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Money and the Taxing Power

BY W. H. ASHBY.

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BOOK 2.—Chapter IV.

Observing next that men by this time began to receive by voluntary agreement these certificates, in discharge of private obligations to each other requiring them to deliver valuable commodities, and sometimes voluntarily in satisfaction of judgments rendered in cases of damages for torts, the next step taken by government, in order to further intensify the force of demand for its certificates, is to enact a law that no judgment of any of its courts should be satisfied by any means, except by the presentation or "tender" of such certificates to the custodian of the judgment, or the officer holding an execution, and compelling the judgment debtor, at whatever sacrifice, to procure these certificates for that purpose.

Slowly and naturally in the process of time, beginning with the issuance to meet its own needs of a certificate to be given as a guarantee and inducement to a taxpayer to pay his taxes in advance, governments have evolved a thing endowed with the exclusive power by its "tender" to satisfy both tax levies and judgments. This thing, no matter what may be its form or upon what substance impressed, is coin.

It will be needful here to digress a little in order to consider the nature of what is called "tender."

Many people have formed an erroneous opinion as to this power. It is only "in the public offices" and "in the courts" that the power of tender is of the smallest validity. No offers of payment, no matter how pressing, if made elsewhere and refused can avail as a satisfaction. If you hold my past due promissory note for \$10, it is vain that I offer you outside of the courts an American gold eagle and demand my note. Your refusal in no way affects the validity of your claim. By certain later statutes and customs you may, by certain acts of refusal, lose your right to recover usury and costs. But the offer of an eagle in the above case, outside the courts and before judgment, if refused, does not act as a receipt or in any way invalidate your claim. You can still go into court and recover a judgment.

There, "in the court," I can present the eagle and its "tender" in "the courts of the United States" is a peremptory receipt and satisfaction of your claim—when it is merged into a judgment. But before judgment no tender of anything is or can be a satisfaction.

Every sovereign government has assumed to have authority to declare what article shall be a peremptory receipt and conclusive evidence of payment by its tender "in the public offices" against tax levies, and "in the courts" against judgments. The power of "tender" is operative nowhere else. It exists nowhere else.

Now, it is a remarkable fact that while the states of this Union, which possessed inherent sovereign powers, granted to congress, which has no inherent powers, the power to "coin" our "money," they neither granted the power to "fix the standard of money" nor to declare what article or articles shall be a "tender" in "the public offices" or "in the courts of the United States." The power to coin money was granted to congress and prohibited to the states. The states which previously had power, no doubt, to make anything they might choose a tender in all payments are prohibited by the constitution from making "anything but gold and silver coin" a tender in payment of debts. But while the states retained the power to make gold and silver coin a tender in payment of all debts, the United States was not granted the power to make anything such tender. Clearly no article is such tender by any inherent power of its own.

On the face of the matter as it stands, therefore, there is no article whatever which is a tender in payment of debts in this country, because congress was not granted any power to declare that anything shall be a tender; and while each of the states has retained the power to make "gold

and silver coin a tender in payment of all debts," it is not believed that any considerable number of them have done so. The result is that no article has been designated which has the power to be a tender in payment of debts.

Notwithstanding that such is the condition, as it exists under the constitution, yet because of the little knowledge possessed by men upon the science of money the first congress did, without any constitutional authority, enact a law by which to "fix the standard of money" and by which it did declare what article shall be "a tender in all payments." And it must be admitted that the power to declare what shall be a tender is not an incident to the power to coin money.

Although entirely without authority, it is believed that, having been acquiesced in for more than a hundred years—bad as such a precedent is in a case of bold usurpation, the courts would hold the act constitutional and that the power to "fix the standard of money" and the power to declare what article shall be a "tender" in all payments passed to congress as a power necessary in the exercise of the powers actually granted.

It becomes apparent, then, that three separate and distinct things are involved in this discussion:

1. The power to "fix the standard of money," which is exercised by the selection of the symbol to be the term by the use of which the "valuation" of quantity of the force of demand for commodities may be expressed, so that the taxing power may be exercised and justice administered in making tax levies and in the rendition of judgments—"in the public offices and in the courts of the United States."

2. The power "to coin" that "money," when it is so fixed, is the power to stamp or "coin" the symbol adopted upon a suitable substance—as a means of anticipating the revenues, thus making receipts against future tax levies and exchanging them for needed services and materials, to enable government to carry on its operations.

3. The power to declare what thing or things shall be "a tender in all payments," by which is meant the power to declare what article by delivery shall peremptorily perform the office of a conclusive receipt and cancel, by its "tender," all tax levies "in the public offices" and all judgments "in the courts of the United States."

Notwithstanding our habits of thought have fixed such an idea in our minds, yet coin is only one thing law might endow with power of tender.

While it is clear that the constitution fails to give congress any power over two of these points; yet congress having exercised that power, though without authority, for so long a period of time, we will consider the matter settled by prescription; and "coin," therefore, or its substitute, is the only thing endowed by statute with the power of tender.

Now, when a government has evolved such certificates of payment of tax levies, for any number of years in advance of such levies, as a means of anticipating its revenues, and inscribes upon these certificates (in the "money" symbol, with the numerals) the quantity of value it received for them and for which they must be accepted as a peremptory receipt and conclusive proof of payment against all tax levies, then that government has exercised the power to "coin" its "money." To coin money is to stamp or print the symbol (which is the "money") of the government that is performing the act. To "coin money" is a phrase of the same character as is to "print words." The result of one is "coin"; the result of the other may be a "composition," an "editorial," a "poem," or a "drama." The phrase "to coin money" has no reference to the material or substance upon which "money" shall be "coined."

(Continued Next Week.)

Head

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Estate No. 1765 of Jesse E. Shotwell Deceased, in County Court of Lancaster County, Nebraska.

The State of Nebraska, ss: Creditors of said estate will take notice that the time limited for presentation and filing of claims against said estate is January 2, 1904, and for payment of debts is July 1, 1904; that I will sit at the county court room in said county, on October 1st, 1903, at 2 p. m., and on January 2d, 1904 at 2 p. m. to receive, examine, hear, allow, or adjust all claims and objections duly filed. DATED May 21, 1903. FRANK R. WATERS, County Judge.

By WALTER A. LEESE, Clerk.

I. H. Hatfield—Attorney.

NOTICE

Notice is hereby given that the undersigned have formed a corporation under the laws of the state of Nebraska under the style of Pointe Conpee Plantation Company, having its principal place of business at Lincoln, Nebraska, with a capital stock of \$50,000, of which \$7,000 shall be paid in before the beginning of business. Said corporation has power to buy and sell real estate, merchandise, lumber; own and operate factories, cotton gins, and saw mills, and such railroads, and tramways with their equipment as may be necessary to operate the same; to borrow money and mortgage real estate to secure the payment thereof. Said corporation began business on March 25, 1903 and shall continue for 50 years; its highest amount of indebtedness shall not exceed two-thirds of its capital stock; and its affairs shall be managed by a board of seven directors, C. S. Allen, I. H. Hatfield, John Carr, Will Owen Jones, Paul F. Clark, J. H. Humpe, E. C. Eddy.



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