

Thomas Vs. United States

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Court : US Supreme Court

Decided On : Feb-23-1904

Appeal No. : 192 U.S. 363

Appellant : Thomas

Respondent : United States

Judgement :

Thomas v. United States - 192 U.S. 363 (1904)

U.S. Supreme Court Thomas v. United States, 192 U.S. 363 (1904)

Thomas v. United States

No. 43

Argued December 4, 1903

Decided February 23, 1904

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ERROR TO THE CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

The, words duties, imposts and excises were used comprehensively in the Constitution to cover customs and excise duties imposed on importation, consumption, manufacture, and sale of certain commodities, privileges, particular business transactions, vocations, and the like. The stamp duty on sales of shares of stock in corporations imposed by the War Revenue Act of 1898, 30 Stat. 448, falls within that category, and was not a direct tax.

George C. Thomas was indicted for violation of the internal revenue laws of the United States in that, being a broker in the City of New York, he sold certain shares of Atchison preferred stock and omitted the required revenue stamps from the memorandum of sale. He demurred to the indictment on the ground that the Act of June 13, 1898, 30 Stat. 448, c. 448, which required the stamps to be affixed, was unconstitutional. The demurrer was overruled, the court, Thomas, J., delivering an opinion. 115 F. 207.

Trial was had, defendant found guilty, and judgment rendered, sentencing him to pay a fine of five hundred dollars.

The case was then brought here on writ of error.

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MR. CHIEF JUSTICE FULLER delivered the opinion of the Court.

By the first clause of Section 8 of Article I of the Constitution, Congress is empowered "to lay and collect taxes, duties, imposts, and excises, . . . but all duties, imposts, and excises shall be uniform throughout the United States."

This division of taxation into two classes is recognized throughout the Constitution.

By clause 3 of section 2, representatives and direct taxes are required to be apportioned according to the enumeration prescribed, and by clause 4 of section 9, no capitation or other direct tax can be laid except according to that

enumeration.

By clause 1 of section 9, the migration or importation of persons by the states was not to be prohibited prior to 1808, but a tax or duty could be imposed on such importation, not exceeding \$10 for each person.

By clause 5, it is provided: "No tax or duty shall be laid on any articles exported from any state."

By clause 2 of section 10, no state can, "without the

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consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws." By clause 3, the states are forbidden, without the consent of Congress, to "lay any duty of tonnage."

And these two classes, taxes so called, and "duties, imposts, and excises," apparently embrace all forms of taxation contemplated by the Constitution. As was observed in *Pollock v. Farmers' Loan & Trust Co.*, [157 U. S. 429](#) , [157 U. S. 557](#) :

"Although there have been from time to time intimations that there might be some tax which was not a direct tax nor included under the words 'duties, imposts, and excises,' such a tax for more than one hundred years of national existence has as yet remained undiscovered notwithstanding the stress of particular circumstances has invited thorough investigation into sources of revenue."

The present case involves a stamp tax on a memorandum or contract of sale of a certificate of stock, which plaintiff in error claims was unlawfully exacted because not falling within the class of duties, imposts, and excises, and being, on the contrary, a direct tax on property.

There is no occasion to attempt to confine the words duties, imposts, and excises to the limits of precise definition. We think that they were used comprehensively to

cover customs and excise duties imposed on importation, consumption, manufacture, and sale of certain commodities, privileges, particular business transactions, vocations, occupations, and the like.

Taxes of this sort have been repeatedly sustained by this Court, and distinguished from direct taxes under the Constitution. As in *Hylton v. United States*, 3 Dall. 171, on the use of carriages; in *Nicol v. Ames*, [173 U. S. 509](#), on sales at exchanges or boards of trade; in *Knowlton v. Moore*, [178 U. S. 41](#), on the transmission of property from the dead to the living; in *Treat v. White*, [181 U. S. 264](#), on agreements to sell shares of stock denominated "calls" by New York stockbrokers; in

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Patton v. Brady, [184 U. S. 608](#), on tobacco manufactured for consumption.

Brown v. Maryland, 12 Wheat. 419, and *Fairbank v. United States*, [181 U. S. 283](#), are not in point. In the one, the clause of the Constitution was considered which forbids any state, without the consent of Congress, to "lay any imposts or duties on imports or exports," and in the other, that "no tax or duty shall be laid on articles exported from any state." The distinction between direct and indirect taxes was not involved in either case.

The sale of stocks is a particular business transaction in the exercise of the privilege afforded by the laws in respect to corporations of disposing of property in the form of certificates. The stamp duty is contingent on the happening of the event of sale, and the element of absolute and unavoidable demand is lacking. As such, it falls, as stamp taxes ordinarily do, within the second class of the forms of taxation.

Judgment affirmed.