

## \* 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, v. THE UNITED STATES.

*Direct taxes.*

A tax on carriages is not a direct tax, such as is required by the constitution to be laid according to the census.

An annual tax on carriages may be considered as within the powers granted to congress to lay duties. CHASE, J.

"I am inclined to think, that the direct taxes contemplated by the constitution, are only two, to wit, a capitation or poll tax, and a tax on land." CHASE, J.

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. PATERSON and IREDELL, JJ.<sup>1</sup>

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 (1 U. S. Stat. 373), 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, waiving 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 one hundred and twenty-five 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 \*172] for the conveyance of persons for \*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, alleging that the said law was unconstitutional and void. If the court adjudged the defend-

<sup>1</sup> This question was finally put at rest by the case of Springer *v.* United States, 102 U. S. 586, where it was formally decided, Judge SWAYNE delivering the opinion of the court, that direct taxes, within the meaning of the constitution, are only capitation taxes, as expressed in that instrument, and taxes on real estate. And accordingly, it has been held, that an income tax is not a direct tax within the meaning of the constitution. Pacific Ins. Co. *v.* Soule, 7 Wall.

433; Springer *v.* United States *ut supra*. Nor a succession tax: Scholey *v.* Rew, 23 Wall. 331. Nor a tax upon the circulation of the state banks: Veazie Bank *v.* Fenno, 8 Ibid. 533. And of the same opinion are all the text-writers on constitutional law. Rawle 30; Sergeant 305; Kent, vol. 1, p. 257; Pomeroy 157; Cooley, Taxation, p. 5, note 2; 1 Sharswood's Blackstone 308 n.