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Statement of the case.

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Mr. Justice MILLER, dissenting.

I believe the judgment of the court below was right, because I understand the original contract to have been an agreement to pay in English guineas, as a commodity, and their value was, therefore, properly computed in the legal tender notes which by law would satisfy the judgment.

I cannot agree to the opinion, for the reasons given in my dissent in the case of *Bronson v. Rodes*.

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RAILROAD COMPANY v. JACKSON.

1. A State has no power to tax the interest of bonds (secured in this case by mortgage) given by a railroad corporation, and binding every part of the road, when the road lies partially in another State;—one road incorporated by the two States.
2. The Internal Revenue Act of June 30th, 1864, does not lay a tax on the income of a non-resident alien, arising from bonds held by him of a railroad company incorporated by States of the Union, and situated in them.

ERROR to the Circuit Court for the District of Maryland.

The State of Pennsylvania, by certain acts, as expounded by the Supreme Court of that State,\* taxed "money owing by solvent debtors, whether by promissory note, penal or single bill, bond or judgment," imposing three mills on the dollar of the principal, payable out of the interest. And where the money was due by a railroad corporation, they made it the duty of the president, or other officer of the company who paid the coupons or interest to the holder, to retain the amount of the tax.

The United States, also, by certain acts, laid what is known as the income tax.

The first tax of this kind was imposed by the act of Congress passed August 5th, 1861.† The 49th section of that act directed that there should be levied and collected upon

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\* *Maltby v. Railroad Company*, 52 Pennsylvania State, 140.

† 12 Stat. at Large, 309.

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the annual income of *every person residing in the United States*, from whatever source derived, a tax of 3 per cent. on the amount of the excess of such income over \$800; and upon the income, rents, or dividends, accruing upon property, &c., owned in the United States by any *citizen* residing abroad, a tax of 5 per cent.

The next act was passed July 1st, 1862,\* and the 90th section of it directed that there should be levied and collected a tax of 3 per cent. on the annual income of *every person residing in the United States*, over \$600 and under \$10,000; and when exceeding \$10,000, a tax of 5 per cent.; and upon the income of citizens residing abroad, a tax of 5 per cent. The next section provided that the portion of income derived from interest on bonds, or other evidences of indebtedness of any railroad company, which should have been assessed and paid by said companies, should be deducted from that prescribed in the previous section; and the 81st section directed that this tax on the bonds and evidences of indebtedness should be paid by the companies, and that they might deduct the same on the payment of interest to the bondholders.

The next act—one more particularly bearing on one part of this case—was that of June 30th, 1864.† This act directed the levy and collection of a tax of 5 per cent. upon the excess of income of *every person residing in the United States*, or of any *citizen* residing abroad, over \$600 and under \$5000; 7½ per cent. over \$5000 and not exceeding \$10,000; and a tax of 10 per cent. over \$10,000. Subsequent sections‡ provided for the deduction from all payments on account of interest arising out of bonds of railroad companies, as in the act of July 1st, 1862, and enacted that the payment by the company of the said duty so deducted from the interest, should discharge the company from that amount of interest on the bonds “so held by any person or persons whatever,” except where the companies might have contracted otherwise.

\* 12 Stat. at Large, 473.

† 13 Ib. 281, § 116.

‡ §§ 117, 122.

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In this state of the statutes of Pennsylvania and of the United States, Jackson, an alien resident in Ireland, brought suit, in the court below, against the Northern Central Railway Company, a company incorporated by the State of Maryland, to recover the amount of certain coupons attached to bonds issued by the company and held by him. The form of them was as follows :

"The Northern Central Railway Company will pay to the bearer, January 1, 1865, thirty dollars, being a half year's interest on bond No. 1827, for one thousand dollars.

"J. S. LIEB, *Treasurer.*"

The plaintiff proved a demand of payment, at the company's office in Baltimore (where the coupons were payable), and that the company offered to pay the amount of them, deducting a tax of 5 per cent. per annum to the United States, under the acts of Congress; and a further tax of three mills per dollar of the principal of each bond asserted to be due to the State of Pennsylvania, but would not pay more. Offer of such payment was refused. He also gave in evidence charters incorporating the Northern Central Railway Company by the State of Maryland, and by that of Pennsylvania, and rested.

The defendant then gave in evidence the articles of consolidation of four railroad companies, one of which had been incorporated by the State of Maryland, and the three others by the State of Pennsylvania, embracing a line of road extending from Baltimore, in Maryland, to Sunbury, in Pennsylvania, about a third or fourth of the whole road only being in the former State.

This consolidation was entered into by the respective companies in pursuance of acts of the legislatures of the two States; and by means of them the four companies were merged in one, called the Northern Central Railway Company, and was incorporated by the same name by the legislature of each State. The stockholders of the old companies received from the new twice the number of shares held by them in the old, upon the receipt of which the old shares



## Argument in support of the tax.

were cancelled, after this company was thus organized and the directors elected. On the 20th of December, 1855, the company executed a mortgage to a board of trustees upon the entire line of its road from Baltimore to Sunbury, including all its property and estate situate within *both* the States, which mortgage was given to secure the payment of \$2,500,000 in bonds, to be issued in amounts therein specified. The bonds were issued by the company accordingly. And it was upon the coupons of a portion of them in the hands of the plaintiff that this suit was brought.

The court below charged, that if the plaintiff, when he purchased the bonds, was a British subject resident in Ireland, and now resided there, he was entitled to recover the amount of the coupons without deductions. It was the correctness of this charge which, after verdict and judgment in accordance with it, was the subject of the question here.

*Mr. Bernard Carter, for the railroad company, appellant*, contended, that the State of Pennsylvania, as well as the United States, had a right to impose the taxes, and the fact that Jackson was a British subject and resident abroad was unimportant.\*

That the taxes in question were not taxes on the person of Jackson, but on his property, which in this case was the debt due to him, as evidenced by the company's bonds. The real or personal property of a non-resident alien, would confessedly be a proper subject for taxation, at the place where it is located, because of the protection and other benefits conferred upon it by the taxing power. Now the alien in this case was the holder of bonds the payment of which was wholly and solely secured to him by property situated here, and while this government extended its protection and its laws over the property, out of which those bonds were to be paid, there was no reason why it should not, for such protection and to the extent of his interest in the property so

\* *McCulloch v. State of Maryland*, 4 Wheaton, 429; *Providence Bank v. Billings*, 4 Peters, 561; *Milne v. Moreton*, 12 Wheaton, 358; *Harrison v. Sterry*, 5 Cranch, 289.

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protected and benefited, demand of the plaintiff (although an alien, and as such excepted from the *general* income duty imposed by the one section of the act of 1864), an equivalent in the shape of the tax imposed by the subsequent sections. The debt, for the purposes of taxation, had its location here.\*

*Messrs. W. A. Fisher and G. H. Williams, contra*, contended, that the statute of Pennsylvania, rightly construed, did not tax interest; and that even if it did, that State had no right to tax the coupons on bonds where both debtor and creditor were outside her territory, and neither of them her subjects. Such an attempt would be *ultra vires*.

So, by the true construction of the internal revenue act of Congress of June 30th, 1864, that it was not intended to tax incomes, except of *citizens* of the United States *wherever resident*, and of *residents*, whether citizens or not; that here, too, even if Congress had made an attempt to tax the incomes of foreigners resident in their own countries, it would have been "*ultra vires*."† A corporation in the United States, when it borrows money from a foreigner abroad, creates a debt, whose locality is always the locality of the creditor; and to tax it, or the annual interest due on it, is to tax him, resident abroad and not a subject of the taxing power, for that which, in contemplation of law, is also outside the country.‡ This plainly was illegal.

Mr. Justice NELSON delivered the opinion of the court.

It has been argued for the plaintiff, that the acts of the legislature of Pennsylvania, when properly interpreted, do not embrace the bonds or coupons in question; but it is not important to examine the subject; for, it is not to be denied, as the courts of the State have expounded these laws, that they authorize the deduction, and, if no other objection ex-

\* *Gordon v. Appeal Tax Court*, 3 Howard, 133, 140, 150; *Appeal Tax Cases*, 12 Gill & Johnson, 117.

† *McCulloch v. State of Maryland*, 4 Wheaton, 429; *Union Bank v. The State*, 9 Yerger, 501.

‡ *The Apollon*, 9 Wheaton, 370.

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isted against the tax, the defence would fail. If this was an open question we should have concurred with the interpretation of the court below, which concurred with the views of the plaintiff's counsel. Nor shall we inquire into the competency of the legislature of Pennsylvania to impose this tax, upon general principles, as we shall place the objection upon other and distinct grounds, though we must say, that the tax upon the promissory note or bond, given by the resident debtor, and the withholding of the amount from the interest due to the non-resident holder, would seem to be a tax upon such non-resident. It is not a tax of the money lent, because that belongs to the resident debtor, for which he is taxable; it is a tax on the security, the bond, which is in the hands of the non-resident holder.

The ground upon which we place the objection in this case, to the tax is, in brief, that the bonds, amounting to \$2,500,000, of which those in question are a part, were issued by this company upon the credit of the line of road, its franchises and fixtures, extending from Baltimore to Sunbury, a given portion of which line lies within the jurisdiction of the State of Maryland. The old company, to which this line belonged, by the act of consolidation, transferred it, with its fixtures and all other interests connected therewith, including their stock, to the new organization which have issued these bonds. The security therefore pledged and bound for the payment of them and of the interest embraces this Maryland portion of the road; and in case of a failure to pay the principal or interest, this portion with its franchises and fixtures would be liable to sale in satisfaction of the bonds and interest.

Now, it is apparent, if the State of Pennsylvania is at liberty to tax these bonds, that, to the extent of this Maryland portion of the road, she is taxing property and interests beyond her jurisdiction. This portion avails her tax-roll as effectually as if it was situate within her own limits. The Maryland portion is not liable for the payment of any specified part, or quantity of these bonds thus taxed, but is liable, with all its interests, for the whole amount, the same as that



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portion of the road within the State of Pennsylvania. The bonds were an issue, in the usual way, by this Northern Central Railway Company, and the security given by mortgage on the entire line of the road. No portion of the bonds belong to one part more than to another. No severance was made of the bonds, and, therefore, none can be made, in the taxation, with reference to the line within the respective jurisdictions of the States. If the tax is permitted as it respects one bond, it must be as it respects all.

Again, if Pennsylvania can tax these bonds, upon the same principle, Maryland can tax them. This is too apparent to require argument. The only difference in the two cases is, that the line of road is longer within the limits of the former than within the latter. Her tax would be a more marked one beyond the jurisdiction of the State, as the property and interest outside of its limits would be larger.

The consequence of this tax of three mills on the dollar, if permitted, would be double taxation of the bondholder. Each State could tax the entire issue of bonds, amounting, as we have seen, to \$2,500,000.

The effect of this taxation upon the bondholder is readily seen. A tax of three mills per dollar of the principal, at an interest of six per centum, payable semi-annually, is ten per centum per annum of the interest. A tax, therefore, by each State, at this rate, amounts to an annual deduction from the coupons of twenty per centum; and if this consolidation of the line of road had extended into New York or Ohio, or into both, the deduction would have been thirty or forty. If Pennsylvania must tax bonds of this description, she must confine it to bonds issued exclusively by her own corporations.

Our conclusion on this branch of the case is, that to permit the deduction of the tax from the coupons in question, would be giving effect to the acts of the legislature of Pennsylvania upon property and interests lying beyond her jurisdiction.

The next question is, whether or not the coupons were

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Opinion of Clifford and Swayne, JJ., dissenting.

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subject to a tax of five per centum per annum to the United States on the 1st of July, 1865, when they became due?

The act in force when the coupons in question fell due, was the act of June 30, 1864,\* and is the one by which the tax of five per centum claimed on the bonds of the plaintiff must be determined. The court below held that the act did not include a non-resident alien, and directed a verdict and judgment for the whole amount of interest. The decision was placed mainly on the ground that, looking at the several provisions bearing upon the question, and giving to them a reasonable construction, it was believed not to be the intent of Congress to impose an income tax on non-resident aliens; that they were not only not included in the description of persons upon whom the tax was imposed, but were impliedly excluded by confining it to residents of the United States and citizens residing abroad, and that the deduction from the prescribed income of the interest on these railroad bonds, when paid by the companies, was regarded as simply a mode of collecting this part of the income tax. We concur in this view. It is not important, however, to pursue the argument, as Congress has since, in express terms, by the acts of March 10th, and July 13th, 1866, imposed a tax on alien non-resident bondholders. The question hereafter will be, not whether the laws embrace the alien non-resident holder, but whether it is competent for Congress to impose it; upon which we express no opinion.

JUDGMENT AFFIRMED.

Mr. Justice CLIFFORD (with whom concurred Mr. Justice SWAYNE), dissenting:

I dissent from the opinion and judgment of the court in this case, because I think the taxes in question, both State and Federal, were legally assessed, and that the officers of the railway company properly deducted the same from the amount of the coupons described in the declaration.

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\* See *supra*, 263.