February Term, 1796.

ON the 4th of *February*, a commiſſion, bearing date the 27th of *January*, 1796, was read, appointing SAMUEL CHASE, one of the juſtices of the Supreme Court.

ON the 8th of *March*, a commiſſion, bearing date the 4th of *March*, 1796, was read, appointing OLIVER ELLSWORTH, CHIEF JUSTICE.

HYLTON, Plaintiff in Error, *verſus* the UNITED STATES.

THIS was a writ of Error directed to the Circuit Court for the Diſtrict of *Virginia*; and upon the return of the record, the following proceedings appeared. An action of debt had been inſtituted to *May* Term, 1795, by the attorney of the diſtrict, in the name of the *United States*, againſt *Daniel Hylton*, to recover the penalty impoſed by the act of Congreſs, of the 5th of *June*, 1794, for not entering, and paying the duty on, a number of carriages, for the conveyance of perſons, which he kept for his own uſe. The defendant pleaded *nil debet*, whereupon iſſue was joined. But the parties, waving the right of trial by jury, mutually ſubmitted the controverſy to the court on a caſe, which ſtated "That the Defendant, on the 5th of *June*, 1794, and therefrom to the laſt day of *September* following, owned, poſſeſſed, and kept, 125 chariots for the conveyance of perſons, and no more: that the chariots were kept excluſively for the Defendant's own private uſe, and not to let out to hire, or for the conveyance of perſons for hire

1796. hire: and that the Defendant had notice according to the act of Congress, entitled "An act laying duties upon carriages for the conveyance of persons," but that he omitted and refused to make an entry of the said chariots, and to pay the duties thereupon, as in and by the said recited law is required, alledging that the said law was unconstitutional and void. If the court adjudged the Defendant to be liable to pay the tax and fine for not doing so, and for not entering the carriages, then judgment shall be entered for the Plaintiff for 2000 dollars, to be discharged by the payment of 16 dollars, the amount of the duty and penalty; otherwise that judgment be entered for the Defendant." After argument, the court (consisting of WILSON & *Justices*) delivered their opinions; but being equally divided, the defendant, by agreement of the parties, confessed judgment, as a foundation for the present writ of error; which (as well as the original proceeding) was brought merely to try the constitutionality of the tax.

The cause was argued at this term, by *Lee*, the Attorney General of the *United States*, and *Hamilton*, the late Secretary of the Treasury, in support of the tax; and by *Campbell*, the Attorney of the *Virginia* District, and *Ingersoll*, the Attorney General of *Pennsylvania*, in opposition to it. The argument turned entirely upon this point, whether the tax on carriages for the conveyance of persons, kept for private use, was a direct tax? For, if it was not a direct tax, it was admitted to be rightly laid, within the first clause of the 8th section of the 1st article of the Constitution, which declares "that all duties, imposts and excises, shall be *uniform* throughout the *United States*:" But it was contended, that if it was a direct tax, it was unconstitutionally laid, as another clause of the same section provides, "that no capitation, or other direct, tax shall be laid, unless in *proportion* to the *census*, or enumeration, of the inhabitants of the *United States*."

THE COURT delivered their opinions *seriatim* in the following terms.*

CHASE, *Justice*. By the case stated, only *one* question is submitted to the opinion of this court;—whether the law of Congress, of the 5th of *June*, 1794, entitled, "An act to lay *duties* upon carriages, for the conveyance of persons," is *unconstitutional and void?*

The principles laid down, to prove the above law *void*, are these: That a tax on *carriages*, is a *direct tax*, and, therefore, by the constitution, must be laid *according to the census*, directed

* The *Chief Justice* ELLSWORTH, was sworn into office, in the morning; but not having heard the whole of the argument, he declined taking any part in the decision of this cause.

ed by the conſtitution to be taken, to aſcertain the number of Repreſentatives from each State: And that the tax in queſtion, on carriages, is not laid by that rule of *apportionment*, but by the rule of *uniformity*, preſcribed by the conſtitution, in the caſe of *duties*, *impoſts*, and *exciſes*; and a tax on *carriages*, is not within either of thoſe deſcriptions. 1796.

By the 2d. ſection of the 1ſt. article of the Conſtitution, it is provided, that *direct taxes* ſhall be *apportioned* among the ſeveral States, according to their *numbers*, to be determined by the rule preſcribed.

By the 9th ſection of the ſame article, it is further provided, That no *capitation*, or *other direct tax*, ſhall be laid, unleſs in proportion to the *cenſus*, or enumeration, before directed.

By the 8th ſection of the ſame article, it was declared, that Congreſs ſhall have power to lay and collect *taxes*, *duties*, *impoſts*, and *exciſes*; but all *duties*, *impoſts*, and *exciſes*, ſhall be *uniform* throughout the *United States*.

As it was incumbent on the Plaintiff's Council in Error, ſo they took great pains to prove, that the tax on carriages was a *direct* tax; but they did *not* ſatisfy my mind. I think, at leaſt, it may be *doubted*; and if I only doubted, I ſhould affirm the judgment of the Circuit Court. The deliberate deciſion of the National Legiſlature, (who did not conſider a tax on carriages a *direct* tax; but thought it was within the deſcription of a *duty*) would determine me, if the caſe was *doubtful*, to receive the conſtruction of the Legiſlature: But I am inclined to think, that a tax on *carriages* is not a *direct* tax, within the *letter*, or *meaning*, of the Conſtitution.

The great object of the Conſtitution was, to give Congreſs a power to lay taxes, adequate to the exigencies of government; but they were to obſerve *two* rules in impoſing them, namely, the rule of *uniformity*, when they laid *duties*, *impoſts*, or *exciſes*; and the rule of *apportionment*, according to the *cenſus*, when they laid any *direct* tax.

If there are any *other* ſpecies of taxes that are not *direct*, and *not* included within the words *duties*, *impoſts*, or *exciſes*, they may be laid by the rule of *uniformity*, or not; as Congreſs ſhall think proper and reaſonable. If the framers of the Conſtitution did not contemplate *other* taxes than *direct* taxes, and *duties*, *impoſts*, and *exciſes*, there is great inaccuracy in their language.—If theſe *four* ſpecies of taxes were *all* that were meditated, the general power to lay *taxes* was unneceſſary. If it was intended, that Congreſs ſhould have authority to lay only *one* of the *four* above enumerated, to wit, *direct* taxes, by the rule of *apportionment*, and the other *three* by the rule of *uniformity*, the expreſſions would have run thus: "Congreſs ſhall have power to lay and collect *direct* taxes, and *duties*, *impoſts*,

1796. *poſts*, and *exciſes*; the *firſt* ſhall be laid according to the *cenſus*; and the *three laſt* ſhall be *uniform* throughout the *United States*." The power, in the 8th ſection of the 1ſt article, to lay and collect *taxes*, included a power to lay *direct* taxes, (whether *capitation*, or any *other*) and alſo *duties*, *impoſts*, and *exciſes*; and every other ſpecies or kind of tax whatſoever, and called by any other *name*. *Duties*, *impoſts*, and *exciſes*, were enumerated, after the general term *taxes*, only for the purpoſe of declaring, that *they* were to be laid by the rule of *uniformity*. I conſider the Conſtitution to ſtand in this manner. A general power is given to Congreſs, to lay and collect taxes, *of every kind or nature*, without any reſtraint, except only on *exports*; but *two* rules are preſcribed for their government, namely, *uniformity* and *apportionment*: Three kinds of *taxes*, to wit, duties, impoſts, and exciſes by the firſt rule, and *capitation*, or *other direct* taxes, by the ſecond rule.

I believe *ſome* taxes may be both *direct* and *indirect* at the *ſame* time. If ſo, would Congreſs be prohibited from laying *ſuch* a tax, becauſe it is *partly* a *direct* tax?

The Conſtitution evidently contemplated *no taxes* as *direct* taxes, but only *ſuch* as Congreſs could lay in *proportion to the cenſus*. The rule of *apportionment* is only to be adopted in *ſuch* caſes where it can *reaſonably* apply; and the *ſubject* taxed, muſt ever determine the application of the rule.

If it is propoſed to tax any *ſpecific article* by the rule of *apportionment*, and it would evidently create great inequality and injuſtice, it is unreaſonable to ſay, that the Conſtitution intended *ſuch* tax ſhould be laid by *that rule*.

It appears to me, that a tax *on carriages* cannot be laid by the rule of *apportionment*, without very great inequality and injuſtice. For example: Suppoſe two States, equal in cenſus, to pay 80,000 dollars each, by a tax *on carriages*, of 8 dollars on every carriage; and in one State there are 100 carriages, and in the other 1000. The owners of carriages in one State, would pay *ten times* the tax of owners in the other. A. in one State, would pay for his carriage 8 dollars, but B. in the other ſtate, would pay for his carriage, 80 dollars.

It was argued, that a tax on *carriages* was a *direct* tax, and might be laid according to the rule of *apportionment*, and (as I underſtood) in this manner: Congreſs, after determining on the *groſs* ſum to be raiſed was to *apportion* it, according to the *cenſus*, and then lay it in one State on *carriages*, in another on *horſes*, in a third on *tobacco*, in a fourth on *rice*; and ſo on.—I admit that this mode might be adopted, to raiſe a *certain* ſum in each State, according to *the cenſus*, but it would not be a tax on *carriages*, but on a number of *ſpecific* articles; and it ſeems to me, that it would be liable to the ſame objection of abuſe

abuſe and oppreſſion, as a ſelection of any *one* article in *all* the States. 1796.

I think, an annual tax on carriages for the *conveyance* of perſons, may be conſidered as within the power granted to Congreſs to lay *duties*. The term *duty*, is the moſt comprehenſive next to the *generical* term *tax*; and *practically* in *Great Britain*, (whence we take our general ideas of *taxes*, *duties*, *impoſts*, *exciſes*, *cuſtoms*, &c.) embraces taxes on ſtamps, tolls for paſſage, &c. &c. and is not confined to taxes on *importation only*.

It ſeems to me, that a tax on *expence* is an *indirect* tax; and I think, an *annual* tax on a carriage for the conveyance of perſons, is of *that kind*; becauſe a carriage is a *conſumeable commodity*; and ſuch *annual* tax on it, is on the *expence* of the *owner*.

I am inclined to think, but of this I do not give a judicial opinion, that the *direct* taxes contemplated by the Conſtitution, are only *two*, to wit, a *capitation*, or *poll* tax, *ſimply*, without regard to *property*, *profeſſion*, or any *other circumſtance*; and a tax on LAND.—I doubt whether a tax, by a *general aſſeſſment* of *perſonal* property, within the *United States*, is included within the term *direct* tax.

As I do not think the tax on carriages is a *direct* tax, it is unneceſſary, *at this time*, for me to determine, whether this court, *conſtitutionally* poſſeſſes the power to declare an act of Congreſs *void*, on the ground of its being made contrary to, and in violation of, the Conſtitution; but if the court have ſuch power, I am free to declare, that I will never exerciſe it, *but in a very clear caſe*.

I am for affirming the judgment of the Circuit Court.

PATERSON, *Juſtice*.—By the ſecond ſection of the firſt article of the Conſtitution of the *United States*, it is ordained, that repreſentatives and direct taxes ſhall be apportioned among the ſtates, according to their reſpective numbers, which ſhall be determined by adding to the whole number of free perſons, including thoſe bound to ſervice for a term of years, and including Indians not taxed, three fifths of all other perſons.

The eighth ſection of the ſaid article, declares, that Congreſs ſhall have power to lay and collect taxes, duties, impoſts, and exciſes; but all duties, impoſts and exciſes, ſhall be uniform throughout the *United States*.

The ninth ſection of the ſame article provides, that no capitation or other direct tax ſhall be laid, unleſs in proportion to the cenſus or enumeration before directed to be taken.

Congreſs paſſed a law on the 5th of *June*, 1794, entitled, "An "act laying duties upon carriages for the conveyance of per-"ſons."

Daniel

1796. *Daniel Lawrence Hilton*, on the 5th of *June*, 1794, and therefrom to the laſt day of *September* next following, owned, poſſeſſed, and kept one hundred and twenty-five chariots for the conveyance of perſons, but excluſively for his own ſeparate uſe, and not to let out to hire, or for the conveyance of perſons for hire.

The queſtion is, whether a tax upon carriages be a direct tax? If it be a direct tax, it is unconſtitutional, becauſe it has been laid purſuant to the rule of uniformity, and not to the rule of apportionment. In behalf of the Plaintiff in error, it has been urged, that a tax on carriages does not come within the deſcription of a duty, impoſt, or exciſe, and therefore is a direct tax. It has, on the other hand, been contended, that as a tax on carriages is not a direct tax; it muſt fall within one of the claſſifications juſt enumerated, and particularly muſt be a duty or exciſe. The argument on both ſides turns in a circle; it is not a duty, impoſt, or exciſe, and therefore muſt be a direct tax; it is not tax, and therefore muſt be a duty or exciſe. What is the natural and common, or technical and appropriate, meaning of the words, duty and exciſe, it is not eaſy to aſcertain. They preſent no clear and preciſe idea to the mind. Different perſons will annex different ſignifications to the terms. It was, however, obviouſly the intention of the framers of the Conſtitution, that Congreſs ſhould poſſeſs full power over every ſpecies of taxable property, except exports. The term taxes, is generical, and was made uſe of to veſt in Congreſs plenary authority in all caſes of taxation. The general diviſion of taxes is into direct and indirect. Although the latter term is not to be found in the Conſtitution, yet the former neceſſarily implies it. Indirect ſtands oppoſed to direct. There may, perhaps, be an indirect tax on a particular article, that cannot be comprehended within the deſcription of duties, or impoſts, or exciſes; in ſuch caſe it will be compriſed under the general denomination of taxes. For the term tax is the genus, and includes,

1. Direct taxes.

2. Duties, impoſts, and exciſes.

3. All other claſſes of an indirect kind, and not within any of the claſſifications enumerated under the preceding heads.

The queſtion occurs, how is ſuch tax to be laid, uniformly or apportionately? The rule of uniformity will apply, becauſe it is an indirect tax, and direct taxes only are to be apportioned. What are direct taxes within the meaning of the Conſtitution? The Conſtitution declares, that a capitation tax is a direct tax; and, both in theory and practice, a tax on land is deemed to be a direct tax. In this way, the terms direct taxes, and capitation and other direct tax, are ſatisfied. It is not neceſſary

ceſſary to determine, whether a tax on the product of land be a direct or indirect tax. Perhaps, the immediate product of land, in its original and crude ſtate, ought to be conſidered as the land itſelf; it makes part of it; or elſe the proviſion made againſt taxing exports would be eaſily eluded. Land, independently of its produce, is of no value. When the produce is converted into a manufacture, it aſſumes a new ſhape; its nature is altered; its original ſtate is changed; it becomes quite another ſubject, and will be differently conſidered. Whether direct taxes, in the ſenſe of the Conſtitution, comprehend any other tax than a capitation tax, and tax on land, is a queſtionable point. If Congreſs, for inſtance, ſhould tax, in the aggregate or maſs, things that generally pervade all the ſtates in the Union, then, perhaps, the rule of apportionment would be the moſt proper, eſpecially if an aſſeſſment was to intervene. This appears by the practice of ſome of the ſtates, to have been conſidered as a direct tax. Whether it be ſo under the Conſtitution of the *United States*, is a matter of ſome difficulty; but as it is not before the court, it would be improper to give any deciſive opinion upon it. I never entertained a doubt, that the principal, I will not ſay, the only, objects, that the framers of the Conſtitution contemplated as falling within the rule of apportionment, were a capitation tax and a tax on land. Local conſiderations, and the particular circumſtances, and relative ſituation of the ſtates, naturally lead to this view of the ſubject. The proviſion was made in favor of the ſouthern States. They poſſeſſed a large number of ſlaves; they had extenſive tracts of territory, thinly ſettled, and not very productive. A majority of the ſtates had but few ſlaves, and ſeveral of them a limited territory, well ſettled, and in a high ſtate of cultivation. The ſouthern ſtates, if no proviſion had been introduced in the Conſtitution, would have been wholly at the mercy of the other ſtates. Congreſs in ſuch caſe, might tax ſlaves, at diſcretion or arbitrarily, and land in every part of the Union after the ſame rate or meaſure: ſo much a head in the firſt inſtance, and ſo much an acre in the ſecond. To guard them againſt impoſition in theſe particulars, was the reaſon of introducing the clauſe in the Conſtitution, which directs that repreſentatives and direct taxes ſhall be apportioned among the ſtates, according to their reſpective numbers. 1796.

On the part of the Plaintiff in error, it has been contended, that the rule of apportionment is to be favored rather than the rule of uniformity; and, of courſe, that the inſtrument is to receive ſuch a conſtruction, as will extend the former and reſtrict the latter. I am not of that opinion. The Conſtitution has been conſidered as an accommodating ſyſtem; it was the

1796. effect of mutual ſacrifices and conceſſions; it was the work of compromiſe. The rule of apportionment is of this nature; it is radically wrong; it cannot be ſupported by any ſolid reaſoning. Why ſhould ſlaves, who are a ſpecies of property, be repreſented more than any other property? The rule, therefore, ought not to be extended by conſtruction.

Again, numbers do not afford a juſt eſtimate or rule of wealth. It is, indeed, a very uncertain and incompetent ſign of opulence. There is another reaſon againſt the extenſion of the principle laid down in the Conſtitution.

The counſel on the part of the Plaintiff in error, have further urged, that an equal participation of the expenſe or burden by the ſeveral ſtates in the Union, was the primary object, which the framers of the Conſtitution had in view; and that this object will be effected by the principle of apportionment, which is an operation upon ſtates, and not on individuals; for, each ſtate will be debited for the amount of its quota of the tax, and credited for its payments. This brings it to the old ſyſtem of requiſitions. An equal rule is doubtleſs the beſt. But how is this to be applied to ſtates or to individuals? The latter are the objects of taxation, without reference to ſtates, except in the caſe of direct taxes. The fiſcal power is exerted certainly, equally, and effectually on individuals; it cannot be exerted on ſtates. The hiſtory of the *United Netherlands*, and of our own country, will evince the truth of this poſition. The government of the *United States* could not go on under the confederation, becauſe Congreſs were obliged to proceed in the line of requiſition. Congreſs could not, under the old confederation, raiſe money by taxes, be the public exigencies ever ſo preſſing and great. They had no coercive authority—if they had, it muſt have been exerciſed againſt the delinquent ſtates, which would be ineffectual, or terminate in a ſeparation. Requiſitions were a dead letter, unleſs the ſtate legiſlatures could be brought into action; and when they were, the ſums raiſed were very diſproportional. Unequal contributions or payments engendered diſcontent, and fomented ſtate-jealouſy. Whenever it ſhall be thought neceſſary or expedient to lay a direct tax on land, where the object is one and the ſame, it is to be apprehended, that it will be a fund not much more productive than that of requiſition under the former government. Let us put the caſe. A given ſum is to be raiſed from the landed property in the *United States*. It it eaſy to apportion this ſum, or to aſſign to each ſtate its quota. The Conſtitution gives the rule. Suppoſe the proportion of *North Carolina* to be eighty thouſand dollars. This ſum is to be laid on the landed property in the ſtate, but by what rule, and by whom? Shall every acre pay

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the ſame ſum, without regard to its quality, value, ſituation, or productiveneſs? This would be manifeſtly unjuſt. Do the laws of the different ſtates furniſh ſufficient data for the purpoſe of forming one common rule, comprehending the quality, ſituation, and value of the lands? In ſome of the ſtates there has been no land tax for ſeveral years, and where there has been, the mode of laying the tax is ſo various, and the diverſity in the land is ſo great, that no common principle can be deduced, and carried into practice. Do the laws of each ſtate furniſh data, from whence to extract a rule, whoſe operation ſhall be equal and certain in the ſame ſtate? Even this is doubtful. Beſides, ſub-diviſions will be neceſſary; the apportionment of the ſtate, and perhaps of a particular part of the ſtate, is again to be apportioned among counties, townſhips, pariſhes, or diſtricts. If the lands be claſſed, then a ſpecific value muſt be annexed to each claſs. And there a queſtion ariſes, how often are claſſifications and aſſeſſments to be made? Annually, triennially, ſeptennially? The oftener they are made, the greater will be the expenſe; and the ſeldomer they are made, the greater will be the inequality, and injuſtice. In the proceſs of the operation a number of perſons will be neceſſary to claſs, to value, and aſſeſs the land; and after all the guards and proviſions that can be deviſed, we muſt ultimately rely upon the diſcretion of the officers in the exerciſe of their functions. Tribunals of appeal muſt alſo be inſtituted to hear and decide upon unjuſt valuations, or the aſſeſſors will act *ad libitum* without check or control. The work, it is to be feared, will be operoſe and unproductive, and full of inequality, injuſtice, and oppreſſion. Let us, however, hope, that a ſyſtem of land taxation may be ſo corrected and matured by practice, as to become eaſy and equal in its operation, and productive and beneficial in its effects. *But to return.* A tax on carriages, if apportioned, would be oppreſſive and pernicious. How would it work? In ſome ſtates there are many carriages, and in others but few. Shall the whole ſum fall on one or two individuals in a ſtate, who may happen to own and poſſeſs carriages? The thing would be abſurd, and inequitable. In anſwer to this objection, it has been obſerved, that the ſum, and not the tax, is to be apportioned; and that Congreſs may ſelect in the different ſtates different articles or objects from whence to raiſe the apportioned ſum. The idea is novel. What, ſhall land be taxed in one ſtate, ſlaves in another, carriages in a third, and horſes in a fourth; or ſhall ſeveral of theſe be thrown together, in order to levy and make the quotaed ſum? The ſcheme is fanciful. It would not work well, and perhaps is utterly impracticable. It is eaſy to diſcern, that great, and perhaps inſurmountable, obſtacles muſt ariſe in forming the ſub-

1796.

ordinate

1796. ordinate arrangements neceſſary to carry the ſyſtem into effect; when formed, the operation would be ſlow and expenſive, unequal and unjuſt. If a tax upon land, where the object is ſimple and uniform throughout the ſtates, is ſcarcely practicable, what ſhall we ſay of a tax attempted to be apportioned among, and raiſed and collected from, a number of diſſimilar objects. The difficulty will increaſe with the number and variety of the things propoſed for taxation. We ſhall be obliged to reſort to intricate and endleſs valuations and aſſeſſments, in which every thing will be arbitrary, and nothing certain. There will be no rule to walk by. The rule of uniformity, on the contrary, implies certainty, and leaves nothing to the will and pleaſure of the aſſeſſor. In ſuch caſe, the object and the ſum coincide, the rule and the thing unite, and of courſe there can be no impoſition. The truth is, that the articles taxed in one ſtate ſhould be taxed in another; in this way the ſpirit of jealouſy is appeaſed, and tranquillity preſerved; in this way the preſſure on induſtry will be equal in the ſeveral ſtates, and the relation between the different ſubjects of taxation duly preſerved. Apportionment is an operation on ſtates, and involves valuations and aſſeſſments, which are arbitrary, and ſhould not be reſorted to but in caſe of neceſſity. Uniformity is an inſtant operation on individuals, without the intervention of aſſeſſments, or any regard to ſtates, and is at once eaſy, certain, and efficacious. All taxes on expences or conſumption are indirect taxes. A tax on carriages is of this kind, and of courſe is not a direct tax. Indirect taxes are circuitous modes of reaching the revenue of individuals, who generally live according to their income. In many caſes of this nature the individual may be ſaid to tax himſelf. I ſhall cloſe the diſcourſe with reading a paſſage or two from *Smith's Wealth of Nations.*

" The impoſſibility of taxing people in proportion to their " revenue, by any capitation, ſeems to have given occaſion to " the invention of taxes upon conſumable commodities; the " ſtate not knowing how to tax directly and proportionably the " revenue of its ſubjects, endeavours to tax it indirectly by tax- " ing their expence, which it is ſuppoſed in moſt caſes will be " nearly in proportion to their revenue. Their expence is tax- " ed by taxing the conſumable commoditities upon which it is " laid out. 3 *Vol. page* 331.

" Conſumable commodities, whether neceſſaries or luxuries, " may be taxed in two different ways; the conſumer may either " pay an annual ſum on account of his uſing or conſuming " goods of a certain kind, or the goods may be taxed while " they remain in the hands of the dealer, and before they are " delivered to the conſumer. The conſumable goods, which

" laſt

" laſt a conſiderable time before they are conſumed altogether, 1796.
" are moſt properly taxed in the one way; thoſe of which the
" conſumption is immediate, or more ſpeedy, in the other: the
" coach tax and plate tax are examples of the former method of
" impoſing; the greater part of the other duties of exciſe and
" cuſtoms of the latter." 3 *Vol. page* 341.

I am, therefore, of opinion, that the judgment rendered in the Circuit Court of *Virginia* ought to be affirmed.

IREDELL. *Juſtice.*—I agree in opinion with my brothers, who have already expreſſed theirs, that the tax in queſtion, is agreeable to the Conſtitution; and the reaſons which have ſatisfied me, can be delivered in a very few words, ſince I think the Conſtitution itſelf affords a clear guide to decide the controverſy.

The Congreſs poſſeſs the power of taxing all *taxable objects*, without limitation, with the particular exception of a duty on exports.

There are two reſtrictions only on the exerciſe of this authority:

1. All *direct* taxes muſt be apportioned.

2. All duties, impoſts, and exciſes muſt be uniform.

If the carriage tax be a direct tax, within the meaning of the Conſtitution, it muſt be *apportioned.*

If it be a duty, impoſt, or exciſe, within the meaning of the Conſtitution, it muſt be *uniform.*

If it can be conſidered as a tax, neither direct within the meaning of the Conſtitution, nor comprehended within the term *duty*, *impoſt* or *exciſe*; there is no proviſion in the Conſtitution, one way or another, and then it muſt be left to ſuch an operation of the power, as if the authority to lay taxes had been given generally in all inſtances, without ſaying whether they ſhould be apportioned or uniform; and in that caſe, I ſhould preſume, the tax ought to be uniform; becauſe the preſent Conſtitution was particularly intended to affect individuals, and not ſtates, except in particular caſes ſpecified: And this is the leading diſtinction between the articles of Confederation and the preſent Conſtitution.

As all direct taxes muſt be *apportioned*, it is evident that the Conſtitution contemplated none as direct but ſuch *as could be apportioned.*

If this cannot be *apportioned*, it is, therefore, not a *direct* tax in the ſenſe of the Conſtitution.

That this tax cannot be apportioned is evident. Suppoſe 10 dollars contemplated as a tax on each chariot, or poſt chaiſe, in the *United States*, and the number of both in all the *United States* be computed at 105, the number of Repreſentatives in Congreſs.

Dolls.

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Dolls. Cts.

This would produce in the whole - - - 1050
The ſhare of *Virginia* being 19-105 parts, would be - - - *Dollars* 190
The ſhare of *Connecticut* being 7-105 parts, would be - - - 70
Then ſuppoſe *Virginia* had 50 carriages, *Connecticut* - - 2.
The ſhare of *Virginia* being 190 dollars, this muſt of courſe be collected from the owners of carriages, and there would therefore be collected from each carriage - - - 3 80
The ſhare of *Connecticut* being 70 dollars, each carriage would pay - - - 35

If any ſtate had no carriages, there could be no apportionment at all. This mode is too manifeſtly abſurd to be ſupported, and has not even been attempted in debate.

But two expedients have been propoſed of a very extraordinary nature, to evade the difficulty.

1. To raiſe the money a tax on carriages would produce, not by laying a tax on each carriage uniformly, but by ſelecting different articles in different ſtates, ſo that the amount paid in each ſtate may be equal to the ſum due upon a principle of apportionment. One ſtate might pay by a tax on carriages, another by a tax on ſlaves, &c.

I ſhould have thought this merely an exerciſe of ingenuity, if it had not been preſſed with ſome earneſtneſs; and as this was done by gentlemen of high reſpectability in their profeſſion, it deſerves a ſerious anſwer, though it is very difficult to give ſuch a one.

1. This is not an apportionment, of a tax on *Carriages*, but of the money a tax on carriages might be ſuppoſed to produce, which is quite a different thing.

2. It admits that Congreſs cannot lay an uniform tax on all carriages in the Union, in any mode, but that they may on carriages in one or more ſtates. They may therefore lay a tax on carriages in 14 ſtates, but not in the 15th.

3. If Congreſs, according to this new decree, may ſelect carriages as a proper object, in one or more ſtates, but omit them in others, I preſume they may omit them in all and ſelect other articles.

Dolls. Cts.

Suppoſe, then, a tax on carriages would produce 100,000
And a tax on horſes a like ſum - - 100,000

and a hundred thouſand dollars were to be apportioned according to that mode. Gentlemen might amuſe themſelves with calling this a tax on *carriages*, or a tax on *horſes*, while not a

ſingle

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ſingle carriage, nor a ſingle horſe, was taxed throughout the Union.

4. Such an arbitrary method of taxing different ſtates differently, is a ſuggeſtion altogether new, and would lead, if practiſed, to ſuch dangerous conſequences, that it will require very powerful arguments to ſhew, that that method of taxing would be in any manner compatible with the Conſtitution, with which at preſent I deem it utterly irreconcilable, it being altogether deſtructive of the notion of a common intereſt, upon which the very principles of the Conſtitution are founded, ſo far as the condition of the *United States* will admit.

The ſecond expedient propoſed, was, that of taxing carriages, among other things, in a general aſſeſſment. This amounts to ſaying, that Congreſs may lay a tax on carriages, but that they may not do it unleſs they blend it with other ſubjects of taxation. For this, no reaſon or authority has been given, and in addition to other ſuggeſtions offered by the Counſel on that ſide, affords an irrefragable proof, that when poſitions plainly ſo untenable, are offered to counteract the principle contended for by the oppoſite counſel, the principle itſelf is a right one; for, no one can doubt, that if better reaſons could have been offered, they would not have eſcaped the ſagacity and learning of the gentlemen who offered them.

There is no neceſſity, or propriety, in determining what is or is not, a direct, or indirect, tax in all caſes.

Some difficulties may occur which we do not at preſent foreſee. Perhaps a direct tax in the ſenſe of the Conſtitution, can mean nothing but a tax on ſomething inſeparably annexed to the ſoil: Something capable of apportionment under all ſuch circumſtances.

A land or a poll tax may be conſidered of this deſcription.

The latter is to be conſidered ſo particularly, under the preſent Conſtitution, on account of the ſlaves in the ſouthern ſtates, who give a *ratio* in the repreſentation in the proportion of 3 to 5.

Either of theſe is capable of apportionment.

In regard to other articles, there may poſſibly be conſiderable doubt.

It is ſufficient, on the preſent occaſion, for the court to be ſatisfied, that this is not a direct tax contemplated by the Conſtitution, in order to affirm the preſent judgment; ſince, if it cannot be apportioned, it muſt neceſſarily be uniform.

I am clearly of opinion, this is not a direct tax in the ſenſe of the Conſtitution, and, therefore, that the judgment ought to be affirmed.

WILSON, *Juſtice*. As there were only four Judges, including myſelf, who attended the argument of this cauſe, I ſhould

1796. ſhould have thought it proper to join in the deciſion, though I had before expreſſed a judicial opinion on the ſubject, in the Circuit Court of *Virginia*, did not the unanimity of the other three Judges, relieve me from the neceſſity. I ſhall now, however, only add, that my ſentiments, in favor of the conſtitutionality of the tax in queſtion, have not been changed.

CUSHING, *Juſtice*. As I have been prevented, by indiſpoſition, from attending to the argument, it would be improper to give an opinion on the merits of the cauſe.

BY THE COURT. Let the judgment of the Circuit Court be affirmed.

HILLS *et al* Plaintiffs in Error; *verſus* ROSS.

THIS was a writ of error directed to the Circuit Court for the Diſtrict of *Georgia*. On the return of the record, ſeveral errors were aſſigned; but the only one, now relied on, ſtated "that the facts on which the Circuit Court had founded their decree, did not appear fully upon the record, either from the pleadings and decree itſelf, or a ſtate of the caſe agreed to by the parties, or their council, or by a ſtating of the caſe by the court," as required by the 19th ſection of the judiciary act.

On examining this record, it was found, that no ſtatement of facts had been made either by the court or the parties, nor did it appear from the pleadings and decree, upon what facts the decree of the Circuit Court had been founded. But it appeared, that a number of witneſſes had been produced and ſworn, (the record did not ſay *examined*) at the hearing before the Circuit Court, whoſe teſtimony had not been committed to writing; while, on the other hand, the depoſitions of the witneſſes who had been examined before the *Diſtrict Court*, were annexed to the proceedings returned. It was acknowledged by the council for the Defendants in error, that the teſtimony of the witneſſes produced in the Circuit Court, had been taken *viva voce*, according to the 30th ſection of the judiciary act, and that their depoſitions had not been committed to writing. It was conceded by the council on both ſides, that without other aids than ſuch as were to be derived from this imperfect record,