin only. It was not intended by the Legal Tender act of 1862, nor by any of the subsequent acts, to change the policy of the general government of paying in specie, and the exception, therefore, became necessary merely to preserve the provisions of former statutes. Since the passage of the act of August 1846, payments to and by the general government have been made in coin only, or in notes issued under the authority of the United States and directed to be received by law. In thus following the long established practice of the government of paying in coin only. Congress has indicated nothing that could be construed into a design to create any legal difference between gold or silver and paper money, as a legal tender in payment of private debts. Indeed, the exception gives force and explains the meaning of the previous parts of the sentesce. From the views which I have here expressed it follows, necessarily, it seems to me, that a contract which created a debt, which debt can be paid with money, can be satisfied by any money which is a legal tender at the time the debt is to be paid, and can be satisfied in no other way. Indeed I do not see how a contract can be framed by which a party to it could be compelled to pay money in silver or gold, when some other substance is made by law sufficient to satisfy the debt. Let us test it by example. Suppose the plaintiffs had sued to recover the freight, would the judgment have been for so many dollars in silver and gold? Such a judgment could not be rendered. The recovery would be for so many dollars, and the judgment could be satisfied by the payment of the number of dollars, in any money which was a legal tender at the time. The defendant's consignors had agreed to pay a certain sum of money, and they had agreed that it should be paid in silver and gold dollars. Could the owners have required a specific perfermance of the contract? Certainly not. It was to pay money, not gold and silver dollars, and the sum of money only was recoverable.—This rule is recognized and well settled when applied to contracts payable in chattels. (Pinney vs. Gleason, 5 Wend., 393; Rockwell vs. Rockwell, 4 Hill, 164.) I know it is said that the practical or marketable difference in value of paper money and coin must be presumed to have been within the contemplation of parties engaging to pay in coin, and that, therefore, such difference should be recoverable as damages, and such seems to have been the view taken by the referee in this case. It is also supposed that upon a contract to pay a sum of money in gold a recovery may be had for the value of gold, as ascertained by comparison with paper money. But the difficulty with the suggestion is, that it does not recognize or admit the distinction which exists between gold as a commodity of traffic and gold used as money. A contract to deliver one thousand dollars of gold is a very different contract from one to pay such sum in gold.—The former can be specifically enforced, and the other can be satisfied by gold or its equivalent. Money, being the common measure of all things, has not, like other things, any particular function. It takes the place of all other things, but is represented only by standards created by law. But gold in bars is no more "money" than are pigs of iron, lead or copper. Like them it may be bought and sold by weight; but until it is "coined" and the value of the coin is ascertained and declared by law, it is no more a medium of exchange or currency than any other metal would be.

I am unacquainted with any rule of damages for the non-payment of money other than the legal rate of interest upon it. At common law not even interest was recoverable, either as an incident to the debt or otherwise; but statutes and adjudications have relaxed the common law, and it is now allowed as damages (Sedg. on Damages, 234). "Interest," says Domat., liv. tit. v., sec. 1, "is the name applied to the compensation which the law gives to the creditor who is entitled to recover a sum of money from his debtor in default." The loss experienced by those who are not paid at maturity is as diversified as the use they might make of the money, and as unforeseen as the wants from which the injury might arise. But no such loss is recoverable. The damages are limited to the infliction of interest merely. The recovery of the current rate of exchange besides interest, upon a debt contracted in Great Britain, was refused in Martin vs. Franklin, 4 John R., 124, and in Scofield vs. Day, 20 Id., 102, and I do not think a case can be found which sustains any measure of damage for the non performance of a contract to pay money, other than interest, upon the sum in default. To adopt any other measure would destroy the efficacy of the Legal Tender act, an limit its effect by admitting fictitious values to regulate the damages.

The plaintiffs' view cannot, therefore, in my judgment, be sustained upon any principle applicable to the recovery of the difference in value between paper and gold money as damages; nor upon any principle applicable to the specific performance of contracts; and no other principle has been suggested upon which it can be sustained. The contract in this case was to pay a sum of money which became a debt. The offer of money which had been made a legal tender in payment of all debts, was sufficient to discharge the obligation; and the agreement to pay in silver and gold dollars had no greater effect than if it had been to pay in the "lawful money of the country." But the question is not new nor without authority. The cases in the Court of Appeals, before referred to, substantially determine the question. The moment the validity of the act is assumed the consequences flowing from it are apparent. Judge Davies says (page 459) "it is the lawful money of the United States, made such by its authority, that can only be effectually used in payment of debts, without reference to the intrinsic value of the thing tendered or paid." We were referred on the argument to decisions made in some of the States of the Union entertaining views apparently opposed to those I have here expressed. As we have been furnished with only newspaper reports of these cases, we cannot be certain of the precise questions raised and decided. The case of Mervine vs. Sailor, in the District Court of Pennsylvania, held that a quit rent payable in "lawful silver money" could not be extinguished by the payment of a sum in gross in legal tender notes. But the decision was solely upon the ground that the quit rent was not a debt, and, therefore, not within the provisions of the legal tender act. The right to satisfy a debt with legal tender money is fully recognized. The rent in that case was payable in "silver weighing seventeen pennyweights and six grains," and the learned Justice Hare says, that neither could the payment of such rent be specifically enforced, nor could the difference in value between the silver and legal tender money be recovered as damages. Two *nisi prius* cases in the Supreme Court of this district were also referred to (Chapin vs. Pretzfelder, Prouty vs. Potter) and one case at Special Term, (Lubing vs. Atlantic Mutual Insurance Company, 3 How. Pr. R. 69.) The first two cases do not seem to have been much considered, and the report of them is too meagre to enable us to see what was intended to be decided; and the last case was a proceeding in equity to require the payment of dividends in gold. There is nothing, therefore, in any of these cases, beyond a mere *dictum* in two of them, which is hostile to the views we have taken.

On the other hand, we were referred to numerous decisions in the State courts, extracted from newspapers, sustaining our position. The only one which has got into the books is Warnibold vs. Schlicting, 16 Iowa, 243, in which the Supreme Court of that State held that a mortgage, made payable in "United States gold" was satisfied by a tender of legal tender notes. The opinion of the Chief Justice is able, and his reasoning, to my mind, conclusive.

My conclusion is that the charter party, requiring the freight to be paid in silver and gold dollars, could be satisfied by payment in legal tender notes, and that a tender of the freight in such notes discharged the debt. The referee should, therefore, have held the tender sufficient, and it was error to award judgment for plaintiffs. The judgment must be set aside and a new trial ordered, with costs of the appellants to abide the event. The order of reference must also be vacated if either party desires it.

Garvin and Jones, Justices, concurred.

Alas! for Poor Humanity.

A short time since a temperance society sprang up in a village not a hundred miles from this city, under the most auspicious circumstances, and for a brief space "all went merry as a marriage bell." The cause found many advocates, and a great number of recruits were added to its ranks. John Barleycorn, at least in that section of the moral vineyard, seemed to be at last doomed to the ignoble death which the three eastern kings endeavored to fasten upon him, when, according to Burns,

> "They took a plough and ploughed him down,
> Put clods upon his head,
> And they have sworn a solemn oath
> John Barleycorn was dead:
>
> "But the cheerful spring came kindly on,
> And showers began to fall,
> John Barleycorn got up again,
> And sore surprised them all!"

And, notwithstanding the war that has been so vigorously waged against, and the anathemas so copiously showered upon, the devoted and seemingly inanimate head of the much persecuted but genial John, the efforts of the society indicated have thus far proven as abortive as those of the trio of crowned heads, and Barleycorn still holds his court, and is receiving back quite a number of his recreant votaries who but lately left him. Some of these frankly admit that they never lost their allegiance to Old John, but merely "put an antic disposition on," and *played temperance*, while others claim to have been *faithful*, but allege that the flavor of the "flesh pots of Egypt," was so oderiferous to their olfactory organs, and brought so vividly to their recollection the merry days of auld lang syne, when they pursued their "sporadic excubations" interlarded with "potations bottle deep," they floated like fairy visions before them, and, as a will-o'-the-wisp, lured them toward their former Bacchanalian haunts till their courage oozed out, and their good resolutions, like the Thane of Cawdor's air-drawn dagger, "wasted away into thin air," and they again returned to the scenes of their former joys.

Be that as it may—of their actions they must be their own censors—with that we have nothing to do; but on passing down High street, Portsmouth, last night, a very *limber* object, moored to a lamp post, met the gaze of *ye local*, and being as usual on the *qui vive* for any thing of interest, we halted, and was edified by the following lines, as they were hiccupped by an individual whom we recognized as a late member of the —— Temperance Society:

> "John Alcohol, my Jo John,
> We've been so long acquaint,
> Although I've tried to leave you, John,
> I've just found out I AIN'T!
> Yes, through the winter just gone by,
> We've toiled through mud and snow,
> And now in spring I'll not leave you,
> John Alcohol, my Jo!
>
> "John Alcohol, my Jo John
> You are a clever FELLER,
> And when imbibed, my jolly lad,
> You make me feel so MELLER,
> That though I've signed the temp'rance pledge,
> Your image haunts me so,
> I can't withstand your winsome way,
> John Alcohol, my Jo!
>
> "John Alcohol, my Jo John,
> We've traveled through all weather
> And 'sink or swim, live or die,'
> We'll still keep on together;
> And if, in stemming life's rough tide,
> Our cables slip, you know,
> We'll both be buried side by side,
> John Alcohol, my Jo!

"If the court knows herself, and HER thinks she DO."

Impressed with the beauty and pathos of the strain, but pitying the condition of the soliloquizer, we wended our way homeward, inwardly ruminating on the sad degeneracy of poor human nature.—*Norfolk Day-Book.*

An interesting case, says an Indiana exchange, has just been decided in the Supreme Court of Indiana. A man named J. O'Reilly, deposited money in Fletcher & Sharpe's bank. In March, 1864, a man representing himself to be O'Reilly, but in reality an impostor, went to the agent of the American Express Company, at Arcola, Ill., who was also the telegraph operator, and got him to telegraph to Fletcher & Sharpe for $1000, which was accordingly sent. The real O'Reilly recovered the money of the bankers, who in turn sued the express company and got a judgment in the common pleas court. The company appealed to the Supreme Court, which tribunal has just affirmed the decision of the lower court, with two per cent. damages.

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