

Statement of the case.

Under all the circumstances, without deciding that there is any particular day to which by the laws of Nebraska the liability for taxation of real estate must always be referred, or if there be, what that day is, we affirm the decree of the Circuit Court dismissing the bill in this case.

DECREE AFFIRMED.

TAYLOR v. THOMAS.

After the late rebellion in the Southern States had broken out into war, and the government had blockaded all the Southern ports so as to prevent the shipment of the staples of the South, including especially cotton, from them, the rebel legislature of Mississippi passed (December 19th, 1861) an act authorizing the issue of \$5,000,000 in what were called cotton notes; negotiable notes in a form suitable for currency, to be issued by the State in sums of \$1, \$2, \$3, \$5, \$10, \$20, and \$100. Owners of cotton were to, in effect, hold it pledged to the government, which thereupon gave them an advance on it in these notes; it being agreed on both sides that after the removal of the blockade, and on a proclamation made to that effect, the cotton should be delivered by the owners, at some seaport or city to be named, and sold; the proceeds of sale to be paid into the treasury of the State, and if sufficient, to be applied to redeeming the notes; and if insufficient the owner of the cotton was to make the *deficit* good to the State.

The notes were made, by the act, receivable in payment of all taxes due or to become due to the State, or to any county, or school fund, or municipal corporation, except a military tax then laid and confessedly in aid of the rebellion; and when received for taxes might be again paid out by the State treasurer upon any warrant of the auditor drawn upon the general treasury.

Held, that notwithstanding the exception as to the "military tax," the notes were to be regarded as issued in aid of the rebellion and were therefore void. And that on the rebellion being suppressed the notes— notwithstanding the provision in the original act about their receivability for taxes—were not receivable in payment of taxes which the re-organized State government directed to be paid in currency of the United States.

In error to the Supreme Court of Mississippi.

This case involved the question of the validity of certain notes, commonly known as "cotton money," issued and put

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in circulation by the State of Mississippi as currency during the late rebellion, and also the obligation of the State to receive the same in payment of taxes after the rebellion, and after the reorganization of the State government.

The case was thus:

Mississippi, through a convention convened by the action of the legislature, passed, on the 9th of January, 1861, an ordinance of secession, by which it was ordained "that all the laws and ordinances by which the State became a member of the Federal Union were repealed, and that all obligations on the part of the said State, or the people thereof, were withdrawn, and that the State now resumed all the rights, functions, and powers which by any of the said laws and ordinances were conveyed to the government of the said United States, and was absolved from all the obligations, restraints, and duties incurred to the said Union, and should be henceforth a free, sovereign, and independent State."

And in March of the same year, persons from different rebel States having met at Montgomery, Alabama, and made what they called a constitution for the permanent Federal government of the Confederate States of America, an additional ordinance was passed by the convention in Mississippi, ordaining that said constitution was adopted and ratified by the State of Mississippi, acting in its sovereign and its independent character; and that the State acceded to and became a member of the Confederacy provided for by the same.

Immediately after this the constitution of the State was so amended as to abrogate all provisions adapting it to the Constitution of the United States, and so changing it as to conform it to the connection between the State and the Southern Confederacy.

This was followed by measures taxing all the resources of the States in various forms to provide the means to sustain the Confederacy in its separation from the United States.

In the spring of 1861, the insurrection having broken out into war throughout the Southern States, military and naval

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measures became necessary to suppress it, and the government of the United States instituted a blockade of all the Southern ports, so that no staple of the States in rebellion could find a market.

On the 19th December, 1861, under such circumstances and in the condition of affairs just described, the insurrectionary government of the State passed an act entitled "*An act authorizing the issue of treasury notes as advances upon cotton.*"

The act provided for the issue of \$5,000,000, in notes of the denomination of \$1, \$2, \$3, \$5, \$10, \$20, and \$100, to be paid out of the State treasury as advances to the people of the State on the crop of cotton grown in the State in the year 1861, at the rate of 5 cents per pound. The notes were to be in the following form :

Receivable in payment of all dues to the State and counties, except the military tax.	On demand, after proclamation to present, the State of Mississippi will pay to the bearer the sum of _____ dollar(s) out of proceeds of cotton pledged for the redemption of this note, at the Treasurer's office, in Jackson, Mississippi.
	Issued _____ day of _____, 186 .
	_____, <i>Auditor of Public Accounts.</i>
	_____, <i>Treasurer.</i>

On the petition of parties owning cotton and having it in their actual possession or control, and on their executing a bond with approved securities in double the amount of the advance conditioned for the delivery of the cotton, &c., the auditor was required to advance these notes to the amount and at the rate per pound above stated. The owner of the cotton was to keep it safely until after the removal of the then existing blockade of the Confederate ports, when, on the proclamation of the governor demanding it, the cotton was to be delivered at some city or seaport in the Confederate States within ninety days, and sold either for gold and silver or for these cotton notes, and the funds so received

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for the cotton were pledged for the redemption of the notes, and were not to be appropriated to any other purpose whatever; and such of the cotton notes as might be received in payment for the cotton were to be cancelled and destroyed. If the proceeds of the sale were not sufficient to discharge the advance in gold or silver, or in treasury notes, then the owner was to pay the amount requisite to make up the deficit. All funds received by the governor, whether in payment of the advances or for the proceeds of sales of the cotton, or for deficits, or recovered in suits on the bonds, were to be deposited with the State treasurer and placed in the State treasury. And the treasury notes issued under the act were to be receivable in payment of all taxes due or to become due to the State, or to any county or school fund, or municipal corporation, except a military tax previously levied under "An ordinance (of January 26th, 1861) to raise means for the defence of the State;" and when so received for taxes might be "again paid out upon any warrant of the auditor drawn upon the general treasury," until redeemed and cancelled as above stated. The cotton, until sold, was to be at the risk of the owner receiving the advance; but when sold the proceeds were to be subject to the order of the governor.

The legislature of Mississippi, which passed the law of 1861, had been elected prior to the so-called secession of the State.

In the year 1865—the rebellion being now suppressed and the supremacy of the government re-established—the legislature of Mississippi passed a law laying a tax of \$2 per bale on cotton, and enacting that the collectors of taxes should collect it "in the currency of the United States."

A certain Taylor having fifty bales, the tax on which was of course \$100, the collector of the taxes, one Thomas, demanded of him payment in currency of the United States. Taylor tendered to him the amount in \$100 of the cotton notes, and refused to pay in currency of the United States. Hereupon the collector was about to distrain, when Taylor filed a bill—the present bill—to enjoin him, and to make

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him receive the \$100 "cotton-note" in payment of the tax; he, Taylor, contending that the agreement of the State made in the act authorizing their issue, to receive the cotton bills in payment of taxes, was a "contract" which the State had no power by its subsequent act of 1865 to impair.

The Supreme Court of the State, where the case finally came, adjudged the notes to be void. It said, in substance,

"We regard the act, in its operation and effects, to have been in aid of the late rebellion; a part of the financial system of the State, at a time of great pecuniary want, to supply not only a circulating medium for the people in the transactions of their ordinary business, but also to furnish the means by which an empty treasury of the State might be replenished.

"One section of the act provides that the notes shall be receivable in payment of all taxes now due or that may hereafter become due to the State, or to any county, or school fund, or municipal corporation, except the military tax; and that the said notes, when so received for taxes, may again be paid out by the treasurer upon any warrant of the auditor, drawn upon the general treasury. It will be thus seen that the notes were intended to supply an important part of the revenue by which the State government was to be sustained and enabled more effectually to aid the Confederate government in the prosecution of a sanguinary war, waged expressly for the purpose of subverting the government of the United States. The notes are therefore illegal and void."

Taylor now brought the case here on error.

Messrs. F. P. Stanton and H. S. Foote, for the plaintiff in error:

I. *The character of the act of 1861, authorizing the issue of the treasury notes, does not warrant the conclusion reached by the Supreme Court of Mississippi, that it was passed in aid of the rebellion.*

The act was one of ordinary legislation. The shipment and sale of cotton had been effectually prevented by the blockade. The crop of 1861 was on hand, wholly unavailable, although in ordinary times the cotton raised in the

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State was the chief, if not the only resource of the people, to supply a currency and to enable them to make the exchanges necessary to the very existence and support of society. This measure was a local one simply, avoiding all connection with any military operations, and providing only for the internal commerce of the State. The substance of it was to base a currency to the extent of \$5,000,000 on the crop of cotton made in the year 1861, then fully matured and in hand, and to preserve this crop for shipment and sale until the raising of the blockade, which had suddenly arrested the whole trade of the region.

The act distinguishes these cotton-notes from the notes issued under the ordinance of the convention, entitled "An ordinance to raise means for the defence of the State," passed January 26th, 1861. This ordinance of the convention was confessedly passed in furtherance of the rebellion. But the act in question had no connection with it, but was in absolute contrast to it. The cotton notes were no more issued to aid in the war than if the government of Mississippi had procured so much gold and silver coin and advanced it to the people of the State on the pledge of their cotton crop of that year.

II. *The decision made by the Supreme Court of Mississippi has been overruled by subsequent decisions in the same court.*

The ruling in this case was a departure from the law as it had previously been settled in that State in the case of *Hill v. Boyland*,* and other cases decided about the same time. The Supreme Court subsequently re-established the doctrine established in *Hill v. Boyland*, and thus overruled its own decision in the case now brought before this court. This, we think, will appear on reference to the cases of *Mister v. McLean*,† *Buchanan v. Smith et al.*,‡ and *Lawson v. Jeffries*.§

III. *Decisions of this court, also, are inconsistent with the conclusion that the act of 1861 was in aid of the rebellion.*

In the cases of *White v. Hart*,|| *Huntington v. Texas*,¶ and *Horn v. Lockhart*,** this court has settled the principle that

* 40 Mississippi, 619. † 43 Id. 270. ‡ Ib. 97. § 47 Id. 686.
 || 13 Wallace, 165. ¶ 16 Id. 413. ** 17 Id. 580.

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"at no time were the rebellious States out of the pale of the Union;" that "if the government was in actual control of the State, the validity of its *act* must depend on the object and purpose of it;" and "that the acts of the several States, executive, judicial, and legislative, during the war, so far as they did not impair or intend to impair the supremacy of the National authority, or the just rights of citizens under the Constitution, are, in general, to be treated as valid and binding." The decision of the court below in this case was the opposite of these principles.

IV. In view of these decisions, which recognize the validity of acts passed by the insurrectionary States, so far as the acts were acts of ordinary legislation, it is unnecessary to advert to the circumstance, that the Mississippi legislature of 1861 had been elected prior to the secession of the State, and was the legislative power of the State not only *de facto*, but *de jure*, as well.

Messrs. G. F. Edmunds and T. W. Bartley, contra:

I. The legislation, and the acts done in pursuance of it, were in aid of the rebellion.

1. They were meant, palpably meant, to circumvent a state of things produced by the war. The shipment and sale of cotton, the chief staple of the South, and the one by which the rebellion was meant to be carried on, was cut off by the blockade, and this act was passed to enable it to hold out.

2. The notes were receivable in payment of *all* taxes except "the military tax" (whatever that was), and were the general fund for paying the legislators, governors, and State troops.

To say that such a proceeding was a pure one and legal, is to offend common sense.

II. The impression of opposing counsel that the decision of the Supreme Court of Mississippi, in this case, has been overruled by subsequent cases in that court, is inaccurate. The cases cited were not strictly analogous, and turned upon questions essentially different.

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III. The same may be said of the cases cited from this court as having overruled the position taken by the Supreme Court of Mississippi in this case. Those cases do not touch the questions in the present case; a reference to the cases cited will show this.

IV. If the lawfully elected legislature of Mississippi betrayed its trust by passing a law to assist in overthrowing the Constitution and government which it had taken an oath to support and maintain, this cannot help the case of the opposite side. It does but add turpitude and perfidy to illegal legislation.

[In addition to the argument of these points, the counsel on both sides argued the question as to whether the notes under consideration were "bills of credit" within the Constitution, and such as that instrument ordains that "no State shall emit."]

Mr. Justice CLIFFORD delivered the opinion of the court.

Beyond all doubt the finding of the appellate court of the State of Mississippi is correct, and the court here also unanimously concur in the conclusion reached by that court, that the treasury notes authorized to be issued by the act under consideration, inasmuch as they were issued "against the public policy and in violation of the Constitution of the United States, are, therefore, illegal and void."

Three principal propositions are submitted by the appellant to controvert that conclusion, which will be separately considered:

(1.) That the terms of the act authorizing the issue of the treasury notes do not warrant the conclusion reached by the State appellate court, that it was passed in aid of the rebellion.

(2.) That the subsequent decisions of the same court have overruled the decisions of that court in that case.

(3.) That certain decisions of this court are inconsistent with the conclusion that the act in question, when properly

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construed, affords any evidence that it was designed to accomplish any such purpose.

I. Subsequent to the passage of the secession ordinance every branch of the State government—executive, legislative, and judicial—claimed that the State ceased by that act to be one of the States of the Federal Union, and denied in the most solemn forms of proceeding that the people of the State owed any further allegiance to the Federal Constitution or obedience to the laws of the United States. Instead of that the whole people of the State joined with one accord in adopting a new constitution differing widely from the Federal Constitution, and by which, as they claimed, they severed and dissolved all connection with the Federal Union and established a new confederation between the people of that State and the other seceding States.

Such measures and pretensions led immediately to conflict of jurisdiction and presently to open hostilities, which showed that every prospect of compromise was at an end. Military preparations became necessary on both sides, and the several seceding States found it impossible to avoid increased and onerous taxation, and no one of the number felt the pressure in that regard more heavily than the State where these parties reside.

Different expedients were adopted to replenish the empty treasury of the State, of which none perhaps afforded greater promise than the measure embodied in the act providing for the issue of treasury notes, as it had the effect to call forth the product of the great staple of the State from its secret depositories, and to render it available as the basis of an extended paper circulation. Legislative authority to issue such notes was accordingly granted, but the requirement was that the notes, when executed in the prescribed form, should be deposited in the treasury of the State, to be paid out by the auditor as advances to such of the people of the State as should comply with the before-mentioned terms and conditions prescribed in the act authorizing their issue.

Other provisions of the act also afford very strong confirmatory proof that the act was passed in aid of the rebel-

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lion, as, for example, the section which provides that whenever the then present blockade of the ports of the Confederate States should be removed (which was to be determined by the proclamation of the governor declaring the fact) the governor should in the same form require all persons to whom advances had been made, to deliver the cotton specified in their respective receipts within ninety days from the date of the proclamation. Nothing could be received by the governor in lieu of the cotton "but gold and silver or the treasury notes issued under the act," and the express requirement is that all the funds so received by the governor in payment of the advances shall be deposited with the treasurer, and be placed in the treasury of the State.

Attempt is made in argument to show the inference drawn from those provisions, that the act was passed in aid of the rebellion, is repelled by another provision of the same act, which in effect provides that such treasury notes shall not be receivable in payment of the tax levied under a prior law and which is denominated a military tax, but it is a sufficient answer to that suggestion to say that by the terms of the act said notes are made receivable in payment of all taxes then due to the State or counties except the military tax, and that when so received the notes might "again be paid out by the treasurer *upon any warrant of the auditor drawn upon the general treasury.*" Nor is there anything in that exception inconsistent with the theory that the act was passed in aid of the rebellion, as it is highly probable that the legislature supposed that the other provisions of the act were sufficient to insure confidence in the paper emission without making the notes receivable in payment of the military tax.

Suppose that is so, still it is insisted that the conclusion of the State court that the act was passed in aid of the rebellion cannot be supported, because the members of the legislature which passed the act were elected before the ordinance of secession was adopted; but two answers may be made to that proposition, either of which is sufficient to show that it is destitute of merit: (1.) That the act, if passed in aid of the rebellion, would be void even if passed by a

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legislature otherwise innocent of any treasonable act. (2.) That the legislature in question, subsequent to the adoption of the secession ordinance and of the ordinance by which the State acceded to and became a member of the insurrectionary confederacy, ceased to represent the State as a constitutional member of the Federal Union.

Members of the legislature may perpetrate treasonable acts after the legislature is organized as well as before they take their seats, nor is the question affected in the least by the fact that the legislature was duly organized before the State seceded, as the public history of the period shows that the whole government and people of the State joined in the rebellion before the act in question was passed through the forms of legislation.

II. Extended discussion of the second proposition submitted by the appellant will be unnecessary, as the cases referred to in support of the theory that the prior decision of that court upon the subject under consideration is overruled, do not afford the proposition any countenance whatever. They are as follows: *Buchanan v. Smith*,* *Mister v. McLean*,† and *Lawson v. Jeffries*.‡ Neither of these cases support the proposition for which they are cited. On the contrary they decide, in substance and effect, that acts necessary to peace and good order among citizens—such, for example, as laws which sanction and protect marriage and domestic relations, govern the course of descents, regulate the conveyance and transfer of property, provide remedies for injuries to person and estate, and other similar acts which would be valid if emanating from a lawful government—must be regarded as valid when proceeding from an actual, though unlawful, government, but that acts in furtherance and support of rebellion and against the just rights of the citizens must be regarded as invalid, which accords with the rule of decision adopted and promulgated in the prior decision of the same court, and which is all that need be said responsive to that proposition.

* 43 Mississippi, 97.

† Ib. 268.

‡ 47 Id. 686.

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III. Under the circumstances it will not be necessary to add much to what has been remarked responsive to the preceding proposition to refute the third one of the series, as the language of the final proposition decided by the State appellate court is borrowed from the decision in *Texas v. White** of this court upon the same subject.

Certain acts, such as those described by the State appellate court, it is admitted are valid, but the late Chief Justice, as the organ of the court, proceeded to say that acts in furtherance or support of rebellion against the United States, or intended to defeat the just rights of the citizens, and other acts of like nature, must be regarded as invalid and void. Nor is there anything in the case of *White v. Hart*† which is in the slightest degree inconsistent with the rule laid down in the preceding case.

Exactly the same doctrines were laid down in the case of *Huntington v. Texas*,‡ in which the opinion of the court was also given by the late Chief Justice. Bonds for the payment of money to a large amount were issued, before the rebellion, by the United States to the State of Texas, to adjust certain claims made by that State growing out of a dispute as to her boundaries. Part of those bonds were still in the treasury of the State when the rebellion broke out. Texas joined the rebellion, and during that period some of those bonds were used by the ruling power of the State. War ensued, but in the progress of events the rebellion was crushed. Various efforts were subsequently made to reorganize the State as one of the States of the Federal Union, and those efforts were so far successful before the suit in the case last cited was commenced that the Supreme Court decided that the State was competent to sue. She brought that suit to recover part of those bonds. Defences of various kinds were set up by the defendant in the subordinate court. Exceptions were filed by him to the ruling of the court and the case was removed here by writ of error.

In disposing of the case here the court remarked as fol-

* 7 Wallace, 733.

† 13 Id. 650.

‡ 16 Id. 413.

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lows: "Whether the alienation of the bonds by the usurping government divests the title of the State depends, as we have said, upon other circumstances than the quality of the government. If the government was in the actual control of the State the validity of its alienation must depend on *the object and purpose of it*. If that was just in itself and laudable, the alienation was valid, but if the object and purpose were to break up the Union and to overthrow the constitutional government, the alienation was invalid."

Surely such remarks do not serve to support the proposition of the appellant; and he is equally unfortunate in his reference to the case of *Horn v. Lockhart*,* in which the opinion was given by Mr. Justice Field. "Order," say the court in that case, "was to be preserved, police regulations maintained, crime prosecuted, property protected, contracts enforced, marriages celebrated, estates settled, and the transfer and descent of property regulated precisely as in times of peace. No one that we are aware of," say the court, "seriously questions the validity of judicial or legislative acts in the insurrectionary States touching these and kindred subjects *where they were not hostile in their purpose or mode of enforcement to the authority of the national government, and did not impair the rights of citizens under the Constitution*."

Viewed in the light of the qualifying phrase the remarks reproduced accord with the present views of the court, as the qualifying phrase is equivalent to an affirmative decision that judicial and legislative acts *hostile in their purpose or mode of enforcement* to the authority of the national government, or which impaired the rights of citizens under the Constitution, are invalid and void, which in principle is exactly what the State appellate court decided in this case.

DECREE AFFIRMED.

* 17 Wallace, 580.