

Perry v. Washburn.

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UNDER the Revenue Act of 1861, it is the duty of the Tax Collector to execute and deliver to a person, paying his taxes in the coin therein designated, a receipt for the same, and the performance of this duty may be enforced by mandamus.

"United States notes," issued under the Act of Congress of February 25th, 1862, are not receivable for State and County taxes.

Taxes are not debts, within the meaning of that clause of the act which provides that the notes shall be "a legal tender in payment of all debts, public and private." Congress, by these terms, only intended such obligations for the payment of money as are founded upon contract.

A tax is a charge upon persons or property to raise money for public purposes. It is not founded upon contract, and does not establish the relation of debtor and creditor between the taxpayer and State.

The cases of *Moore v. Patch*, (12 Cal. 270) and *People v. Seymour*, (16 Id. 340), commented upon and explained.

APPEAL from the Twelfth Judicial District.

Application for mandamus. The petition of the relator shows that on the twenty-fourth day of July, 1862, defendant was Tax Collector of the city and county of San Francisco, and that the relator then owing city and county taxes assessed to him upon his property to the amount of two hundred and seventy dollars and forty-five cents, on that day tendered to defendant as Collector the said amount in United States notes issued under the Act of Congress of February 25th, 1862; that the said Collector refused to receive said notes, and refused, though requested, to give relator a receipt showing the payment of his taxes as it was his duty to do, and as was enjoined upon him by law. Wherefore a mandamus was prayed, commanding the defendant to receive the notes for the taxes, and execute the receipt. Defendant answered, admitting his official character, the correctness of the amount of taxes alleged to be due, the tender of the notes, and his refusal to receive them and to execute the receipt, and denying that it was his duty to receive the notes, or anything else than "legal coin of the United States, or foreign coin at the value fixed for such coin by the laws of the United States," in payment of the taxes due.

The case was submitted to the District Court upon the pleadings

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and without argument, and judgment was rendered in favor of the defendant, refusing the mandamus prayed for; from which judgment the relator appeals to this Court.

Taylor & Hastings, for Appellant.

In behalf of the appellant, we shall endeavor to establish these propositions:

1st. That the Congress of the United States has the power, under the Constitution, to create paper money and make it a legal tender, and constitute it the currency of the nation.

2d. That Congress has exercised this power.

3d. That the Act of Congress making "United States notes" lawful money, and a legal tender in payment of all debts, public and private, within the United States, obliges every individual within the United States to receive such lawful money in payment of any debt, and enjoins the State, and every municipal corporation created by the State, to receive it in payment of its taxes.

4th. If there be anything in the Revenue laws of this State conflicting with this law of Congress, then the former are subordinate to the latter; and so far as they conflict, the State laws stand repealed.

I. Congress has power to issue these notes, make them lawful money and a legal tender, and constitute them the currency of the nation. Congress derives this power from the Constitution of the United States, Art. 1, sec. 8, subs. 5 and 17.

They recite that Congress shall have the power. "5. To coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures." "17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the Government of the United States, or any department or officer thereof."

The meaning of the words quoted from subdivision seventeen, their scope and aim, have been defined and settled by the Supreme Court of the United States.

At an early day the Bank of the United States was incorporated, with full power to issue bank bills and notes. That such incorpora-