

---

Statement of the case.

---

State to State, or upon the transporter because of such transportation.

But while holding this, we recognize fully the power of each State to tax at its discretion its own internal commerce, and the franchises, property, or business of its own corporations, so that interstate intercourse, trade, or commerce, be not embarrassed or restricted. That must remain free.

The conclusion of the whole is that, in our opinion, the act of the legislature of Pennsylvania of August 25th, 1864, so far as it applies to articles carried through the State, or articles taken up in the State and carried out of it, or articles taken up without the State and brought into it, is unconstitutional and void.

JUDGMENT REVERSED, and the record is remitted for further proceedings

IN ACCORDANCE WITH THIS OPINION.

Mr. Justice SWAYNE (with whom concurred Mr. Justice DAVIS), dissenting.

I dissent from the opinion just read. In my judgment, the tax is imposed upon *the business* of those required to pay it. The tonnage is only the mode of ascertaining the extent of the business. That no discrimination is made between freight carried wholly within the State, and that brought into or carried through or out of it, sets this, as I think, in a clear light, and is conclusive on the subject.

---

NOTE.

At the same time with the preceding case was adjudged another, that of

ERIE RAILWAY COMPANY v. PENNSYLVANIA.

A case, like the preceding one, in error to the Supreme Court of Pennsylvania. The plaintiff in error, in the present case, was a corporation created by the State of New York, which by acts

---

Opinion of the court.

---

of the Pennsylvania legislature of February 16th, 1841, and March 26th, 1846, was authorized to construct its railroad through a portion of Pennsylvania, paying for the privilege the annual sum of \$10,000, and being subjected to taxation on so much of its stock as equalled the cost of construction of that part of its road situate in Pennsylvania, in the same manner and at the same rate as other similar property was, or might be, subject.

Under an act of Assembly of the State, of August 25th, 1864, a tax was levied upon freight carried upon that portion of the road situate in Pennsylvania, either taken up within the State and carried out, or received by the company in another State for the sole purpose of being brought within it, and actually so brought. The question now was, whether that act, so far as it taxed such freight, was constitutional. The Supreme Court of Pennsylvania had held that it was. The case being brought here, was elaborately and ably argued by *Messrs. W. W. McFarland and J. W. Simonton, for the plaintiff in error; and by Mr. Wayne McVeigh, contra, for the Commonwealth of Pennsylvania.* Of necessity the arguments were to some extent similar to those meant to be reported in the preceding case; but on both sides they were presented with fresh aspects, and with varied illustrations.

Mr. Justice STRONG gave the judgment of the court.

He stated briefly that the question presented in the case was the same which the court had considered and answered in the preceding one; and that for the reasons given in the opinion of the court there, the act, so far as it taxed the sort of freight above mentioned, was to be held unconstitutional. As in the preceding case, therefore, the judgment of the Supreme Court of Pennsylvania was reversed, and the record remitted for further proceedings in conformity with the opinion of this court.