The News and Observer.

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THE LARGEST CIRCULATION OF ANY NORTH CAROLINA DAILY.

INCOME TAX DECISION

THE SUPREME COURT EQUALLY DIVIDED AS TO ITS CONSTITUTIONALITY.

BUT TWO IMPORTANT FEATURES GO

The Tax on Rents and State and Municipal Bonds Declared to be Unconstitutional--The Court Room Crowded and the Opinion Read by Chief Justice Fuller---Justices Field and White Read Independent Dissenting Opinions--No Rehearing Asked.

WASHINGTON, April 8.—The announcement of the decision of the Supreme Court of the United States on the income tax to-day was made in the presence of a crowded court room, the spectators' lobby being thronged to its utmost capacity.

Public interest in the case had drawn an attendance every decision day since the argument took place, that has taxed the power and ingenuity of the officials to care for. Among those within the rail to-day were Attorney General Olney, Assistant Henry and Mr. W. D. Guthrie, of New York, who took part in the argument; J. M. Wilson, of Washington, of counsel for J. G. Moore who sought an injunction to restrain Internal Revenue Commissioner Miller from proceeding to carry out the law; Senator Hill of New York, who so persistently fought the insertion of the tax provision in the tariff law; ex-Secretary of the Treasury Boutwell, Comptroller of the Treasury; Senator Smith and Hunton, ex-Attorney Gen. Garland, Hon. G. C. Gorham and a great many of Attorneys more or less interested in the action of the court.

The members of the court except Mr. Justice Jackson, entered the chamber promptly at noon. A few cases of minor importance were disposed of, and the Chief Justice announced at the conclusion of the sitting on Thursday the court would adjourn over Good Friday, and several orders by the court, after which the case of the day was read by him.

Chief Justice Fuller Reads Opinionr

He said, in an almost painful stillness: "I am charged with the duty of announcing the opinion and judgement of the court in the case of Chas. Pollock vs. the Farmer's Loan and Trust Company.

The conclusions of the court were stated as follows:

1. That by the constitution federal taxation is divided into two great classes: Direct taxes and duties, imposts and excises.

2. That the imposition of direct taxes is governed by the rule of apportionment among the several States, according to numbers, and the imposition of duties, imposts and excises by the rule of uniformity throughout the United States.

3. That the principle that taxation and representation go together was intended to be and was prescribed in the constitution by the establishment of the rule of apportionment among the several States, so that such apportionment should be according to numbers in each State.

4. That the States surrendered this power to levy imposts and to regulate commerce to the general government and gave it the concurrent power to levy direct taxes in reliance on the protection afforded by the rules prescribed, and that the compromises of the constitution cannot be disabused by legislative action.

5. That these conclusions result from the text of the constitution, and are supported by the historical evidence furnished by the circumstances surrounding the framing aad adoption of that instrument, and the views of those who framed and adopted it.

6. That the understanding and expectation at the time of the adoption of the constitution was that direct taxes would not be levied by the government except under pressure of extraordinary exigency, and such has been the practice down to August 15, 1894. If the power to do so is to be exercised as an ordinary and usual means of supply, that fact furnishes an additional reason for circumspection in disposing of the present case.

7. That taxes on real estate belong to the class of direct taxes and that the taxes on the rent or income of real estate, which is the incident of its ownership, belong to the same class.

8. That by no previous decision of this court has this question been adjudicated to the contrary of the conclusions now announced. That so much of the act of August 15, 1894, as attempts to impose a tax upon the rent or income of real estate without apportionment is invalid.

The court is further of opinion that the act of August 15th, 1894, is invalid so far as it attempts to levy a tax upon the income derived from municipal bonds. As a municipal corporation is the representative of the State and one of the instrumentalities of the State government, the property and revenues of municipal corporations are not the subjects of federal taxation, nor is the income derived from State, county and municipal securities, since taxation on the interest therefrom operates on the power to borrow before it is exercised and has a sensible influence on the contract, and therefore, such a tax is a tax on the power of the States and their instrumentalities to borrow money and consequently repugnant to the constitution.

Upon each of the other questions argued at the bar, to-wit:

1. Whether the void provisions as to rents and income from real estate invalidates the whole act?

2. Whether as to the income from personal property as such, the act is unconstitutional as laying direct taxes?

3. Whether any part of the tax if not considered as a direct tax is invalid for want of uniformity on either of the grounds suggested?"

The Justices who heard the argument are equally divided and therefore no opinion is expressed.

The result is that the decree of the Circuit Court is reversed and the cause remanded with directions to enter a decree in favor of complainant in respect only of the voluntary payment of the taxes on the rents and income of real estate and that which it holds in trust, and on the income from municipal bonds owned or so held by it.

The Courts and the Constitution.

The Chief Justice said that the jurisdiction of the courts of equity to prevent diversion of funds by breach of trust or illegal payment of the funds had been frequently affirmed by the court. The questioned was not raised in the court below, but had been explicitly waived on the argument of the case, and the court felt justified in proceeding to a decision of the case on its merits. He said that the power to decide a law unconstitutional was used with reluctance, but the responsibility could not be evaded when the necessity arose. The contentions respecting this law were: (1) That a tax on rents was a tax on real estate, and that not being laid according to appointment, it was invalid; (2) that it was not uniform, and a violation of the constitutional requirement that such taxes shall be laid with uniformity. Under this head came the exceptions in favor of those persons who were not in possession of an income of $4,000, of mutual insurance companies, savings banks, and partnerships, all organized for and doing the same business as that of corporations authorized by the States. These exceptions, it was held, were arbitrary and caprabious, and not based upon sound public policy; (3) that incomes from investments in States and municipal bonds could not be taxed.

The Chief Justice preceeded to a consideration of the constitutional requirements with respect of the imposition of the two forms of taxation, direct and indirect, and said that the framers of the constituzign intended to make the consent of those who were expected to pay, essential to the validity of any tax. They had just came out of a conflict upon the great principle of taxation with representation, and they were intended to go together—that Congress should so impose a tax that it would fall with even force and effect upon all of the constitutents of those who voted for it.

The States represented in the constitutional convention, said the Chief Justice, surrendered their right to levy imposts, excises and duties to the general government. They looked forward to the time when great States to the west of them would be coming into the Union, and when they gave up that right, they did so with confidence that the rule of uniformity would be observed in the laying of taxes by the congress.

The first question to be considered, said Chief Justice Fuller, was whether or not a tax on rents is a direct tax within the meaning of the constitution. It had always been held, he said, that a tax on estate, real or personal, was a direct tax, but it might be that the constitution had a different meaning, and that it was to be applied to this case. In that view it became necessary to inquire what were direct taxes at the time the constitution was adopted.

The Chief Sustice then made extensive quotations from the history of the debates in the convention on the subject of taxation. The inference from them, he said, was that the general distinction being direct and indirect taxation was well understood by the members of the convention, and that the expectation was that a direct tax would be the last resort of Congress.

The celebrated case of Hyton vs the United States, decided March 3d, 1796, was then referred to at great length, the one in which it was held that a tax on carriages was not a direct tax. The several opinions filed by the justices were quoted, and Mr. Chief Justice Fuller asserted that in none of them was there any expression of opinion as to whether or not anything except land and capitation taxes was a direct tax, but they were confined to the case at hand. The case, he said, seemed to turn upon the declaration of Hamilton as to what constituted direct taxation; if there has been a reference to the decisions of the country from which the United States derived its jurisprudence, it would have been fatal, for in Great Britain income taxes had always been treated as direct taxes.

Former Decisions Reviewed.

The opinion then proceeded to review the decisions made by the Supreme Court in cases arising under the law of 1861, which, the Chief Justice said, counsel had contended declared that an income tax was not a direct tax, and must be regarded as controlling in the case under review.

The principle of *stare decisus*, he continued, applied only to cases are directly in point. No court had ever held itself bound by any part of a decision not necessary to decide the case before it. The duty of any court charged with the construction of constitutional provisions was not to extend a decision on a question if an error of principle was likely thereby to be perpetuated or committed. In the light of these observations the opinion considered the decisions down to that in the Springer case, and concluded that they were all distinguished from the one in hand. The Springer case was no exception to the rule, inasmuch as it did not present the point raised in this case, is a tax on rents a tax on real estate? The court, the opinion continued, was unable to see any distinction between a tax on real estate and a tax on the rents arising from such real estate. What is land but the income thereof? was asked. The constitutional requirement was that the taxes should be laid only by apportionment among the States according to population, and this tax was a direct tax. There was no distinction between an annual tax on the value of the land and a tax on the land itself. Constitutional provisions, it was said, could not be thus evaded; it was the substance, and not the form or shadow that was to prevail in construing them. Upon this point there were many decisions, and some of them were quoted.

"What the constitution intended to prevent," said the Chief Justice, "was that no tax should be laid on the residents of any State by the representatives of other States." The exercise of the power to levy direct taxes was to be restricted to extraordinary occasions.

In conclusion therefore, upon this point, the Chief Justice announced that the court were of the opinion that that part of the law imposing taxes upon rents obtained from real estate was invalid.

State and Municipal Bonds.

Next in order the opinion considered the third objection to the law: That it imposed a tax upon the incomes derived from investments in State and municipal bonds, and was therefore invalid.

Chief Justice Fuller re-asserted the general principle that a tax on government bonds was held to be a tax on contracts and prejudicial to the public interest. It was obvius that such a tax on the powers of the States or municipalities to make contracts was prejudicial to public policy and therefore unconstitutional.

On the matters involved in the case of Hyde vs. the Continental Trust Company of New York, and in the case of J. G. Moore vs. J. Smiler, Commissioner of Internal Revenue for an injunction to restrain him from proceeding to carry out the law, appealed from the courts of the District of Columbia, Chief Justice Fuller stated that the court was equally divided. The judgment of the lower courts as far as it related to the payment of the tax on real estate and municipal bonds was reversed. In the Moore case the effect of the court's action is to affirm the refusal of an injunction against the Commissioner of Internal Revenue.

Justices Field and White read independent dissenting opinions.

Justice Field's Opinion.

Justice Field devoted some time to a review of the provisions regarding rents and denounced the principle sought to be established by the income tax law. Many of his conclusions were in conformity with those expressed by the Chief Justice. He also attacked the law on account of it's lack of uniformity, and the many discriminations found therein.

Taking up the exemption of mutual insurance companies, he declared that they were conducted on lines identical with those on which large corporations were conducted—for the mutual benefit of stockholders. He inveighed against the exemption of saving and building associations, which were not charitable institutions, but conducted for either money making or money saving. All these exemptions stamped the law as class legislation of the most pronounced character. The law violated every right and comity gathered under the Constitution. That there should be any doubt about this, surpassed his comprehension. If the census figures did not convince one of the magnitude and injustice of the exemptions granted, he did not think Congress could be convinced, "though one rose from the dead" to convince it. The law was also invalid in that it levied a tax upon the salaries of the 101 judges of the United States, many of whom received small salaries. If the provisions of the Constitution could be set aside by the arbitrary act of Congress, where, he asked, would this power end? It was but the stepping stone to other and greater acts that would eventually open the way for a war between the poor and the rich. Such a power assumed by Congress and permitted to go unchallenged, would mark the hour when the decadence of the nation would commence. If the limit of the exemption could be fixed at $4,000, future Congresses might fix it at $15,000 or $20,000, thus compelling one class alone to pay the tax. Or, the limit might be fixed at such an amount as a board of walking delegates might determine to be necessary.

In conclusion, Justice Field announced his opinion that the whole law of 1894, should be declared to be null and void.

Justice White Also Dissents.

Justice White prefaced his dissenting opinion with the statement that the custom of rendering long dissents in a court of last resort was more honored in the breach than in the observance Their only effect was to weaken the efficacy of the opinion of the court.

Justice White said he should not speak to-day but for the fact that the court had overruled established precedents and the settled and uniform doctrine of the Supreme Court down to the present time. He regretted that at this last day this court should nullify an act of Congress affirmed by all text writers and by every decision of the Supreme Court of the United States. When the Fathers constructed our form of government they gave it unlimited power to levy taxes, with but one exception—that of taxing exports. The assertion that the constitutionality of Congress was limited, was, he thought, the fundamental error in the ruling of the majority of this court. The great question before the court was: Is income tax a direct tax? That question was practically decided long ago, and he did not deem it necessary to enter into an elaborate review of the case.

In briefly reviewing the case presented to the court he observed that the arguments made and the citations used in this case were the same as those brought out in the Hyton case, and now this court was asked to again take up the question adjudicated by a unanimous court a hundred years ago.

Justice Harlan Almost in Accord.

Justice Harlan was of the opinion that a tax on gains, profits and income derived from rent of lands was not a direct tax; that under numerous decisions of this court the income derived from municipal bonds was not the subject of specific taxation in any form by the United States. In other matters he was in accord with Justice White.

At 2:35 the court concluded the reading of opinions.

Upon the question of the constitutionality from State and municipal bonds the court was in the negative. Upon the question of taxation of rents the court stood against the law.

Will Not Call an Extra Session.

WASHINGTON, April 8.—The President on being asked to-day whether in view of the decision of the Supreme Court on the income tax law an extra session of Congress would be called, said that neither he nor the Secretary of the Treasury saw any necessity for such action and usless there was an unexpected change in conditions he had no idea that Congress would meet again before the time appointed for its regular session.

The effect of the Supreme court decision on the income tax law so far as the Treasury Department officials can determine after a hurried estimation made this afternoon, will be a reduction of about one half in the revenue originally estimated as obtainable from that source, thus making the annual revenue to be expected about $15,000,000. The original estimation of $30,000,000 per year was based on the assumption that the law would be held to be constitutional in all its provisions.

Collectors of internal revenue will be notified of the decision and instructed to make whatever questions may be necessary through the decision rendered to-day, in the blanks furnished them. No new forms will be issued and the work of preparation for the collection of tax will proceed.

Will Not Ask a Rehearing.

Attorney General Olney said the government would not ask for a rehearing but would accept the decision as rendered. He was not surprised at that portion of it excepting municipal and State bonds from taxation, but expressed the hope that the question of rents might be brought before the court in some other shape when he entertained the strong belief that the present attitude of the court would be revised.

In the Treasury Department Assistant Secretary Curtis declared that the condition of the Treasury was good.

Commissioner Miller and officials of the income tax division held a conference to-night at the Treasury discussing the bearing of the opinion on the present income tax machinery in operation and changing it when necessary to meet the changed condition. These instructions will be ready for publication tomorrow or next day.

HEAVY RAINS IN VIRGINIA.

The Swollen Streams Rival the Famous Flood of 1878.

LYNCHBURG, Va., April 8.—A special from Wytheville, Va., to the News says:

The citizens of Wytheville waked this morning to find that the heavy rains during the night had created a flood in the streams rivaling the famous flood of 1878, the difference being that this flood, though lacking two or three feet of being as high in Reed river rose much more rapidly and did equally as much damage. Fences, logs, bridges, lumber and live stock were caught by the swelling streams and carried down with irresistible force.

The railroad track in the neighborhood of Max Meadows was flooded and there have been no trains from either direction to-day.

Dr. S. R. Sayers had a hundred sheep and two colts drowned. A number of other casualties are reported, but the streams are so high that news is cut off from a greater part of the county.

So far as can be learned the rain was confined to Southwest Virginia, but was so heavy in places as to indicate local water spouts. The water is receding rapidly now.

Death of Miss Mary John.

Special to the News and Observer.

JOHN STATION, N. C., April 8.

Miss Mary John, of Richmond county, who was stricken with pneumonia November last died to-day at her home near John Station. She was a graduate of Greensboro Female College and last year a student in the State Normal and Industrial School and had a large acquaintance throughout the State.

The Wound Has Healed.

LONDON, April 8.—A Central News dispatch from Tokio says: Dr. Sato says that Li Hung Chang's wound is completely healed. Dr. Sato will return at once to Hiroshama.

Governor Marvil Dead.

WILMINGTON, Del., April 8.—Governor Marvil died at 9:15 to-night after a lingering illness.

CARR TO THE RESCUE

THE GOVERNOR, AS PRIVATE CITIZEN, ASKS SUPPRESSION OF THE MORTGAGE LAW.

COMPLAINT SERVED UPON COKE.

The Secretary of State Finds Himself Defendant in an Action to Prevent His Publication of the Fraudulent Measure--The Democrats Would Thus Save the People Against Their Enemies--The Governer Gave Bond and Filed the Complaint Yesterday.

Yesterday afternoon, Gov. Carr came in from the drizzly air and presented himself to Superior Court Clerk D. H. Young.

The Governor came as private citizen, Elias Carr, to present a complaint in behalf of himself and all other citizens vs. Octavius Coke, Secretary of State of North Carolina. There was a copy, too, which was put in the hands of the sheriff and will this morning be served upon the Secretary. In the meantime, the Secretary will be enjoined from publication of the act known as the Anti-preference law and the cause will be heard before the next term of the Superior Court. Without further comment, the complaint with the above explanation is laid before the readers of the NEWS AND OBSERVER as the heroic attempt of the Governor to stand, as the principal citizen of the State, between its citizens and the business revolution into which they were about to be plunged by the craven corruption of some vicious band.

State of North Carolina—Wake County.
Superior Court, April term, 1895.

Elias Carr, in behalf of himself and all other citizens of the State of North Carolina, vs. Octavius Coke, Secretary of State of North Carolina.

Complaint.

The plaintiff, in behalf of himself and all other citizens of the State of North Carolina, complaining, alleges:

1st. That defendant is Secretary of State of North Carolina, and by virtue of his office has the custody of all the acts passed by the Legislature of 1895, or which purport to have been passed by it.

2nd. It becomes his duty by law to deliver certified copies of said acts to the public printer of said State for printing and publication.

3rd. When so printed and published, they become presumptive evidence that they are laws duly and constitutionally enacted.

4th. On the 13th day of March, A. D. 1895, a bill was signed by the President of the Senate and Speaker of the House of Representatives in the Legislature of North Carolina, at its last session, in the presence of each House, and purports to have been ratified upon that day, which reads as follows:

"An Act to regulate assignments and other conveyances of like nature in North Carolina.

"The General Assembly of North Carolina do enact:

"Section 1. That all conditional sales, assignments, mortgages, or deeds of trust which are executed to secure any debt, obligation note, or bond, which gives preference to any creditor of the maker shall be absolutely void as to existing creditors.

"Section 2. That all laws in conflict with this act are hereby repealed.

"Section 3. That this act shall be in force from and after its ratification.

"Ratified the 13th day of March, 1895,"

5th. The said bill, as this plaintiff is informed and believes, was not enacted a law in accordance with the provisions of the Constitution of this State.

6th. The Journals of both Houses of the Legislature show that it was not read three times in either House.

7th. The Journal of the Senate shows that it was never read before that body, and never passed any reading in it.

8th. The Journal of the House of Representatives shows that it was introduced in that body and referred to a committee, the said committee reported it back to the House with an amendment, and that it was laid on the table on its second reading in that body, on the 11th day of March, A. D., 1895.

9th. The bill is marked and stamped, Tabled 12th day of March, A. D., 1895.

10th. It is now deposited amonst the tabled bills in their proper receptacle in what is known as the Old State Library, in the Capitol.

11th. By some means unknown to this plaintiff, but which he is informed and believes to be fraudulent, the said bill was enrolled by some person to this plaintiff unknown, in the office of the Enrolling Clerk, and signed by mistake by the President of the Senate and Speaker of the House of Representatives upon the day upon which it purports to have been ratified.

12th. The copy of the enrolled bill purporting to have been ratified, as above stated, is now in the custody of the defendant, the Secretary of the State of North Carolina.

13th. The said defendant, in performance of the duty by law imposed upon him, is compelled to deliver for printing and publication to the Public Printer of this State a certified copy of said fraudulent act to be published and printed as an act of the legislature of 1895, unless restrained from so doing by the order of this Court.

14th. The said defendant now threatens and declares his intention to so deliver a certified copy of the said fraudulent act to the Public Printer to be published and printed as aforesaid.

15th. The act when so printed and published becomes presumptively an act of the legislature, duly enacted, and a valid law of the State.

16th. This plaintiff is informed and believes that after such printing and publication there is no legal method by which such presumption can be rebutted in the Courts of this State so long as said act remains in the custody of the Secretary of said State filed with the acts of the legislature legally passed by it.

17th. Plaintiff is a resident and citizen of the State of North Carolina and owns property within said State over and above his homestead and personal property exemptions; he proposes to reside in said State hereafter, and he, in common with many other citizens will be injured in his right of alienation of his property if said fraudulent act of the legislature is printed and published in the manner above stated or remains in the custody of the said Secretary of State filed with acts of the legislature as above set forth; that he is a creditor of debtors who are indebted to others and will be deprived by the said act of the right to secure debts so due him by mortgage, conditional sales, deeds of trust or assignments, unless the relief prayed for in this complaint is granted.

18th. That a summons has been served in this case upon the defendant together with a copy of this complaint.

Wherefore the plaintiff prays that an order be made by this Court directing said defendant Secretary of State to show cause why a peremptory mandamus shall not be issued against him to compel him to remove the said act from the files of the laws required to be kept by him, and why he should not be enjoined from delivering a certified copy of said act to the Public Printer of this State to be printed and published as a law of this State, and the plaintiff further prays that the said defendant may be restrained in the meantime from delivering a certified copy of said act to the Public Printer to be printed and published as aforesaid, and demands such other and further relief as the Court may adjudge that he is entitled to in the premises, and asks that this complaint shall be treated as an affidavit for the purpose of obtaining the temporary restraining order for which he prays.

F. H. BUSBEE,
F. I. OSBORNE,
Attorneys for Plaintiff.

Elias Carr, being duly sworn, says that the facts set forth in the above complaint as of his own knowledge are true; and those stated upon his information and belief he believes to be true.

ELIAS CARR.

Sworn and subscribed before me this 8th day of April 1895.

D. H. YOUNG,
Clerk Superior Court
of Wake County, N. C.

PROF. HAWKS LECTURES.

Heaviest Rainfall at the University for Many Years.

Special to the News and Observer.

CHAPEL HILL, N. C., April 8.

Prof. A. W. Hawks, of Baltimore, has delighted several full audiences here with pleasing lectures. The Di. Society had him in a pay lecture on Friday night and on Saturday night the same society engaged him for a lecture on "Sunshine," complimentary to the University and the village.

Prof. Hawks led the service at the Baptist church on Sunday to the Y. M. C. A. at 3:30 p. m.

Last night Prof. Mimms, of Trinity College, on invitation of the Y. M. C. A. delivered a most interesting lecture on the "Book of Job." It showed a great deal of earnest research and study. All the churches united at the Chapel to hear him.

Ex-Justice Shepherd spent Sunday on the Hill.

The "Alumni Quarterly" is being mailed. It is an interesting number, being devoted to the benefactors of the University. It has an excellent likeness of Dr. Deems and copies of the Mason Portraits, and prints the address delivered last commencement on Dr. Deems by the late Dr. F. L. Reid.

Preparatory work is going forward for the great Centennial Commencement. With three good hotels and the numerous boarding houses, it is being planned that all who come will be accommodated. There will be new and special features of interest.

The faculty for the Summer School for teachers will soon be published. The school will open June 25th and continue five weeks. All the teachers in the State who wish the best instruction in methods should come. The cost is nominal.

New paint and new yard fences are improving the town.

Miss Lizzie Harris has returned from her music work in Maxton.

Rev. Dr. Carroll has been confined to the house for some time.

The heaviest rainfall of many years fell last night. Prof. Gore's official measurement shows 4 3-4 inches during the night, all of which was confined to a few hours.

Land and Timber Company Fail.

PENSACOLA, Fla., April 8.—The Southern States, Land and Timber Company, one of the largest concerns here, was placed in the hands of three receivers today by order of Judge Pardee, of New Orleans. This is an English company and has offices in New York. The receivers are S. M. Lamont and W. F. McCormick, of Louisville, Ky., and Clarence Cary, of New York. The business will be continued by the three receivers attending to the business in America, and Ernest Noel, of London, the English business.