

Sec. 9—Powers Denied to Congress

Cl. 4—Taxes

Court held, by a vote of five-to-four, that a tax on income from property was a direct tax within the meaning of the Constitution and hence void because not apportioned according to the census.

Restriction of the Pollock Decision

The *Pollock* decision encouraged taxpayers to challenge the right of Congress to levy by the rule of uniformity numerous taxes that had always been reckoned to be excises. But the Court evinced a strong reluctance to extend the doctrine to such exactions. Purporting to distinguish taxes levied “because of ownership” or “upon property as such” from those laid upon “privileges,”¹⁸⁴⁵ it sustained as “excises” a tax on sales on business exchanges,¹⁸⁴⁶ a succession tax which was construed to fall on the recipients of the property transmitted rather than on the estate of the decedent,¹⁸⁴⁷ and a tax on manufactured tobacco in the hands of a dealer, after an excise tax had been paid by the manufacturer.¹⁸⁴⁸ Again, in *Thomas v. United States*,¹⁸⁴⁹ the validity of a stamp tax on sales of stock certificates was sustained on the basis of a definition of “duties, imposts and excises.” These terms, according to the Chief Justice, “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.”¹⁸⁵⁰ On the same day, in *Spreckels Sugar Refining Co. v. McClain*,¹⁸⁵¹ it ruled that an exaction, denominated a special excise tax, that was imposed on the business of refining sugar and measured by the gross receipts thereof, was in truth an excise and hence properly levied by the rule of uniformity. The lesson of *Flint v. Stone Tracy Co.*¹⁸⁵² was the same. In *Flint*, what was in form an income tax was sustained as a tax on the privilege of doing business as a corporation, the value of the privilege being measured by the income, including income from investments. Similarly, in *Stanton v. Baltic Mining Co.*,¹⁸⁵³ a tax on the annual production of mines was held to be “independently of the effect of the operation of the Sixteenth Amendment . . . not a tax upon property as such be-

¹⁸⁴⁵ *Stanton v. Baltic Mining Co.*, 240 U.S. 103 (1916); *Knowlton v. Moore*, 178 U.S. 41, 80 (1900).

¹⁸⁴⁶ *Nicol v. Ames*, 173 U.S. 509 (1899).

¹⁸⁴⁷ *Knowlton v. Moore*, 178 U.S. 41 (1900).

¹⁸⁴⁸ *Patton v. Brady*, 184 U.S. 608 (1902).

¹⁸⁴⁹ 192 U.S. 363 (1904).

¹⁸⁵⁰ 192 U.S. at 370.

¹⁸⁵¹ 192 U.S. 397 (1904).

¹⁸⁵² 220 U.S. 107 (1911).

¹⁸⁵³ 240 U.S. 103 (1916).