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DAMAGES - APPLICABILITY OF GOLD CLAUSE RESOLUTION TO OBLIGATION TO DELIVER GOLD BULLION

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DAMAGES — APPLICABILITY OF GOLD CLAUSE RESOLUTION TO OBLIGATION TO DELIVER GOLD BULLION — Petitioner lessor and respondent lessee entered into a lease for the enjoyment in perpetuity of water power rights. The yearly rental was stipulated to be "a quantity of gold which shall be equal in amount to fifteen hundred dollars of the gold coin of the United States of the standard of weight and fineness of the year 1894, or the equivalent of this commodity in United States currency." In 1934, after the devaluation of the dollar by the Federal Government, the lessors intervened in the lessee's reorganization proceedings and filed a claim for rent. The petitioners requested that

the lessees be made to pay the amount of dollars which the Government was paying for newly mined gold of the stated quantity. In behalf of the lessee the contention was that by force of the Joint Resolution of June 5, 1933, the debt was dischargeable, dollar for dollar, in the then prevailing currency. *Held*, the obligation was one for the payment of money and not for the delivery of gold as upon the sale of a commodity. The gold was a standard with which to stabilize the value of the dollar. In view of the circumstances which plainly showed it was a payment, the fact that it was characterized to be a commodity was of no import. The alternative provision made this conclusion inescapable. *Holyoke Water Power Co. v. American Writing Paper Co.*, (U. S. 1937) 57 S. Ct. 485.

This case presents for the first time in the Supreme Court the question whether the Gold Clause Resolution¹ was meant to apply to the situation where gold was specified as a means of payment.² The decision plainly indicates that the Court will closely scrutinize all "gold bullion clauses" in order to determine whether the actual intention of the parties was to have a delivery of gold bullion as a commodity or was merely a device by which to fix the value of the dollar.³ The Court declared that even in the absence of the alternative clause providing for payment in currency⁴ it would have construed the bullion stipulation alone as an attempt "to assure the payment of a money debt in dollars of a value as constant as that of gold."⁵ Whether the Court bases its decision on the construction that the covenant is an agreement to pay in dollars or in gold as the equivalent of money, the resolution is equally applicable.

William J. Isaacson

¹ 48 Stat. L. 113, 31 U. S. C., §§ 462, 463 (1933).

² *Emery Bird Thayer Dry Goods Co. v. Williams*, (D. C. Mo. 1936) 15 F. Supp. 938, is the only other recent case to raise this question. That case involved a 99-year lease in which the yearly rental was stipulated to be "grains of pure unalloyed gold" provided, however, that in lieu thereof the lessors at their option could require the delivery of its value in such lawful currency as they designated. *Held*, the resolution did not apply to this clause stipulating for gold bullion. See 35 MICH. L. REV. 667 at 669 (1937) for a discussion of this case.

³ Language in the opinion which indicates the Court's attitude in this respect: "We must consider the situation of the parties, their business needs and expectations, in gauging their intention."

⁴ See 35 MICH. L. REV. 667 at 669 (1937), in which it is suggested that the use of the reservation in *Emery Bird Thayer Drygoods Co. v. Williams*, (D. C. Mo. 1936) 15 F. Supp. 938, showed that the parties intended the gold bullion clause as a stable measure of value in terms of currency rather than as a commodity.

⁵ See instant case. For a collection of the decisions handed down by the state courts after the Civil War in regard to the operation of the Legal Tender Acts which they construed as invalidating gold clauses on payment stipulations set out in gold bullion, see 35 MICH. L. REV. 667 at 669, note 7 (1937).