APPENDIX.

In *United States* v. *Erie Railway Company*, error to the Circuit Court of the United States for the Southern District of New York, *ante*, p. 327, Mr. Justice Bradley, with whom Mr. Justice Harlan concurred, delivered the following opinion: —

I concur in the judgment of the court in this case, but not for the reasons given in *Railroad Company* v. *Collector*, 100 U. S. 595. I concurred in the judgment in that case, as in this, on grounds essentially different from those given by the court. I always regarded the tax which, by the one hundred and twenty-second section of the Internal Revenue Act of 1864, was laid upon the interest payable on the bonds and upon the dividends declared on the stock, of railroad and other corporations, as a tax on the incomes *pro tanto* of the holders of such bonds and stock. *Stockdale* v. *Insurance Companies*, 20 Wall. 323, 333; *Railroad Company* v. *Rose*, 95 U. S. 78. The interest payable on bonds was not a tax upon the companies in respect of a debt owed by them, nor upon the property represented thereby. The property obtained by the proceeds of the loans represented by the bonds was taxable (if not taxed) in another form, and consisted of the railroad tracks or canal, and other specific property of the companies respectively. If taxed directly, it was indirectly by means of the duty of two and a half per cent which was laid on their gross earnings. The tax laid upon their bonds was intended to affect the owners of them; and whilst the companies were directed to pay it, they were authorized to retain the amount from the instalments due to the bondholders, whether citizens or aliens. The objection that Congress had no power to tax non-resident aliens is met by the fact that the tax was not assessed against them personally, but against the *rem*, the credit, the debt due *to* them. Congress has the right to tax all property within the jurisdiction of the United States, with certain

exceptions not necessary to be noted. In this case, the money due to non-resident bondholders was in the United States, — in the hands of the company, — before it could be transmitted to London, or other place where the bondholders resided. Whilst here it was liable to taxation. Congress, by the internal revenue law, by way of tax, stopped a part of the money before its transmission, namely, five per cent of it. Plausible grounds for levying such a tax might be assigned. It might be said that the creditor is protected by our laws in the enjoyment of the debt; that the whole machinery of our courts and the physical power of the government are placed at his disposal for its security and collection.

Whether taxation thus imposed would be respected by foreign governments if the creditor could bring before their courts the debtor company or its property, does not concern us in considering the question now presented. There is nothing in the Constitution which authorizes this court, or any other court, to disaffirm the power of Congress to lay the tax. Congress is its own judge of the propriety or expediency of laying it.

Indeed, so far as the power of Congress is concerned, regarded in reference to any power the courts have to limit or restrain it, I see no reason why Congress may not lay a tax upon any property on which the government can lay its hands, whether within or without the jurisdiction of the United States. If, in imitation of the dues levied by Denmark upon vessels passing through the Cattegat Sound, Congress should levy a duty upon all vessels passing through the Strait of Florida, I do not know of any power which the courts possess to prevent it. It might create complications with foreign governments, it is true, and involve the country in war; but Congress has the power, if it chooses to take the responsibility, of creating, or giving occasion to such complications. The responsibility rests upon it alone.

So if, in taxing money due from citizens of the United States to foreign citizens, any complications arise with the governments to which the latter are subject, Congress alone has the responsibility, and is the only department of our government which has a right to take such a responsibility. In *State Tax on Foreign-held Bonds*, 15 Wall. 300, the State legislature had laid a tax on the interest payable upon the bonds of all corporations doing business in the State; and authorized the companies to retain the amount out of the interest payable to the bondholders without regard to their residence or nationality. I concurred in the judgment rendered in that case on the ground that the State, in passing such a law, appli-

cable to pre-existing contracts, exceeded its just powers under our form of government, and that the law, in its effect upon non-resident bondholders, impaired the obligation of the contract.

Considering, therefore, that if Congress chooses to take the responsibility of levying such a tax as the one in question, the courts have no power to control its action, or to give any relief to parties affected by it, I concur in the judgment of reversal.

NOTE.

As this work was ready for the press several months after the decision in *The North Star*, *ante*, p. 17, was pronounced, 7 Appeal Cases was received in this country. It appears that in *Soomvaart Mattschappy Nederland* v. *Peninsular and Oriental Steam Navigation Company*, reported in that volume, p. 795, the House of Lords overruled *Chapman* v. *Royal Netherlands Steam Navigation Company*, taking the same view as that contained in the opinion in *The North Star*.