

United States Officers Must Pay Income Tax

Ruling of State Tax Commission in Case Against Judge Purnell, Postmaster Bailey and Others—Will Be Fought Out in Courts

The North Carolina Tax Commission made a ruling yesterday that the salaries of United States officers were liable to tax in this State under the income tax clause of the revenue act or rather they decided that all incomes are liable to tax except those received from property already taxed.

The ruling was made after a hearing given the defendants in the matter of the State Tax Commission vs. Judge Thomas R. Purnell, Postmaster C. Tom Bailey and Assistant Postmaster Phil Andrews in which the list takers of Raleigh township were cited to appear before the commission with the tax lists to ascertain whether they were liable for taxation and if not why not. The case was called yesterday morning Mr. C. F. Cooke and Register of Deeds Bernard were examined merely to ascertain that Judge Thomas R. Purnell, Postmaster C. Tom Bailey and Assistant Postmaster P. H. Andrews had not listed their incomes for the tax. Mr. Cooke said that both Judge Purnell and Mr. Bailey stated in giving in their property that their incomes from their salaries were not liable to the State tax.

Judge Purnell's Answer

After the statements made by the list takers and register of deeds, Judge Purnell filed the following formal answer to the summons made by the State Tax Commission:

"North Carolina—Wake County. Before State Tax Commission. "Thomas R. Purnell, answering the notice that the review referred to in a notice issued to C. D. Arthur and C. F. Cooke, list takers for Raleigh township, Wake county, N. C., that the income of certain parties among whom is the name of respondent, that the income referred to is subject to taxation in Raleigh township and has been omitted from the tax list of said township, respectfully submits:

"First, that your respondent is United States Judge and as such United States Judge received from the government of the United States a salary of five thousand dollars per annum, which amount is fixed by act of Congress and under Article three of the Constitution of the United States cannot be diminished during his term of office and is exempted from any tax levied by the State government, whether as income tax or otherwise.

"Second, that the facts in regard to the abstract referred to are as follows: when the abstract of 1902 was made, the list takers, who is an officer of the State government, filled out the blank. As he came down the list the said tax list asked income, to which amount he replied, "Five thousand dollars, salary as United States Judge, no other income. Said tax list then said I believe that is not taxable, to which respondent replied I think not.

"As to the abstract of 1901, according to respondent's best recollection, the foregoing facts were entered on the abstract with the statement that his income or salary as United States Judge was not subject to tax.

Mr. B.'s Brief and Argument

Mr. E. J. Best of the Raleigh Bar represented Judge Purnell, Postmaster Bailey and Assistant Postmaster Phil Andrews, made a comprehensive argument from the viewpoint of the unconstitutionality of a State tax against salaries of United States officers and employees, reviewing the adverse position of the United States Supreme Court in the premises. Mr. Best's brief was much complimented as a very complete presentation of the case for the defendants. It follows:

Before the State Tax Commission. In re the Taxation of Federal Officers and Employees of the United States. In 1843, fifty-nine years ago, the Supreme Court of the United States in a power, elaborate and learned decision discussed the precise question now before this body for consideration. (Dobbin vs. Erie County Commrs., 16 Pet., 446.) The learned justice delivering the opinion of the court, after mature consideration discussed and sets forth the reasons upon which the court arrived at its conclusion, touching upon the constitutionality of the act of Congress, which levies a tax on the salaries of federal officers and employees. The reasons stated and assigned by the court are so potent and unanswerable that the question has been let to slumber and to rest until this good hour when your honorable body seem inclined to review the very exhaustive decision supra.

Again in 1895, the Supreme Court of the United States in Com. Pacific R. R. vs. Crockett, 102 U. S., pp. 149, addressed to the doctrine laid down above and with approval affirmed the case in 16 Pet.

It does seem after the latest pronouncement of this question of taxation of the salaries and emoluments of officers and employees of the United States would be forever settled and removed beyond the realm of legal controversy.

The list of the land referees to assess itself, but has steadfastly adhered to the principles first announced by it as I shall presently abundantly show. Surely this body will not in the face of such authority attempt to arrogate to itself the power to tax the persons mentioned. They are embraced within the class mentioned in said decision, and are entitled to the protection, immunity and exemptions of the law of the land.

The Congress of the United States has prescribed and fixed the salaries of its officers and employees by express and positive legislation.

when Congress makes provision by the enactment of laws and fixes the salaries of its various officers and employees throughout the various States in a specific amount for a kindred or similar service, it intends such officer of officers shall receive the amount thus appropriated without diminution by any power. To permit the State to impose a tax on this class of persons, in view of their diverse and unequal tax laws would make the salaries of officers performing similar services throughout the United States unequal—this would be discrimination and will not be permitted or countenanced by the law making power. If such a course were pursued by the States it would be impossible for Congress to fix and determine a uniform salary to its officers for a particular service. In some States the tax would undoubtedly be much higher than in others and it is readily seen the rule of uniformity and equality could not be maintained. It would also allow the States to seize and appropriate the revenues of Congress by indirect method, which is forbidden to do by decision. The Supreme Court in the case above cited uses the following language: "The presumption is that the compensation given by law is no more than the services are worth, and only such in amount as will secure from the officer the diligent performance of his duty." The officers execute their offices for the public good. This implies their right of reaping from thence the recompense for services they may render may decrease without that recompense being in any way lessened, except by the sovereign power from whom the officer derives his appointment, or by another sovereign power to whom the first has delegated the right of taxation over all the objects of taxation, in common with itself, for the benefit of both. And no diminution of the recompense of an officer is just and lawful, unless it is prospective, or by way of taxation by the sovereignty who has power to impose it. * * * The compensation of an officer of the United States is fixed by a law made by Congress. It is in its exclusive discretion to determine what shall be given. It exercises the discretion and fixes the amount, and confers upon the officer the right to receive it when it has been earned. Does not a tax then by a state upon the officer, diminishing the recompense, conflict with the law of the United States, which secures it to the officer in its entirety? It certainly has such an effect. * * * and any law of a state imposing such a tax cannot be constitutional, because it conflicts with a law of Congress made in pursuance of the constitution, and which makes it the supreme law of the land.

The legislature of the state can no more tax the salary or emolument of the officers of the United States, than it can tax the buildings and lands belonging to the general government. An officer of the government is but an agent or instrumentality of the government, by which it exists and by which it can no more be taxed than the government itself.

Neither the general government or government of the state can tax an officer of the other. While there is no express provision in the Federal Constitution exempting such officers, such protection and immunity arises by necessary implication. Since the pioneer decision of Dobbin vs. Erie County, 16 Pet., thirty-nine of the American States have by the enactment of laws exempted the property of the United States from taxation in their States.

In Collector vs. Day, 11 Wall., 113, it was adjudged that Congress had no power, even by an act taxing all incomes, to levy a tax upon the salaries of judges of a state, for reasons similar to those on which it had been held in Dobbin vs. Erie Co., &c., that a state could not tax the officers of the United States. Mr. Justice Wilson, in delivering the judgment, said: "The general government, and the states, although they both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently, of each other, within their respective spheres. It was also held in Dobbin vs. Erie Co., &c., that a state tax on an officer of the United States for his office, or its emoluments, was void mainly because of "its interference with the constitutional means" employed by the government to execute its powers.

In Weston vs. The City of Charleston, the court speaking by Chief Justice Marshall, again declared that the state cannot by taxation or otherwise "retard, impede, burden or in any manner obstruct or interfere with the free and independent action of the national government"; and it was further held in the same case that any interference by the state governments tending to the interruption of or in derogation of the powers granted to the national government was prohibited by the constitution.

The right to tax also confers the right to destroy. If a state possessed the power to tax any of the instrumentalities or incidents of the general government, it could likewise by the imposition of an unjust, arbitrary and discriminatory tax destroy the very existence of the government itself.

Such was not the intention of the law making power and is not the law. In view of the very able, learned and exhaustive decisions referred to I deem necessary to show the action this body attempting to take is unwarranted, without authority and wholly void.

Respectfully submitted,
E. J. BEST,
Counsel for Respondents.
Will invoke injunction.

It is understood that one of the defendants in the case possibly, Postmaster Bailey, will petition a federal court to issue an injunction enjoining the State Tax Commission against enforcing the collection of the income tax from them.

Certain it is that the case will be fought to a finish.

Floral Love Story Party

Correspondence of The Morning Post. Nashville, N. C., Sept. 1.—At the hospitable home of Mr. and Mrs. R. A. P. Cooley a most delightful social was given Friday night in honor of their sister, Miss M. Louise Davis of Richmond, Va. The parlor, dining hall and

verandas were filled with the merry voices of the happy couples. The shaded lights and floral decorations added loveliness to the already beautiful scene and the sweet strains of music found echo in the hearts of the merry lads and lasses. During the evening a "Floral Love Story" was introduced and was greatly enjoyed by all present. The first prize was won by Mr. Ed. Batchelor and the booty prize was awarded Mr. S. P. Austin. As the soft tones of the cathedral clock tolled the hour of twelve dainty refreshments were served in the long dining hall.

Among the guests present were Misses Sallie Benson, Beatrice Earl, Beulah Brooks, Annie Brooks, Mattie and Leta Carter and Ida Batchelor of Nashville, N. C.; Nannie Braswell of Battleboro, N. C.; Messrs. C. C. Cockrell, Ed. Batchelor, S. F. Austin, Bernard Brooks, F. A. Brooks, Buck Batchelor, Clarence Benson, Scott Sills and Prof. A. P. Pettway of Nashville, N. C., and Messrs. Joe Lane and Robert Carraway of Goldsboro and S. J. Williams of Kinston, N. C.

Recital at Cary High School

Correspondence of The Morning Post. Cary, N. C., Sept. 2.—Miss Hazel Wade, teacher of music and elocution gave a recital last night to the great delight of the whole community. Miss Wade came here a stranger as the opening of the session, but she has already won all for her friends. Her attainments as an elocutionist, a vocalist and pianist make a rare combination. Her rendition of dramatic and correct recitations were equally excellent. As a pianist she has rare gifts. Her technique and time are well nigh perfect. She has a medium contralto voice under perfect control. All are speaking in highest terms of the recital.

Pupils continue to enter school. Representatives of four counties came in yesterday.

ANNOUNCEMENTS OF DEMOCRATIC SPEAKINGS

Hon. Dan Hugh McLean will speak at Reynolds Springs on September 9th.
Hon. Dan Hugh McLean will speak at Lumberton on September 9th.
Hons. J. H. Small and W. T. Dortch will speak at Greenville on Thursday, September 11th.
Hon. Lee S. Overman will speak at Troy on Tuesday, September 23d.
Hon. Jas. A. Lockhart will speak at Rockingham on Tuesday, September 23d.
Hon. George W. Ward will speak at Camden Court House on Monday, September 29th.
Hon. John H. Small will speak at Camden Court House on Monday, September 29th.
Hon. W. W. Kitchin and Hon. G. B. Patterson will speak at Dunn, Hartnett county, on Monday, September 15th.
Hon. E. Y. Webb will speak at Gaston county, on Tuesday, September 9th.

RESALE ORDERED IN DARE CO. CASE

Judge Purnell Makes Order Involving Immense Tract of Timber Lands

Judge Purnell of the United States Court has ordered a resale in the case of East Coast Cedar Company vs. The People's Bank of Buffalo et al. involving an immense tract of land in Dare county. It will be remembered that A. B. Andrews, Jr., as commissioner sold the property recently for \$32,000 and later a 10 per cent increase was offered in accordance with the law the petitioners for the resale pledging to start the bidding in the event the sale was ordered at \$35,000. The order for the resale follows:

United States of America—Eastern District of North Carolina—in the Circuit Court. In Equity. East Coast Cedar Company vs. The People's Bank of Buffalo et al.

This cause coming on to be heard on the report of the commissioner herein and affidavits filed and fully heard; that the State practice is in no way binding upon this court in ordering a resale but the same rests solely in the discretion of the court; that the resale of the premises at the increased bid of fifty-eight thousand dollars will be to the interest of the parties herein and the final order of resale there of and a resale is ordered to be made by the commissioner hereinbefore appointed under a decree hereinbefore made in all respects, except as hereinafter modified. The bidding at such sale will be started at fifty-eight thousand dollars and continue until the land is knocked off to the highest bidder according to the former decree herein.

It is further ordered that the commissioner hereinbefore named advertise the land as heretofore in The Morning Post, published at Raleigh, N. C., once a week for four successive weeks and such sale be made thirty days from the advertisement as herein provided.

It is further ordered that ten per cent paid into the registry of the court by the highest bidder at the former sale be returned to such bidder.

It is further ordered, adjudged and decreed that the petitioner herein pay the expenses of the former sale herein said expense to be paid as provided by statute in paying out money deposited in the registry of the court on an account rendered by the commissioner and checks approved by the judge as provided by law.

Sept. 2d, 1902. U. S. Judge &c.

LOCAL PARAGRAPHS

The police are to begin at once a crusade against the small boy bean shooters who have gotten to be a considerable nuisance about the city. Arrests will be made and punishment to the full limit of the law will be administered.

A very large number of boys arrived in the city yesterday afternoon and last night to enter the A. and M. College. There will be not less than 40 on the hill when the college opens today.

The Baptist Female University will open for the Fall session today and a very large number of girls have arrived. The attendance is sure to tax the utmost capacity of the institution. There will be no formal opening exercises. President Vann feels that the work of the school would be too much hindered by such exercises.

John R. Hicks convicted at Durham for forgery was brought to the penitentiary yesterday and confined in the criminal insane department.

Sheffield L. Meete of Duplin county arrived yesterday with a negro convict whom he committed to the penitentiary for five years for shooting in a train.

There will be a basket picnic at Wendell Thursday, September 4th. Gov. Aycock will address the gathering at 11 o'clock a. m.

EXCURSION TO PORTSMOUTH, VA., SEPT. 23.

On September 24 the Seaboard Air Line Railway will operate its last excursion of the season to Norfolk, Va. Train leaves Union Depot at 2 p. m. September 24, returning to Raleigh-Portsmouth at 10 a. m. September 4th. Fare for the round trip \$2.25.

Don't fail to take the S. A. L. Railway excursion to Portsmouth, Norfolk, Old Point, Ocean View and Virginia Beach on September 24. Fare for round trip \$2.25. This is your last chance this season and as the week-end rate of \$4 will be withdrawn August 31st there will be no more reduced rates.

Excursion to Norfolk and the Seashore leaves Raleigh Union Depot promptly at 2 p. m. September 2d (Tuesday) via Seaboard Air Line. Separate coaches for white and colored and a fast schedule. Apply to undersigned for any information. Tickets sold at city and depot offices of the S. A. L. Railway.

C. H. GATTIS, P. T. A., Raleigh, N. C.

THE WEATHER TOO DRY FOR COTTON

Condition of the Crop Has Deteriorated for Two or Three Weeks

Washington, Sept. 2.—The weekly crop bulletin issued today by the government says: "The temperature conditions in the northern districts east of the Missouri valley during the week ending September 1 were more favorable for maturing crops than in the previous week, but as the two weeks immediately preceding excessively high temperatures prevailed in the central and west Gulf districts, including Oklahoma and Indian Territory. Excessive rains have continued in the lower Missouri and Red river of the north valleys, to the serious detriment of grain in shock and stack and with temperatures slightly below normal in the Missouri valley, the maturity of crops has not advanced rapidly. Continued absence of rains has intensified the drought in the west Gulf districts and rain is generally needed in the Ohio valley and in coast districts from southern New England to the Carolinas. Generally abundant rains have relieved drought conditions in the east Gulf districts.

But little rain has fallen over west Texas and the greater part of the Mississippi river during the past month. The last three weeks of which have been excessively warm, the week ending September 1 being practically rainless over the greater part of Louisiana, portions of Arkansas and Oklahoma, and throughout Texas, with the exception of a few light showers in the north central and northeastern portions. While favorable weather conditions in the near future would cause a marked improvement in the condition of cotton in Texas, the reports indicate that under the most favorable circumstances the yield would be much short of an average crop. The central and eastern districts of the cotton belt, with the exception of portions of the Carolinas, where drought continues, have received abundant rains but too late to be of material benefit, while causing considerable injury to open cotton. Some slight improvement is reported from portions of Florida and Georgia and less premature opening from Alabama, but rust and shedding are very general throughout the central and eastern districts. (The weather map of this date, September 2, shows that good rains fell over a large part of Texas during the past four hours ending 8 a. m., September 2.)

Cutting and curing of tobacco have progressed under favorable conditions and are largely finished in the Carolinas and Virginia.

Worse Than Reported

Castries, St. Lucia, Sept. 2.—The latest advices from Martinique are to the effect that the latest eruption of Mont Pelee was more serious than first reports indicated. It is said 1,160 persons were killed and 15,000 injured. A large tract of country inland was devastated. The government has ordered all the northern parishes to be evacuated. The heat on the island is almost unbearable, a condition that is attributed to volcanic action. The heat is also great in St. Lucia.

"Of all bodily ailments," said the suburbanite, "I think ague is the most paradoxical." "How paradoxical?" inquired Citizen. "It gives you the shak, and sticks right to you."—Philadelphia Press.

RALEIGH MARBLE WORKS COOPER BROS. Proprietors, Raleigh, N. C. MONUMENTS

Write for catalogue. We pay the freight.

POSTSCRIPTS

Mr. N. F. Carter of Mt. Airy is a Raleigh visitor.
Mr. J. Clyde Cheek of Hillsboro is in the city on business.
Mr. J. A. Tate of Greensboro spent yesterday in Raleigh.
Mr. W. P. Brown of Fayetteville spent yesterday in Raleigh.
Mr. L. Middleton of Kernersville is a guest at the Yarrowburgh.
Mr. John Barnes has returned from a visit to friends in Oxford.
Mr. T. C. Harns of Youngsville was a Raleigh visitor yesterday.
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Thousands Have Kidney Trouble and Don't Know It.

How To Find Out.

Fill a bottle or common glass with your water and let it stand twenty-four hours; a sediment or settling indicates an unhealthy condition of the kidneys; if it stains your linen it is evidence of kidney trouble; too frequent desire to pass it or pain in the back is also convincing proof that the kidneys and bladder are out of order.

What To Do.

There is comfort in the knowledge so often expressed that Dr. Kilmer's Swamp-Root, the great kidney remedy fulfills every wish in curing rheumatism, pain in the back, kidneys, liver, bladder and every part of the urinary passage. It corrects inability to hold water and scalding pain in passing it, or bad effects following use of liquor, wine or beer, and overcomes that unpleasant necessity of being compelled to go often during the day, and to get up many times during the night. The mild and the extraordinary effect of Swamp-Root is soon realized. It stands the highest for its wonderful cures of the most distressing cases. If you need a medicine you should have the best. Sold by druggists in 50c. and \$1. sizes. You may have a sample bottle of this wonderful discovery and a book that tells more about it, both sent absolutely free by mail.

Address Dr. Kilmer & Co., Home of Swamp-Root, Co., Binghamton, N. Y. When writing mention reading this generous offer in this paper.

Don't make any mistake, but remember the name, Swamp-Root, Dr. Kilmer's Swamp-Root, and the address, Binghamton, N. Y., on every bottle.

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RALEIGH AGENCY for ACID IRON MINERAL

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Mixed Pickle Spice, 5 cents.
American Preserving Powder and Liquid, 25 cents.
Compound Extract of Salsy, \$1.25.
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