

# Thoughts Out of Season

Occasional Reviews and Notes  
Of Mutual Interest  
Compiled by Tim Froward



Greenback (1862)

## Love Me Tender

Sometime shortly before the American Civil War, a wealthy Kentuckian named Henry Griswold had extended a loan to one Susan Hepburn. Griswold had expected to be repaid in gold or silver – then the only lawful money in the United States. After passage of the Legal Tender Act<sup>1</sup>, Hepburn repaid the loan in new paper money. Griswold refused to accept, and the high court in Kentucky agreed, ruling that Hepburn had to pay the loan in coin. Hepburn appealed. She pointed out that Congress had made the greenback acceptable for “all debts.” In November 1869, the U.S. Supreme Court heard *Hepburn v. Griswold*, challenging the legality of the Legal Tender Act.

Solomon P. Chase, who was Lincoln’s able Secretary of the Treasury in 1862 was now the Chief Justice of the Supreme Court. Chase, leading a four-to-three majority (two seats were vacant), issued a surprising and disruptive ruling that legal tender was an unconstitutional “taking” of value. This contradicted the Republicans’ broad reading of Congress’s powers. It also invalidated the greenback currency that had financed the Union victory of The Civil War.

President U.S. Grant, upset with the court’s ruling, quickly filled the two vacant Supreme Court seats.

Presented with two more greenback cases, the reconstituted court overruled *Griswold v. Hepburn* in *Knox v. Lee* (1871). With Chase still in the minority, legal tender was found to be constitutional. The court said: requiring a creditor to accept legal tender was not an illegal “taking,” but an equal substitution for valued coin with a different kind of value<sup>2</sup> – the pledge of the nation’s credit.<sup>3</sup>

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<sup>1</sup> HR 240, Legal Tender Act, February 25, 1862. The U.S. Congress passes the Legal Tender Act, authorizing the use of paper notes to pay the governments bills.

<sup>2</sup> **Chartalism.** In macroeconomics, chartalism is a heterodox theory of money that argues that money originated historically with states’ attempts to direct economic activity rather than as a spontaneous solution to the problems with barter or as a means with which to tokenize debt, and that fiat currency has value in exchange because of sovereign power to levy taxes on economic activity payable in the currency they issue.

<sup>3</sup> Roger Lowenstein, *Ways and Means, Lincoln and his Cabinet and the Financing of the Civil War.* (New York: Penguin Press, 2022) Page 320.