the constitutionality of the measure was made by Hamilton, who treated it as an "excise tax," [1835] whereas Madison, both on the floor of Congress and in correspondence, attacked it as "direct" and therefore void, because it was levied without apportionment.[1836] The Court, taking the position that the direct tax clause constituted in practical operation an exception to the general taxing powers of Congress, held that no tax ought to be classified as "direct" that could not be conveniently apportioned, and on this basis sustained the tax on carriages as one on their "use" and therefore an "excise." Moreover, each of the judges advanced the opinion that the direct tax clause should be restricted to capitation taxes and taxes on land, or that, at most, it might cover a general tax on the aggregate or mass of things that generally pervade all the states, especially if an assessment should intervene, while Justice Paterson, who had been a member of the Federal Convention, testified to his recollection that the principal purpose of the provision had been to allay the fear of the Southern states that their Negroes and land should be subjected to a specific tax.[1837]

From the Hylton to the Pollock Case

The result of the *Hylton* case was not challenged until after the Civil War. A number of the taxes imposed to meet the demands of that war were assailed during the postwar period as direct taxes, but without result. The Court sustained successively, as "excises" or "duties," a tax on an insurance company's receipts for premiums and assessments,[1838] a tax on the circulating notes of state banks,[1839] an inheritance tax on real estate,[1840] and finally a general tax on incomes.[1841] In the last case, the Court took pains to state that it regarded the term "direct taxes" as having acquired a definite and fixed meaning, to wit, capitation taxes, and taxes on land.[1842] Then, almost one hundred years after the *Hylton* case, the famous case of *Pollock v. Farmers' Loan & Trust Co*.[1843] arose under the Income Tax Act of 1894.[1844] Undertaking to correct "a century of error," the

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[1835] THE WORKS OF ALEXANDER HAMILTON 845 (J. Hamilton ed., 1851). "If the meaning of the word excise is to be sought in the British statutes, it will be found to include the duty on carriages, which is there considered as an excise, and then must necessarily be uniform and liable to apportionment; consequently, not a direct tax."

[1836] 4 ANNALS OF CONGRESS 730 (1794); 2 LETTERS AND OTHER WRITINGS OF JAMES MADISON 14 (1865).

[1837] 3 U.S. (3 Dall.) 171, 177 (1796).

[1838] Pacific Ins. Co. v. Soule, 74 U.S. (7 Wall.) 433 (1869).

[1839] Veazie Bank v. Fenno, 75 U.S. (8 Wall.) 533 (1869).

[1840] Scholey v. Rew, 90 U.S. (23 Wall.) 331 (1875).

[1841] Springer v. United States, 102 U.S. 586 (1881).

[1842] 102 U.S. at 602.

[1843] 157 U.S. 429 (1895); 158 U.S. 601 (1895).

[1844] 28 Stat. 509, 553 (1894).