COMMENT.

A case putting in issue the constitutionality of the income tax has just been decided in the Supreme Court of the District of Columbia — the opinion is by Mr. Justice Hagner, and, as reported in the newspapers, it affirms the validity of the tax.

In view of this decision and of the general interest in the matter to-day, we think it may be convenient to place briefly before our readers a summary of former proceedings in the Supreme Court of the United States, wherein taxes of this character have been under consideration. The point that has been chiefly discussed has, of course, been whether such a tax is direct, and therefore to be apportioned, or whether it is a duty or excise.

The question as to what was a direct tax first arose in the Supreme Court in 1796, in the case of *Hylton* v. *U. S.*, 3 Dallas, 171. Congress had laid a tax on carriages, and the plaintiff in this case, as owner for his own use of more than one hundred carriages, resisted the tax, claiming that it was a direct tax and, not being apportioned, was unconstitutional. The court decided against this, laying weight on the fact that great injustice would result from an apportionment of a tax of that character, falling as it would, very heavily on owners of carriages in a State where there were but few of such vehicles, and lightly on owners in those States where carriages were in more general use. The court then expressed the opinion that direct taxes, in the sense of the Constitution, include only capitation taxes and taxes on land.

The opinion of Iredell, J. (p. 181) after stating that Congress has the power to tax all taxable objects, except duties on exports, subject only to the two well known restrictions, viz.: that direct taxes must be apportioned, and all duties, imposts, and excises must be uniform, continues:

"If it," *i. e.*, the carriage tax, "can be considered as a tax" "neither direct, within the meaning of the Constitution, nor" "comprehended within the term duty, impost, or excise, there" "is no provision in the Constitution one way or the other, and" "then it must be left to such an operation of the power, as if" "the authority to lay taxes had been given generally in all" "instances."

The question of direct taxes was again discussed by the Supreme Court of the United States in 1868, in the case of *Pacific*

Union Co. v. *Soule*, 7 Wall. 434. In this case the Court decided that an income tax upon amounts insured, renewed, or continued by insurance companies upon the gross amounts of premiums received and assessments made by them, and also upon dividends, undistributed sums, and income is not a direct tax, but a duty or excise. The opinion of the Court, delivered by Mr. Justice Swayne, referred to the case of *Hylton* v. *U. S.*, *supra*, with the remark that the opinion as to what were direct taxes expressed in that case had been subsequently adopted by Chancellor Kent and Judge Story. It then defined the taxing power of Congress as follows:

"The taxing power is given in the most comprehensive" "terms. The only limitations imposed are that direct taxes," "including the capitation tax, shall be apportioned, that duties," "imposts, and excises shall be uniform, and that no duties shall" "be imposed upon articles exported from any State. With these" "exceptions the exercise of the power is in all respects unfettered." As to the question immediately in issue in the case, the Court says:

"If the tax in question were apportioned, it would fall very" "lightly on some States where the insurance companies are" "numerous and rich, and very hardly on others. It cannot be" "supposed that the framers of the Constitution intended that" "any tax should be apportioned, the collection of which on that" "principle would be attended with such results. The conse-" "quences are fatal to the proposition. To the question under" "consideration it must be answered that the tax to which it" "relates is not a direct tax, but a duty or excise."

But the subject received a more thorough examination of the Supreme Court in 1880, in the case of *Springer* v. *U. S.*, 102 U. S. 586, in which the opinion of the Court was again delivered by Mr. Justice Swayne, who therein cites the following passage from Hamilton's works, vol. 7, p. 848. "What is the distinction between" "direct and indirect taxes? It is a matter of regret that terms" "so uncertain and vague on so important a point are to be found" "in the Constitution. We shall seek in vain for any antecedent" "settled legal meaning to the respective terms. There is none." "We shall be as much at a loss to find any disposition of either" "which can satisfactorily determine the point." He suggests that the boundary line between direct and indirect taxes be settled by "a species of arbitration," and "that direct taxes be held to" "be only capitation or poll taxes, and taxes on lands and build-" "ings, and general assessments, whether on the *whole property* of"

"individuals, or on their *whole* real or personal estate. All else" "must of necessity be considered as indirect taxes."

The opinion goes on to show that the tax in question does not fall within either of these categories. "It is not a tax on the whole" "personal estate of the individual, but only on his income, gains," "and profits during a year, which may have been but a small" "part of his personal estate, and in most cases would have been" "so." The Court then refers to the former Acts of Congress, laying direct taxes, showing that the Acts of July 14, 1798, August 2, 1813, and January 19, 1815, were laid on real estate and on slaves, and the Act of August 5, 1861, on real estate only, and continues: "In all of these Acts the aggregate amount required" "to be collected was apportioned among the several States. It" "will thus be seen that whenever the government has imposed" "a tax which it recognized as a *direct tax*, it has never been" "applied to any objects but real estate and slaves." The opinion reviews the cases of *Hylton* v. *U. S.* and *Pacific Co.* v. *Soule*, *supra*, and *Veazie Bank* v. *Fenno*, 8 Wall. 533, quoting from this case the following remark of Mr. Chief Justice Chase: "It may rightly" "be affirmed that in the practical construction of the Constitution" "by Congress, direct taxes have been limited to taxes on land" "and appurtenances, and taxes on polls or capitation taxes." The opinion concludes in these words: "Our conclusions are," "that *direct taxes*, within the meaning of the Constitution, are" "only capitation taxes as expressed in that instrument, and taxes" "on real estate, and that the tax of which the plaintiff in error" "complains, is within the category of an excise or duty."

It would appear that the following propositions are established by the foregoing decisions, viz.: that Congress may tax all taxable objects except exports, provided that direct taxes are apportioned, and that all others are uniform; that direct taxes, in the constitutional sense, include only capitation or poll taxes, and taxes on real estate; and that a tax on real estate, to come within the definition, must be laid on the *whole* estate, and not on any gains, income, or profits derived from it during a year.