No. 13583

Supreme Court of Illinois

Butler

vs.

Wright

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STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 348

348

Butler

vs

1862

Wright

Referred

13583

Buller v Murphy

The law requiring the revenue to be collected and paid over in gold & silver alone is as peremptory and obligatory now as it was previous to the passage of the act of Congress making treasury notes a legal tender in the payment of debts. This is a subject entirely within the controle of our legislature and with which Congress has nothing to do. The Legislature might require all revenue to be paid in gold alone. or in silver ~~[illegible]~~ or Cattle although gold & silver have always been legal tender in the payment of debts - ~~[illegible]~~

An opinion at length will be hereafter prepared.

348

William Butler
vs
Presco Wright

Opinion

Filed May 19. 1862
L. Leland
Clerk

IN THE SUPREME COURT FOR THE STATE OF ILLINOIS.

THIRD GRAND DIVISION—APRIL TERM, A. D. 1862.

WILLIAM BUTLER, Treasurer of the State of Illinois. vs. PRESCO WRIGHT, Collector of Sangamon county,	Appeal from Sangamon.

The appellant makes the following points for the reversal of the judgment and order of the Court below:

First, by the act of the Legislature of the State of Illinois, entitled "An act regulating the collection of the Revenue." Approved February 12th, 1853. See Session Acts of 1853, page 99; by the first section of the act it is declared and enacted that the County Revenue shall be collected in Gold and Silver Coin, County Orders and Jury Certificates, and in no other currency: the revenue for State purposes shall be collected in Gold and Silver Coin and Auditors Warrants, and in no other currency: and State taxes levied for any special purpose other than to defray the ordinary expenses of the State government shall be collected in Gold and Silver Coin, and in no other currency."

The Court is apprised that the largest portion of the State taxes are levied for the special purpose of paying the interest on the public debt of the State. The State has contracted to pay the interest on the public debt in Gold and Silver, and has specially provided, in order to meet this ~~objection~~ obligation, that the taxes levied for this purpose shall be paid in Gold and Silver Coin, and in no other currency. The faith of the State is pledged for the interest in Coin, and no provision is made for exchanging any other currency for Coin to meet this engagement; if therefore it is held that the Treasurer must receive Treasury Notes in payment for taxes, contrary to the express provisions of the act above quoted, the interest must be repudiated, and the State dishonored, at least until the Legislature can meet and make some other arrangement.

The Treasurer contends that the Legislature had full power to direct the collection of the taxes in Gold and Silver Coin.

That there is not in the Constitution of this State any restriction or prohibition, express or implied, which could restrain the Legislature from so directing; and there is no restriction imposed by the Constitution of the United States or authorized by that Constitution to be imposed by Congress on the power of the Legislature to direct in what kind of funds such taxes shall be collected.

Second, The jurisdiction of the State on the subject of taxation is supreme, and is in no wise controlled by any power of the Government of the United States, except as regards the objects of taxation. As to the mode of assessment and collection, or the kind of funds in which it is to be collected, no power exists in Congress to interfere with the State authorities.

Third, The Act of 12th February, 1853, stands unrepealed, and prescribes the only rule on which the Treasurer can act.

Wherefore he prays that the judgment and order of the Circuit Court be reversed.

S. T. LOGAN,
Att'y for Appellant.

348

William Butler
Treasurer
Pecos Right Co.
~~John R. Dickson~~
~~Auditor~~ of Texas

Plff's Briefs

Filed May 17. 1862
L. Leland
Clk

348

Butler
vs
Wright

Filed May 9. 1842
L Leland
Clk

THE PEOPLE OF THE STATE OF ILLINOIS,

BY THE GRACE OF GOD FREE AND INDEPENDENT.

TO ALL TO WHOM THESE PRESENT SHALL COME GREETING!

Know Ye, That we having caused to be inspected the records and proceeding now remaining in the office of our clerk of our Circuit Court in and for our county of Sangamon, and State of Illinois, do find certain records and proceedings in the words and figures following, to wit:

STATE OF ILLINOIS, } ss: Of the April term, A. D. 1862, of the Circuit Court for Sangamon
SANGAMON COUNTY, } county.

PRESCO WRIGHT, Treasurer and Collector of Sangamon county,
against
WILLIAM BUTLER, Treasurer of the State of Illinois.

Be it Remembered, That on the seventh day of May, in the year of our Lord one thousand eight hundred and sixty-two, at the April term of the Circuit Court for Sangamon County, 1862, before the honorable Edward Y. Rice, Judge of the Eighteenth Judicial Circuit of the State of Illinois, said Court being then in session there was filed in open Court, an agreed case and motion for peremptory mandamus, in the words and figures following, to wit:

"In the Circuit Court for Sangamon County, of the April term, A. D. 1862.

"It is agreed by and between William Butler, Treasurer of the State of Illinois, and Presco Wright, Treasurer and Collector of Sangamon county, that the said Presco Wright, as Treasurer and Collector of Sangamon county, had collected and had in his hands due to the State of Illinois on the sixth day of May, 1862, the sum of one thousand dollars, collected by him of taxes assessed, laid and collected by him in the year 1862, due to the State of Illinois for all the various items of taxation required by law to be collected and paid into the State Treasury, which sum had been collected by him from the inhabitants of Sangamon county and received by him from them in the United States Treasury Notes hereinafter described, and that on that day the Auditor of Public Accounts issued from his office the following order, to wit:

$1,000. AUDITOR'S OFFICE, ILLINOIS, SPRINGFIELD, May 6th, 1862.

MR. TREASURER:—Receive of Presco Wright, Collector of Sangamon county, one thousand dollars, being the amount in part of taxes collected by him for the year 1861.

JESSE K. DUBOIS, Auditor.

And it is further agreed, that on the same day, the said Presco Wright presented said order to the Treasurer, the said Wm. Butler, and then and there, at the office of the Treasurer of the State of Illinois, tendered and offered to pay to the said Treasurer of the said sum of one thousand dollars in demand Treasury Notes of the United States, issued under and in pursuance of the provisions of an act passed by the congress of the United States, approved July 17th, 1861, entitled: "An act to authorize a national loan, and for other purposes," which Treasury Notes the said Treasurer then and there refused to receive from the said Presco Wright; and thereupon, the said Presco Wright tendered, and offered to pay to the said Treasurer the said sum of one thousand dollars in Treasury Notes of the United States, issued under and by virtue of an act passed by the congress of the United States, approved Feb. 25th, 1862, entitled: "An act to authorize the issue of United States Treasury Notes, and for the redemption or funding thereof, and for funding the floating debt of the United States;" which last mentioned sum of Treasury Notes, the said Treasurer also refused to receive from the said Presco Wright; and it is now further agreed to submit to the decision of the court, whether the said Treasurer was bound to receive the said sum of one thousand dollars in either description of Treasury Notes before described; and if the court shall be of opinion that the Treasurer was bound to receive the said sum of one thousand dollars, in either description of Treasury Notes above described, then the court shall award a peremptory mandamus, commanding the Treasurer to receive said sum of one thousand dollars in Treasury Notes, the parties hereby waiving the issuing of an alternative mandamus. And it is further agreed, that a *pro forma* judgment of the Circuit Court may be entered, awarding a peremptory mandamus, commanding the Treasurer to receive said Treasury Notes of either kind. And the parties further agree, that an appeal may be granted by the court to the Supreme Court of the State of Illinois, to the said Wm. Butler, on his filing a copy of this record in said Supreme Court, sitting at Ottawa, in the Third Grand Division, during the April Term of said court, without bond or security. And they further agree that said Supreme Court shall enter such judgment as in their opinion the law justifies and requires on the agreed case.

WM. BUTLER, State Treasurer,
PRESCO WRIGHT, Treasurer and Collector,
Sangamon County, Ills.

THE PEOPLE OF THE STATE OF ILLINOIS,

BY THE GRACE OF GOD FREE AND INDEPENDENT.

TO ALL TO WHOM THESE PRESENT SHALL COME GREETING!

Know Ye, That we having caused to be inspected the records and proceeding now remaining in the office of our clerk of our Circuit Court in and for our county of Sangamon, and State of Illinois, do find certain records and proceedings in the words and figures following, to wit:

STATE OF ILLINOIS, } ss: Of the April term, A. D. 1862, of the Circuit Court for Sangamon county.
SANGAMON COUNTY, }

PRESCO WRIGHT, Treasurer and Collector of Sangamon county, }
against
WILLIAM BUTLER, Treasurer of the State of Illinois. }

Be it Remembered, That on the seventh day of May, in the year of our Lord one thousand eight hundred and sixty-two, at the April term of the Circuit Court for Sangamon County, 1862, before the honorable Edward Y. Rice, Judge of the Eighteenth Judicial Circuit of the State of Illinois, said Court being then in session there was filed in open Court, an agreed case and motion for peremptory mandamus, in the words and figures following, to wit:

"In the Circuit Court for Sangamon County, of the April term, A. D. 1862.

"It is agreed by and between William Butler, Treasurer of the State of Illinois, and Presco Wright, Treasurer and Collector of Sangamon county, that the said Presco Wright, as Treasurer and Collector of Sangamon county, had collected and had in his hands due to the State of Illinois on the sixth day of May, 1862, the sum of one thousand dollars, collected by him of taxes assessed, laid and collected by him in the year 1862, due to the State of Illinois for all the various items of taxation required by law to be collected and paid into the State Treasury, which sum had been collected by him from the inhabitants of Sangamon county and received by him from them in the United States Treasury Notes hereinafter described, and that on that day the Auditor of Public Accounts issued from his office the following order, to wit:

$1,000. AUDITOR'S OFFICE, ILLINOIS, SPRINGFIELD, May 6th, 1862.

MR. TREASURER:—Receive of Presco Wright, Collector of Sangamon county, one thousand dollars, being the amount in part of taxes collected by him for the year 1861.

JESSE K. DUBOIS, Auditor.

And it is further agreed, that on the same day, the said Presco Wright presented said order to the Treasurer, the said Wm. Butler, and then and there, at the office of the Treasurer of the State of Illinois, tendered and offered to pay to the said Treasurer of the said sum of one thousand dollars in demand Treasury Notes of the United States, issued under and in pursuance of the provisions of an act passed by the congress of the United States, approved July 17th, 1861, entitled: "An act to authorize a national loan, and for other purposes," which Treasury Notes the said Treasurer then and there refused to receive from the said Presco Wright; and thereupon, the said Presco Wright tendered, and offered to pay to the said Treasurer the said sum of one thousand dollars in Treasury Notes of the United States, issued under and by virtue of an act passed by the congress of the United States, approved Feb. 25th, 1862, entitled: "An act to authorize the issue of United States Treasury Notes, and for the redemption or funding thereof, and for funding the floating debt of the United States;" which last mentioned sum of Treasury Notes, the said Treasurer also refused to receive from the said Presco Wright; and it is now further agreed to submit to the decision of the court, whether the said Treasurer was bound to receive the said sum of one thousand dollars in either description of Treasury Notes before described; and if the court shall be of opinion that the Treasurer was bound to receive the said sum of one thousand dollars, in either description of Treasury Notes above described, then the court shall award a peremptory mandamus, commanding the Treasurer to receive said sum of one thousand dollars in Treasury Notes, the parties hereby waiving the issuing of an alternative mandamus. And it is further agreed, that a *pro forma* judgment of the Circuit Court may be entered, awarding a peremptory mandamus, commanding the Treasurer to receive said Treasury Notes of either kind. And the parties further agree, that an appeal may be granted by the court to the Supreme Court of the State of Illinois, to the said Wm. Butler, on his filing a copy of this record in said Supreme Court, sitting at Ottawa, in the Third Grand Division, during the April Term of said court, without bond or security. And they further agree that said Supreme Court shall enter such judgment as in their opinion the law justifies and requires on the agreed case.

WM. BUTLER, State Treasurer,
PRESCO WRIGHT, Treasurer and Collector,
Sangamon County, Ills.

And afterwards, to-wit: on said seventh day of May in said year, A. D., 1862, the same being one of the regular days of said April Term of said court for said year A. D., 1862, and the said court being then duly organized and sitting in open court for the transaction of business, certain proceedings were had and entered of record by the said court, in the words and figures following, to-wit:

PRESCO WRIGHT, Treasurer and Collector of Sangamon county,
vs.
WILLIAM BUTLER, Treasurer of the State of Illinois.
} Petition for Mandamus.

This day came the said parties by their attorneys, and the court having heard the arguments and allegations of the parties by their counsel, and being now sufficiently advised of and concerning the premises does now peremptorily order that a mandamus issue to the said William Butler, Treasurer of the said State of Illinois, commanding him to receive from the said Presco Wright, County Treasurer of said Sangamon county, the said sum of one thousand dollars in United States Treasury notes and give his proper receipts therefor. And by agreement of the parties an appeal is granted to the said William Butler from this order to the Supreme Court of the State of Illinois, now sitting in the Third Grand Division at Ottawa, on his filing a copy of the record of this case at the present term of said court without bond or security.

STATE OF ILLINOIS,
SANGAMON COUNTY.
} ss.

I, Stephen S. Whitehurst, Clerk of the Circuit Court, in and for said county, in the State aforesaid, do hereby certify the above and foregoing to be a full, true and correct transcript of the record of the proceedings of the Sangamon County Circuit Court, in a certain agreed case lately pending in said Court, wherein Presco Wright, Treasurer of Sangamon county, was plaintiff, and William Butler, Treasurer of the State of Illinois, was defendant, as appears from the records and files of said Court, now remaining in my said office.

Attest my hand and the seal of said Court, hereto affixed at my office in the city of Springfield, in said county and State aforesaid, this 7th day of May, A. D., 1862.

S. S. Whitehurst
Clerk.

In the Supreme Court for the State of Illinois
In the Third Grand Division Of the April Term
of said Court in the year 1862
William Butler Treasurer of the State of Illinois
vs 3 Appeal from Sangamon
Presco Wright Treasurer of Sangamon County
And the plaintiff in Error comes and says
that in the record and proceedings of the Cir
cuit Court manifest error has intervened
to his prejudice in this that said Court erred
in ordering a peremptory mandamus to be
issued as in said order & judgment of the Court
is specified Wherefore he prays that said
Judgment and order be reversed
S. T. Logan for Appellant

348

Wm Butler Treasurer

vs } Appeal from Sangamon

Preso Wright Collector

Copy record & mos

Filed May 9. 1862
L. Leland
Clk.

IN THE SUPREME COURT FOR THE STATE OF ILLINOIS.

THIRD GRAND DIVISION—APRIL TERM, A. D. 1862.

WILLIAM BUTLER, Treasurer of the State of Illinois. vs. PRESCO WRIGHT, Collector of Sangamon county,	Appeal from Sangamon.

The appellant makes the following points for the reversal of the judgment and order of the Court below:

First, by the act of the Legislature of the State of Illinois, entitled "An act regulating the collection of the Revenue." Approved February 12th, 1853. See Session Acts of 1853, page 99; by the first section of the act it is declared and enacted that the County Revenue shall be collected in Gold and Silver Coin, County Orders and Jury Certificates, and in no other currency: the revenue for State purposes shall be collected in Gold and Silver Coin and Auditors Warrants, and in no other currency: and State taxes levied for any special purpose other than to defray the ordinary expenses of the State government shall be collected in Gold and Silver Coin, and in no other currency."

The Court is apprised that the largest portion of the State taxes are levied for the special purpose of paying the interest on the public debt of the State. The State has contracted to pay the interest on the public debt in Gold and Silver, and has specially provided, in order to meet this objection, that the taxes levied for this purpose shall be paid in Gold and Silver Coin, and in no other currency. The faith of the State is pledged for the interest in Coin, and no provision is made for exchanging any other currency for Coin to meet this engagement; if therefore it is held that the Treasurer must receive Treasury Notes in payment for taxes, contrary to the express provisions of the act above quoted, the interest must be repudiated, and the State dishonored, at least until the Legislature can meet and make some other arrangement.

The Treasurer contends that the Legislature had full power to direct the collection of the taxes in Gold and Silver Coin.

That there is not in the Constitution of this State any restriction or prohibition, express or implied, which could restrain the Legislature from so directing; and there is no restriction imposed by the Constitution of the United States or authorized by that Constitution to be imposed by Congress on the power of the Legislature to direct in what kind of funds such taxes shall be collected.

Second, The jurisdiction of the State on the subject of taxation is supreme, and is in no wise controlled by any power of the Government of the United States, except as regards the objects of taxation. As to the mode of assessment and collection, or the kind of funds in which it is to be collected, no power exists in Congress to interfere with the State authorities.

Third, The Act of 12th February, 1853, stands unrepealed, and prescribes the only rule on which the Treasurer can act.

Wherefore he prays that the judgment and order of the Circuit Court be reversed.

S. T. LOGAN,
Att'y for Appellant.

IN THE SUPREME COURT FOR THE STATE OF ILLINOIS.

THIRD GRAND DIVISION—APRIL TERM, A. D. 1862.

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S. T. LOGAN,
Att'y for Appellant.

348

Butler
Freeman &c
v
Dubois
Auditor &c.