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SOME ASPECTS OF NATIONAL BANK
TAXATION.

The states in the beginning attempted to tax national banks, but this exercise of authority was speedily condemned by the highest court in the land as transcending state authority, besides impairing, if permitted, the authority of the nation.¹ But congress, soon after this judicial announcement, permitted the states to assess the shares of the individual shareholders of these institutions.² This was but little more than an indirect method of accomplishing the same end, and for that reason the execution of the permission has been sometimes attended with difficulty. Forseeing that the purpose of the permission was clear, to enable the states to derive the same amount of revenue

¹ *Bank of Commerce v. New York City*, 2 Black, 620; *First National Bank of Louisville v. Kentucky*, 9 Wall. 353; *Davis v. Elmira Savings Bank*, 161 U. S. 283; *Owensboro National Bank v. Owensboro*, 173 U. S. 664; *Third National Bank of Louisville v. Stone*, 174 U. S. 432; *Collins v. Chicago*, 4 Biss. 472; *Brown v. French*, 80 Fed. 166; *Austin v. Aldermen of Boston*, 14 Allen 359; *Flint v. Board of Aldermen of Boston*, 99 Mass. 141; *Maguire v. Board of Revenue*, 71 Ala. 401; *National Bank Act of 1864*, Sec. 41.

² *City of Springfield v. First National Bank of Springfield*, 87 Mo. 441; *First National Bank of Wilmington v. Herbert*, 44 Fed. 158; *Maguire v. Board of Revenue*, 71 Ala. 401.

as by directly taxing the banks, the states have not always kept in sight, as they should have done, the mode of accomplishing this purpose. Again and again have the states assessed actually or in effect the banks, which was illegal, instead of the shareholders on their shares, which was legal.

The contention was soon raised that a tax levied on a corporation measured by the value of its shares was equivalent in effect to a tax on its shares, because the burden of the tax fell eventually on the shareholders in proportion to their holdings. "But the two kinds of taxes," said Justice White, "are not equivalent in law, because the state has the power to levy the other. The question here is one of power and not of economics. If the state has not the power to levy this tax, we will not inquire whether another tax which it might lawfully impose would have the same ultimate incidence."³

"Although the states may not in any form levy a tax upon United States securities, they may tax, as the property of their owners, the shares of banks and other corporations whose assets consist in whole or in part of such securities, and in valuing the shares for the purposes of taxation it is not necessary to deduct the value of the national securities held by the corporation whose shares are taxed."⁴ In most cases, the states have succeeded in observing the national requirement, assessing shareholders, and their action has been sustained;⁵ in fewer cases the states have in effect taxed the banks or their personal prop-

³ *Home Savings Bank v. City of Des Moines*, 205 U. S. 503, 519; *Owensboro National Bank v. Owensboro*, 173 U. S. 664; *Van Allen v. The Assessors*, 3 Wall. 573; *Bradley v. The People*, 4 Wall. 459.

⁴ *Van Allen v. The Assessors*, 3 Wall. 573; *People v. The Commissioners*, 4 Wall. 244; *Bradley v. The People*, 4 Wall. 459; *National Bank v. Commonwealth*, 9 Wall. 353; *Merchants' and Manufacturers' Bank v. Pennsylvania*, 167 U. S. 461, 465; *Hagar v. Citizens' National Bank of Lebanon*, 105 S. W. 403 (Ky.).

⁵ *Ibid.*

⁶ *City and County of San Francisco v. Crocker-Woolworth National Bank*, 92 Fed. 273; *People v. National Bank of D. O. Mills and Co.*, 123 Cal. 53.

erty, and their action has been condemned.' It is singular that the states have been so slow in amending their laws, conforming them with the laws of those states which have received the imprimatur of the highest federal tribunal. Though more than forty years have passed since the taxing of national bank shares was permitted, some of the states have not yet learned this plainest lesson.

Though the shareholders must be taxed instead of the bank itself, yet it is difficult to keep the bank out of the business; nor need this be entirely done. It may indeed act as the shareholder's agent in listing his shares and paying the taxes on them.⁸ And if a state law requires this to be done, shareholders need not list them so long as this is done by the banks themselves.⁹ The law simply implies that the owners must list them, whenever the banks which issued them neglect or refuse to list them.¹⁰ Furthermore, a penalty may be imposed on the officers of a bank for not listing them as required by law.¹¹

If the list contains the name of each shareholder, his residence, and the number of his shares as required by law to be furnished to the assessors of taxes where a bank is located, and where all the shares are to be assessed, another statute is satisfied which provides that there shall be no abatement of the taxes of any one who has not filed

⁸ *Home Savings Bank v. City of Des Moines*, 205 U. S. 503; *Bradley v. The People*, 4 Wall. 459; *Marion National Bank v. Burton*, 90 S. W. 944 (Ky.); *Owensboro National Bank v. Owensboro*, 173 U. S. 664; *Third National Bank of Louisville v. Stone*, 174 U. S. 432.

⁹ *Merchants' and Manufacturers' Bank v. Pennsylvania*, 167 U. S. 461; *National Bank v. Commonwealth*, 9 Wall. 353; *Lionberger v. Rouse*, 9 Wall. 468; *Whitney National Bank v. Parker*, 41 Fed. 402; *First National Bank v. Douglas County*, 3 Dill. 330. The imposition of a tax on the shares of a national bank by a statute which requires the bank to pay the tax and then look to the dividends on the shares and to the shareholders for reimbursement is a tax on the bank itself. *Citizens' Bank of Louisiana v. Board of Assessors*, 54 Fed. 73 (1893).

¹⁰ *Scobee v. Bean* 109 Ky. 526.

¹¹ *Commonwealth v. Jackson*, 61 S. W. 700 (Ky.); *Scobee v. Bean*, 109 Ky. 526.

¹² *Commonwealth v. Citizens' National Bank*, 80 S. W. (Ky.) 158.

with the assessors a list subscribed by him of his estate liable to taxation.¹²

While a bank cannot be taxed by state authority, it can voluntarily list its shares. When thus acting the taxing authority must deal with the bank in a manner somewhat different from the ordinary course, especially the board of equalization. Said the Court of Civil Appeals in Texas in such a case: "As the bank voluntarily rendered the property for taxation and states in its answer that it is willing to pay taxes thereon according to its rendition, we shall not, as we otherwise would, hold it not liable for any portion of the taxes on the bank stock. But, not being originally liable for taxes on the stock, we are of opinion that the board of equalization could not, without its consent, augment its conceded liability by adding other personal property to its rendition, or raising the value of that which had been rendered."¹³ Again, if a bank, through its proper officers, voluntarily lists its shares for taxation as the property of the bank, which are thus taxed, equity will not enjoin collection in the absence of a proper application to the statutory tribunals established to grant relief in such cases.¹⁴

The state may also employ a bank as its agent to collect a tax, lawfully assessed, from its shareholders.¹⁵ But it cannot be required to pay them unless it has in its possession dividends or other property belonging to its members.¹⁶

It has often been declared that shares cannot be valued in the aggregate, but must be listed in the names of their respective owners.¹⁷ The highest court, however, has de-

¹² *National Bank of Commerce v. City of New Bedford*, 155 Mass. 313.

¹³ *First National Bank of Lampasas v. City of Lampasas*, 78 S. W. 42.

¹⁴ *Small v. City of Lawrenceberg*, 128 Ind. 231.

¹⁵ *National Bank v. Commonwealth*, 9 Wall. 353, 361; *Waite v. Dowley*, 94 U. S. 527; *First National Bank v. Douglas County*, 3 Dill. 330.

¹⁶ *Hershire v. First National Bank*, 35 Iowa 272; *Farmers' and Traders' National Bank v. Hoffman*, 93 Iowa, 119.

¹⁷ *National Bank of Virginia v. City of Richmond*, 42 Fed. 877; *Sta-*

clared that the assessment of the entire stock of a national bank *in solido* against the bank itself is valid. And the state may tax the shares of a national bank owned by another bank as if they were owned by an individual.¹⁸

A state may provide one method for taxing state banks and another for taxing national banking associations, if there be no actual discrimination against the shares of national banks resulting from the difference in method.¹⁹ Thus a state may assess a tax directly on state banks, while it can assess no direct tax on national banks, but only on the shares of their members. But if in assessing the former tax, national bonds are deducted from the valuation of a state bank, while they are not deducted from the valuation of the shares of a national bank, there is a manifest inequality in assessing the two classes of shareholders.²⁰

In taxing unincorporated banks, as they have no shares, the legislature, of necessity, is compelled to adopt a different method of taxing them by assessing the capital therein invested, which is practically the difference between the value of a bank's assets and the amount of its liabilities.²¹ The shares of a national bank do not represent the assets of the bank, but rather the difference between the value of its property and its liabilities.²² And in another case of taxing private banks and bankers on the aggregate value of their property, there was held to be no discrimination against national banks by exempting United States bonds belonging to the private banks from taxation and deducting

pylton v. Thaggard, 91 Fed. 93; *National Com. Bank of Mobile v. Mayor of Mobile*, 62 Ala. 284; *Sumter County v. National Bank of Gainesville*, 62 Ala. 646; *Miller v. First National Bank of Cincinnati*, 46 Ohio St. 424; *Farmers' and Traders' National Bank v. Hoffman*, 93 Iowa, 119; *First National Bank of Leoti v. Fisher*, 45 Kan. 726.

¹⁸ *First National Bank of Aberdeen v. Chehalis County*, 166 U. S. 440, affg. 6 Wash. 64.

¹⁹ *San Francisco National Bank v. Dodge*, 197 U. S. 70; *Davenport Bank v. Davenport*, 123 U. S. 83; *Covington v. First National Bank of Covington*, 198 U. S. 100; *Marion National Bank v. Burton*, 90 S. W. 944 (Ky.); *Crocker v. Scott*, 149 Cal. 575.

²⁰ *Marion National Bank v. Burton*, 90 S. W. 944.

²¹ *Bressler v. County of Wayne*, 32 Neb. 834.

²² *Ibid.*

them from their aggregate of valuation, while they were not deducted in determining the value of national bank shares.²³

Again, the taxing of national bank shares in the hands of the owners, while banking institutions are taxed by imposing a franchise tax, does not necessarily result in a discrimination against national bank shares; and before a court can hold that such is the effect of the method, the discrimination must be averred and established.²⁴

But when a state does discriminate against a national bank by using a different method, then the act is within the federal inhibition. And this is done "in assessing national bank shares at their full cash, selling, or market value under a statute that embraced not only the book value of all the assets of the corporation, but the good-will, the dividend earning power, the ability with which the corporation affairs were managed, the confidence reposed in the capacity and permanency of tenure of the officers, and all those other indirect and intangible increments of value which enter into the estimate of the worth of stock and help to fix the market value or selling price of the shares."²⁵

In assessing state banks, where such a statute prevailed, conceding that every species of property was assessed which was specifically enumerated as taxable in the state constitution, it did not follow, said the court, "that the assessment of property as such includes good will, dividend earning power, confidence in the ability of the management, and all those other intangible elements which necessarily enter into the cash or selling value of shares of stock."

This difference in method was held to create an unjust discrimination against the shares of national banks, and was therefore condemned. But four members of the court dissented from this view, holding "that there was beyond

²³ *National State Bank v. City of Burlington*, 94 N. W. 234 (Iowa). See *German American Savings Bank v. City of Burlington*, 91 N. W. 829.

²⁴ *Scobee v. Bean*, 109 Ky. 526.

²⁵ *San Francisco National Bank v. Dodge*, 197 U. S. 70, 88, 89, 114.

doubt an attempt on the part of the California legislature to cast only an equal burden of taxation on [national bank] shares."²⁶

At what valuation may national bank shares be assessed? Their par value may be exceeded if they are worth more. It was once contended that the term "moneyed capital" used in the federal statute, means money at interest, and that as such capital was not taxed on more than its par or nominal value, the par value of national bank shares was their maximum value for taxation. The answer of the court was, that "money invested in a bank is not money put out at interest. The money of the bank is so put out."²⁷ On one occasion, by the bank's statement to the assessor each share was worth \$112.00, while the par was \$100.00. Proof was adduced that \$175.00 had been paid for a share. The bank was justified in fixing the value at \$130.00.²⁸

The market value rule doubtless is similar to the rule which declares that national bank shares must be assessed at their real value. On the application of this rule, a court once said: "The assessor should appraise each asset of the bank at its real value. The value thus ascertained became a charge against the item of value of stock, and should be credited with the debts of the bank. The balance is to be taken as the true value. From the true value of the stock, the assessed valuation of the real estate and of such of the personal property as is legally assessed should be deducted, and the remainder is the amount to be apportioned among the shareholders according to their holdings as the value of the stock for the purpose of taxation."²⁹

Th market value rule is doubtless similar to the rule which directs that bank shares shall be assessed "at their value," and that personal property shall be assessed at "its

²⁶ *Ibid.*

²⁷ *Hepburn v. School Directors*, 23 Wall. 480.

²⁸ *First National Bank of Estherville v. City Council of Estherville*, 112 N. W. 838 (Iowa).

²⁹ *First National Bank of Blue Hill v. Webster County*, 113 N. W. 190 (Neb.).

true value in cash." By this rule the value of national bank shares for the purpose of taxation is the sum of money for which they can be actually sold, and not their book value, computed by adding to the par value of the paid up stock the undivided profits of the bank. The two expressions "value" and "true value in cash" mean the same thing.⁸⁰

Are assessors, boards of review, and, on appeal, are courts bound by the showing of the books of a national bank in arriving at the value of its stock for tax assessment? Generally, it may be said, that the board, as well as the assessor, has the right to seize on any information within reach that may furnish aid to them. Either body may receive evidence, or may act on the knowledge of its own members. Nor is there any requirement that more than a bare record of its conclusion need be preserved.⁸¹

While the states are thus permitted to extend their taxing power over national banks, congress has imposed two limitations: one is that the shares of a non-resident can be assessed only where such bank is located; the other is that the assessment shall not be at a greater rate than on other moneyed capital in the hands of individual citizens of the same state.⁸² In construing the second limitation, four years after its enactment, Justice Davis remarked that "Congress meant no more than to require of each state, as a condition to the exercise of the power to tax the shares in national banks, that it should, so far as it had the capacity, tax in like manner the shares of banks of issue of its own creation."⁸³ The law was not long afterward applied in Missouri. The state had two banks of issue which could not be taxed beyond a fixed amount without infringing their charter, but many other banks of much larger capital were without this charter limitation. A tax was laid on

⁸⁰ *Ankeny v. Blakey*, 44 Or. 78.

⁸¹ *First National Bank of Estherville v. City Council of Estherville*, 112 N. W. 829 (Iowa).

⁸² National Banking Act, 1864, Sec. 41.

⁸³ *Lionberger v. Rouse*, 9 Wall. 468, 476.

all shares of stocks in banks and incorporated companies. The inability of the state to collect a tax for a smaller amount on the two banks of issue did not prevent it from collecting a tax for a larger amount on the shares of national banks.³⁴

There has been much contention over the phrase "other moneyed capital," contained in the second limitation. The chief object of congress in fixing this limit to state taxation on the shares of national banks was to prevent an unequal and unfriendly competition by favoring institutions or individuals carrying on a similar business. "Moneyed capital," says Justice Peckham, "does not mean all capital the value of which is measured in terms of money, neither does it necessarily include all forms of investments in which the interest of the owner is expressed in money."³⁵ What, then, is moneyed capital? In a recent case a federal tribunal has said that the answer is to be determined by the nature of the business in which it is employed, the purpose of the statute being to prevent discrimination against national banks. Where capital is not so employed as to come into competition with the business of national banks, although it is in a general sense moneyed capital, it is within the discretion of the state to tax it at a different rate from banking capital.³⁶

Do the resources of a trust company come within this definition? In other words, is it a bank competitor? The courts have divided on the question, and we are likely to hear more from them before its final settlement. The true answer, we think, depends on the answer to a preliminary

³⁴ *Ibid.*

³⁵ *First National Bank of Wellington v. Chapman*, 173 U. S. 205, 214, affg. 56 Ohio St. 310.

³⁶ *National Bank of Baltimore v. Mayor of Baltimore*, 40 C. C. A. 254, 100 Fed. 24, affg. 92 Fed. 239. For other cases defining moneyed capital, see *Talbot v. Silver Bow Co.*, 139 U. S. 438; *Andeny v. Blakey*, 44 Or. 78; *Cleveland Trust Co. v. Lander*, 62 Ohio St. 266; *First National Bank of Utica v. Waters*, 19 Blatchf. 247; *Mercantile National Bank v. New York*, 121 U. S. 138; *Newark Banking Co. v. Newark*, 121 U. S. 163; *First National Bank of Wellington v. Chapman*, 173 U. S. 205; *Commercial National Bank of Ogden v. Chambers*, 182 U. S. 556; *Mercantile National Bank v. Shields*, 59 Fed. 952.

inquiry. The older companies were created with a double function, to execute trusts and, incidentally, to keep and use the money received from doing this business in a more careful manner than banks for the reason that it possessed a peculiar trust character. Many, if not most of the newer companies, are simply banks with the added power of executing trusts if confided to them. But the trust portion of their business is the smallest, and for many years is likely to be. They obtain deposits from every source like banks, and, in many cases at least, lend them quite as freely. As the business of a trust company thus conducted comes into direct competition with a bank, is there any reason for taxing it in a different manner?

In the *Mercantile Bank* case this distinction between the two functions of a trust company were understood and clearly stated. With respect to the trust function, Justice Matthews said: "Trust companies in New York are not in any proper sense of the word banking institutions." Then follows a description of their powers. "To receive money in trust, and to accumulate the same at an agreed rate of interest; to accept and execute all trusts of every description committed to them by any person or corporation, or by any court of record," and other powers.⁸⁷

This is one side of a trust company; what is the other? Continuing, Justice Matthews said: "They receive money on deposit, it is true, and invest it in loans, and so deal therefore in money and securities for money in such a way as properly to bring the shares of stock held by individuals therein within the definition of moneyed capital in the hands of individuals, as used in the act of Congress."⁸⁸

Whether, therefore, a trust company ought to be taxed like a bank or not is a question of fact depending on its business. This inquiry ought not to be confined to its legal powers, but to its actual business. Is its principal business that of a trust company in its original and proper sense, or

⁸⁷ *Mercantile National Bank v. Mayor of New York*, 121 U. S. 138.

⁸⁸ *Ibid.*

is its principal business that of a bank of deposit and discount? The question has been answered in different ways. It is true the highest tribunal has declared that a tax imposed on a national or state bank is not an unlawful discrimination, because a trust company, while possessing many of the powers and functions of a bank, is not entirely so; the important function of discounting and purchasing paper is denied to it almost everywhere, and the lack of this function removed it from the category of banks for the purpose of taxation. While this must be accepted as the federal rule, the final statement, that trust companies are denied the function of discounting and purchasing paper, one need not accept so far as it is not in harmony with their actual business.³⁹

An unfriendly discrimination in taxing national banks may be shown in four ways. First, in the law whereby they are taxed at a higher rate than other moneyed corporations. The term "rate" used in this statute has relation to the assessment as a whole and was not intended to signify the mere percentage of levy on any valuation that the authorities might adopt.⁴⁰

No attempt has been made to tax national bank shares at a higher rate than other moneyed capital, but some of the state laws have authorized an unfriendly and illegal valuation of them. In defense of their conduct, state officials have contended that if the rate of the tax was the same on both kinds of property they were not amenable for valuing national bank shares higher than "other moneyed capital" or "at a greater rate." But this defense cannot avail.

Said Justice Harlan in *Boyer v. Boyer*.⁴¹ "The words

³⁹ *Jenkins v. Neff*, 186 U. S. 230, affg. 163 N. Y. 320, which affd. 47 App. Div. 394, *Negative View*; *Cleveland Trust Co. v. Lander*, 62 Ohio St. 266; *National Bank of Trenton v. Baker*, 65 N. J. Law, 549.

⁴⁰ *Ankeny v. Blakey*, 44 Or. 78, 86; *People v. Weaver*, 100 U. S. 539; *Pelton v. Commercial National Bank*, 101 U. S. 143; *Supervisors of Albany Co. v. Weaver*, 105 U. S. 539; *Hills v. National Albany Exchange Bank*, 105 U. S. 319; *Evansville Bank v. Britton*, 105 U. S. 322; *Boyer v. Boyer*, 113 U. S. 689.

⁴¹ 113 U. S. 689, 695.

'at a greater rate' than is assessed upon other moneyed capital in the hands of individual citizens" refer to the entire process of assessment, which, in the case of national bank shares, includes both their valuation and the rate of percentage on such valuation; consequently, that the act of congress is violated if, in connection with a fixed percentage applicable to the valuation alike of national bank shares and of other moneyed investments or capital, the state law establishes or permits a mode of assessment by which such shares are valued higher in proportion to their real value than is other moneyed capital." The principle, therefore, is clearly settled that a state statute which establishes a mode of assessing national bank shares at a higher valuation in proportion to their real value than other moneyed capital is in conflict with the national law, though no greater percentage is levied on that valuation than on the valuation of other moneyed capital.

Second, a valid assessment is an essential prerequisite to the lawful exercise of the power of taxation.⁴² Therefore whenever assessors deliberately determine, in deference to the popular will, to violate the statute and to disregard the judicial admonition, and assess national bank shares on a larger percentage than "other moneyed capital," the collection of the tax may be enjoined. "There can be no question of intention or design in such discrimination. In the very nature of it, arithmetically considered, there is discrimination in the operation; and no reasonable man can be heard to say that he did not intend to discriminate when he applied a larger percentum of violation in one case than another.⁴³ But if the unequal valuation be an honest mistake in judgment, a court will not interfere.⁴⁴

The third form of unfriendly discrimination may be shown in valuing national bank shares nearer to, or higher above, their true value, than other bank shares. On one

⁴² *State v. First National Bank of Cartersville*, 180 Mo. 717.

⁴³ *Hammond, J., First National Bank v. Treasurer*, 25 Fed. 749, 752.

⁴⁴ *Exchange National Bank v. Miller*, 19 Fed. 372.

occasion the shareholders of a national bank, whose shares had been assessed at their true value, complained of the illegality of such action because other property had been assessed much below its true value. The assessors sought to establish a custom of assessing national bank shares in this manner, but failed. "Even if it had been established," said the court, "it could not have properly affected the result of this suit. It appears that appellant's property was not assessed beyond its true value."⁴⁵ The position of the court may be questioned, for, if the shareholders could have established a custom of discriminating against national bank shares, they certainly ought to have been entitled to relief. Of course, if no shares of other banks had been included in the general assessment, the court might have been on firm ground; otherwise, it was not.

In the way of further illustration of this principle assessing officers assessed the shares of a national bank at their full value, and other property in their district, credits, notes, mortgages and other moneyed capital known to them, at two-thirds of its value, besides omitting large amounts. This discrimination against the national bank shareholders was declared to be illegal and the entire assessment was void.⁴⁶

A fourth form of unfriendly discrimination against national banks is in permitting unfriendly reductions. The case in which this subject has been most fully considered is *Boyer v. Boyer*.⁴⁷ In Pennsylvania a very large amount of property which, in 1844, was subjected to general taxation, was afterward relieved from the burden of county taxation. In the repeal was included railroad bonds and shares, mortgages, judgments and recognizances and other property. National bank shares, however, were subjected to a heavier burden than that imposed on other property by the law of 1844. The court declared that it seemed difficult

⁴⁵ *Engelke v. Schlenker*, 75 Tex. 559.

⁴⁶ *Exchange National Bank v. Lindsay*, 45 Fed. 619; *Whitney National Bank v. Parker*, 41 Fed. 402.

⁴⁷ 113 U. S. 689.

to avoid the conclusion that, in respect of county taxation of national bank shares, there had been, and was, "such a discrimination in favor of other moneyed capital against capital invested in such shares as is not consistent with the legislation of congress." This decision has proved a powerful stimulant to litigation. It has aroused the hopes within many a taxpayer of overturning the assessment laid on his shares and securing a deduction. Most of these contestants have failed; the smaller number have gained partial or complete victories.

Deductions are made of several things, which may or may not work a substantial inequality. The first of these that may be mentioned are debts. The rule has been stated on many occasions: one of the most noteworthy was in deciding *The People v. Weaver*.⁴⁸ It was then declared that if a debtor is permitted by law to deduct the amount of his debts in valuing his personal property, including his moneyed capital, he should also be permitted to deduct them from his national bank shares. These are moneyed capital and must be included; to exclude them and permit no reduction for indebtedness therefrom, while this is permitted against other moneyed capital, produces an unequal and unjust valuation of such shares.⁴⁹

In states which permit no deductions to be made for debts, a national bank shareholder stands on no higher ground than others; but, wherever a different rule prevails, national bank shareholders are entitled to the benefit of it. Thus a debtor in Virginia who owns national bank shares cannot have his indebtedness deducted therefrom,⁵⁰

⁴⁸ 100 U. S. 539; *Palmer v. McMahon*, 133 U. S. 660; *Albany County Supervisors v. Stanley*, 105 U. S. 305; *Hills v. National Albany Exchange Bank*, 105 U. S. 319; *Mercantile National Bank v. Shields*, 59 Fed. 952; *Miller v. Heilborn*, 58 Cal. 133; *Wasson v. First National Bank of Indianapolis*, 107 Ind. 206.

⁴⁹ *Pelton v. Commercial National Bank*, 101 U. S. 143; *Cumming v. National Bank*, 101 U. S. 153; *Supervisors of Albany Co. v. Stanley*, 105 U. S. 305; *Evansville Bank v. Britton*, 105 U. S. 322; *People v. Dolan*, 36 N. Y. 59.

⁵⁰ *Burrows v. Smith*, 95 Va. 694.

nor a debtor in Ohio,⁵¹ nor in Utah,⁵² while in Iowa,⁵³ a debtor can claim the deduction. A non-resident shareholder also is entitled to all deductions for indebtedness allowed to resident shareholders.⁵⁴

If the laws of a state permit a taxpayer owning moneyed capital to deduct from its assessed value his *bona fide* indebtedness, the owner of national bank shares may do the same thing, even though the law is silent concerning them, and may make this demand even after his shares have been returned for assessment.⁵⁵

Another deduction often made and leading to inequality is that of national securities. As we have seen, the capital of a national bank cannot be taxed by a state, nor any government securities that it may own. Thus in *Griffen v. Heard*, it was claimed that the United States Treasury notes accumulated in a bank was to avoid taxation and ought not to be exempted. If they had been procured for that purpose by exchanging taxable property, they would have been properly taxable. "But having been received," so the court said, "in due course of business, and having been legitimately held as a reserve fund, they remained non-taxable, although one purpose of selecting and retaining them was to escape taxation upon that amount of money."⁵⁶

But a national bank shareholder cannot claim as a deduction the worth of the bank's national securities from the valuation of its shares. This claim was made by a shareholder during the earlier administration of the law, but not sustained.⁵⁷ In estimating, therefore, the value of national bank shares, the value of national securities or government

⁵¹ *Niles v. Shaw*, 50 Ohio St. 370; *First National Bank of Wellington v. Chapman*, 173 U. S. 205.

⁵² *Commercial National Bank of Ogden v. Chambers*, 182 U. S. 566.

⁵³ *First National Bank v. City Council of Albia*, 86 Iowa, 28.

⁵⁴ *Mercantile National Bank v. Shields*, 59 Fed. 952.

⁵⁵ *Whitebeck v. Mercantile National Bank*, 127 U. S. 193.

⁵⁶ 78 Tex. 607, 616.

⁵⁷ *Van Allen v. The Assessors*, 3 Wall. 573; *People v. The Commissioners of Texas*, 4 Wall. 244, 256; *Adair v. Robinson*, 6 Tex. Civ. App. 275.

notes owned by the bank may be included.⁵⁸ But if they are, the same rule must be applied to state banks owning such securities.⁵⁹

If a bank owns real estate the National Banking Law authorizes the assessment of this against the bank for "state, county, or municipal taxes, to the same extent, according to its value, as the real property."⁶⁰ Possessing this authority, a state may deal with it in several ways. It may be assessed against the bank, with the limitation at no higher percentage than other real estate of the same character situated in the county or municipality where the tax is sought to be levied.⁶¹ But when real estate is thus assessed against the bank, the amount must be deducted in assessing its shares.⁶² And if a statute contains no provision for deducting the value of the real estate owned by a national bank from the aggregate value of its shares, the statute is invalid, for "without such a provision, a double tax is fixed upon the value of the real estate from which other moneyed capital is exempt."⁶³ Thus in Pennsylvania, if a bank pays a tax on the par value of its shares, a building it may own, that is used for banking, cannot be taxed for county purposes, although a part is occupied by the cashier as a residence.⁶⁴ Likewise, in Minnesota, if national bank shares are taxed at their actual value without a reduction for real estate, the office and lot of the bank cannot be taxed.⁶⁵ In New York, also, a bank erected an office

⁵⁸ *National State Bank v. City of Burlington*, 94 N. W. 234 (Iowa); *First National Bank v. Farwell*, 7 Fed. 518; *First National Bank v. Board of Reviewers*, 41 La. Ann. 181; *Adair v. Robinson*, 6 Tex. Civ. App. 275.

⁵⁹ *Cleveland Trust Co. v. Lander*, 62 Ohio St. 266.

⁶⁰ National Banking Act. 1864, Sec. 41; *Maguire v. Board of Revenue*, 71 Ala. 401.

⁶¹ *City National Bank v. Paducah*, 2 Flippin 61.

⁶² *First National Bank v. City Council of Albia*, 86 Iowa, 28.

⁶³ *People v. Commissioners of Taxes*, 69 N. Y. 91, revg. 9 Hun. 650.

⁶⁴ *County of Lancaster v. Lancaster County National Bank*, 7 Pa. Week Notes, 29.

⁶⁵ *Board of County Commissioners v. Citizens' National Bank*, 23 Minn. 280.

building on leased ground, the cost of which the tax commissioners refused to deduct from the value of the bank's shares. Their action was erroneous, the court holding that the assessed value of the building should have been deducted.⁶⁶

If a national bank is not taxed on its real estate, no deduction for its value need be made in assessing its shareholders on their shares.⁶⁷ Once a national bank was assessed on both its shares and real estate. Nevertheless, as the valuation of both was less than half their real value, the court declared that no injustice had been done. Others had been assessed too low while the shareholders in this bank were "not yet assessed as high as they should be."⁶⁸ In the absence of proof to the contrary, the law will presume that the assessors have deducted the value of a bank's real estate from the value of its shares, and an assessor's affidavit attached to the tax roll stating that it contains a true statement of the taxable personal estate "at the full and true value thereof, is not evidence of neglect or refusal to make the reduction."⁶⁹

The next deduction to be mentioned is that for savings banks deposits. An assessment of bank shares at their cash value, and at no greater rate than other moneyed capital, is valid, even though an exemption be made of savings bank deposits which are invested in loans secured by taxable real estate.⁷⁰ Nor is the deduction from taxation of money invested in state bonds an unfriendly discrimination against national bank shares. Said the Supreme Court of Alabama: "We feel fully justified in concluding that there was no intention on the part of congress to require the taxation of state bonds. The purpose of the law is accomplished when

⁶⁶ *People v. Commissioners of Taxes*, 80 N. Y. 573.

⁶⁷ *County Commissioners of Frederick Co. v. Farmers' and Mechanics' National Bank*, 48 Md. 117.

⁶⁸ *Nickerson v. Kimball*, 1 National Bank Cases, 409, 1 Chicago L. J. 42.

⁶⁹ *Matter of Farmers' National Bank*, 1 Th. and C. (N. Y.) 383.

⁷⁰ *Bank of Redemption v. Boston*, 125 U. S. 60; *Davenport National Bank v. Davenport*, 123 U. S. 83; *Palmer v. McMahon*, 133 U. S. 660.

the states conform, as far as practicable, their revenue system to its requirements substantially."⁷¹ Nor is the continued deduction of property, which had been exempted before the creation of the national banks, an unfriendly discrimination against them. To tax a corporation that had been exempted would be a plain violation of a contract. This principle was applied to the state bank and branches of the Bank of Indiana, which had been exempted by charter from taxation. Notwithstanding this exemption, the shares of national banks were taxed.⁷²

No deduction of the surplus fund, which a national bank is required to accumulate, unless it is invested in federal securities,⁷³ need be made in valuing its shares.⁷⁴ As the accumulation of a surplus, in excess of the amount required by law, is voluntary, there is "no reason," remarks Justice Smith, "why the state, in the exercise of a power which it never surrendered to the national government, cannot provide for the taxation of the surplus earnings of the national banks located within its borders to the extent above named."⁷⁵ Nor can a tax assessed against a national bank for "money on hand, at interest, or on deposit," be abated because the words "surplus capital" used in the statute, were not employed by the assessors.⁷⁶

Passing from deductions, one of the first questions that arose in taxing national bank shares was, what did congress mean by declaring they must be assessed "at the place where such bank is located?" Did congress mean the state, county or municipal district? To settle this question, congress en-

⁷¹ *Pollard v. State*, 65 Ala. 628, 634.

⁷² *City of Richmond v. Scott*, 48 Ind. 568; *Stilz v. Tutweiler*, 48 Ind. 468.

⁷³ *First National Bank v. Peterborough*, 56 N. H. 38; *North Ward National Bank of Newark v. City of Newark*, 39 N. J. Law, 380.

⁷⁴ *Strafford National Bank v. Dover*, 58 N. H. 316; *First National Bank v. Peterborough*, 56 N. H. 38; *National Bank v. Commonwealth*, 9 Wall. 353; *People v. Commissioners of Taxes*, 94 U. S. 415, affg. 67 N. Y. 516.

⁷⁵ *First National Bank v. Peterborough*, 56 N. H. 38, 41.

⁷⁶ *First National Bank v. Concord*, 59 N. H. 75.

acted in 1868⁷⁷ that "place where the bank is located and not elsewhere" meant the state of the bank's location, leaving to the legislature the right of more minute specification, with the proviso "that the shares of any national bank owned by non-residents of any state, shall be taxed in the city or town where said bank is located, and not elsewhere."

The shares that are taxed are owned by residents and non-residents. The shares of the former may be taxed either where the bank is located, or where the owners reside if they live at a different place; the shares of non-residents must be taxed where the bank is located. Says Chief Justice Chase:⁷⁸ "Every owner takes the property subject to the power of taxation under state authority, and every non-resident, by becoming an owner, voluntarily submits himself to the jurisdiction of the state in which the bank is established for all the purposes of taxation on account of his ownership. * * * The state, therefore, within which a national bank is situated, has jurisdiction, for the purposes of taxation, of all the shareholders of the bank, both resident and non-resident, and of all its shares, and may legislate accordingly."

The states may require national bank shareholders to give annual notice to their respective institutions of their residences, and may tax them, if neglectful of their duty, at the location of their banks as well as at their places of residence. In Massachusetts, where such a law prevailed, a shareholder was rightfully taxed, so it was judicially declared, on his shares in the town where he resided, although he had, through an honest mistake, notified the cashier that his residence was in another town.⁷⁹

Non-residents have not been behind others in trying to find holes in the tax-net, but have rarely succeeded. As intent has rarely been shown in the state laws to violate

⁷⁷ Feb. 10, 1868, 15 Stat. at Large, 40 Cong. 1 Sess. Ch. 7.

⁷⁸ *Tappan v. Merchants' National Bank*, 19 Wall. 490, 499.

⁷⁹ *Goldsbury v. Inhabitants of Warwick*, 112 Mass. 324.

the national regulations, so taxpayers have on nearly every occasion been required to pay their taxes.⁸⁰

A state cannot authorize a city or other municipality to exact a license or other form of local tax from a national bank doing business within its limits.⁸¹ Nor can the shares of a non-resident be taxed by a city when the law of the state plainly provides that all national bank shares shall be assessed and taxed in the county where the bank is located. If, therefore, a city charter should authorize a city to levy taxes on all real and personal property within the city, nevertheless the shares of a national bank located there owned by non-residents cannot be taxed, since the general law authorizes the taxing of them only by the counties. And an injunction will lie to restrain the city officers from attempting to enforce such taxation, as this is more than an irregularity, an attempt indeed to tax property that is exempt from taxation.⁸²

A national bank dividend may be taxed. By mistake, though in good faith, a national bank declared a dividend, or made an addition to its surplus on contingent fund. The dividend or addition was taxable, nor could the mistake be corrected by a court in an action brought to recover the tax. "The law conclusively assumes in such a case that a dividend declared and paid is a dividend earned."⁸³

While a state may make a bank its agent to collect the taxes imposed on its shareholders, it can exercise this prerogative only during solvency. When it passes into the hands of a receiver, its shares are generally worse than useless, and the receiver has no assets belonging to the share-

⁸⁰ See *Kyle v. Mayor*, 75 N. C. 445 and 449; *Moore v. Mayor*, 80 N. C. 154; *Weld v. City of Bangor*, 59 Me. 416; *Provident Institution v. Boston*, 101 Mass. 575; *Clapp v. City of Burlington*, 42 Vt. 579; *Austin v. The Aldermen*, 7 Wall. 694.

⁸¹ *Shelton v. Platt*, 139 U. S. 591; *Second National Bank v. Caldwell*, 13 Fed. 429; *Mayor v. First National Bank of Macon*, 59 Ga. 648; *City of Carthage v. First National Bank of Carthage*, 71 Mo. 508; *State of Idaho v. First National Bank of Boise City* (1902, Dist. Ct. Idaho; not reported); *Bank of Chattanooga v. Mayor*, 8 Heisk. 814.

⁸² *City and County of San Francisco v. Crocker-Woolworth National Bank*, 92 Fed. 273; *National Bank of Arizona v. Long*, 57 Pac. 638.

⁸³ *Bailey v. Railroad Co.*, 106 U. S. 109, 116.

holders which he can apply in payment of the tax assessed on their shares.⁸⁴ But if they possess any value, they are taxable and their owners must pay.⁸⁵ And if a tax has been levied before the receiver's appointment, but after the bank's insolvency, a court, at the receiver's request, will restrain the collector from selling the bank's personal property to satisfy it.⁸⁶ Again, when a bank officer has paid a tax wrongfully assessed on shareholders, the receiver can recover the amount; or, if he himself has paid the tax under protest, he can recover it.⁸⁷

After the failure of a national bank, the duty of the United States Treasurer to collect the taxes that may be due are subordinated to the general power of the Controller. "The Treasurer represents the United States as a creditor, while the Controller is the embodiment of their visitatorial power over corporations created by the government."⁸⁸

A tax by statute may become a lien on national bank shares, and their transfer, without mentioning its existence, would render the transferrer liable for the tax. Thus A sold to B shares on which the tax had not been paid. A gave B a written statement purporting to be a history of the shares in which not a word appeared about the tax. It was paid by the bank, and the amount was afterward recovered from A.⁸⁹

Not infrequently property escapes taxation through lack of knowledge of its existence, neglect of the taxing officers, or for other reasons. In every state there are laws for dealing with such delinquencies. And if need be, whenever property has been omitted from taxation for a year, the legislature has power to enact a law to cure the omission.⁹⁰

⁸⁴ *Stapylton v. Thaggard*, 62 U. S. App. 638, 643; *City of Boston v. Beal*, 5 U. S. App. 253, affg. 51 Fed. 306.

⁸⁵ *Rosenblatt v. Johnston*, 104 U. S. 462.

⁸⁶ *Woodworth v. Ellsworth*, 4 Colo. 580.

⁸⁷ *Wilmington v. Ricard*, 61 U. S. App. 630; *Stapylton v. Thaggard*, 62 U. S. App. 638.

⁸⁸ *Jackson v. United States*, 20 Ct. of Claims, 298, 305.

⁸⁹ *Simmons v. Aldrich*, 41 Wis. 241.

⁹⁰ *McVeagh v. City of Chicago*, 49 Ill. 318.

The Iowa Code provides that when property subject to taxation is omitted, the county treasurer shall demand of the person who should have listed the amount for which the property should have been taxed during the omitted years. The auditor and treasurer of a county gave notice to the shareholders of a national bank that they were the owners of shares omitted for several years from taxation and requested them to show cause on a specified day why the same should not be assessed against them. On the day fixed the tax ferret appeared before the officers and informed them of the omitted property. As there was no assessment of the shares by the officers, there was no assessment on which an action could be based for taxes on property omitted from taxation.⁹¹

In listing omitted property, the proper method has been recently considered by the Supreme Court of Iowa. Under the laws of that state requiring national bank shares to be assessed to the shareholders at the place of the bank's location, and also requiring the assessor to enter on the assessment rolls the several items of property subject to assessment, an assessor is required to list to each shareholder the value of the shares. A county treasurer or county auditor in assessing omitted bank shares must list them in the same way as would an assessor. Therefore, notices given to the shareholders notifying them that they were the owners of shares in a national bank and requiring them to show cause why these should not be assessed, and demanding payment for amount for which the shares should have been taxed during the omitted years, is not a sufficient assessment.⁹²

The omission of assessors within ten days after completing their assessment of the shares of a national bank to serve on the institution a notice in writing of their action, as required by law, does not vitiate the assessment.⁹³ Nor does the omission of a clerk to extend on the assessment

⁹¹ *Judy v. National State Bank of Mt. Pleasant*, 110 N. W. 605.

⁹² *Ibid.*

⁹³ *People v. Smith*, 50 Hun, 39.

roll the amount to be paid by each shareholder until after the roll has been delivered to the collecting authority avoid taxation of the shares.⁹⁴

Lastly, state officers can inspect national banks for tax purposes. Congress⁹⁵ has declared that "no association shall be subject to any visitorial power other than such as are authorized" by the national banking law "or are vested in the courts of justice." This statute does not justify national bank officers in withholding the bank books from state officials who desire to inspect them for the purposes of ascertaining the names, residences and deposits of individual depositors.⁹⁶ A federal court, therefore, will not stay proceedings in a state court pertaining to such an examination by injunction.⁹⁷ And the state courts may compel by mandamus, the officers of national banks to exhibit their books to the state taxing officers.⁹⁸

The remedies to be pursued to prevent the collection of taxes improperly assessed, or, if paid, to obtain their recovery, during recent years have not been matters of much legal contention. The law provides effective relief; the states, too, are learning the lesson of the greatness of the risk incurred by changing their tax laws after their legality have been determined by adequate judicial inquiry. Nevertheless, some changes in the laws are wrought by industrious legislative tinkers almost annually, and thus fresh questions are ever arising to please the lawyer, to interest or distract the judge, and to raise or destroy the hope of the unwilling taxpayer.

Albert S. Bolles.

⁹⁴ *First National Bank of Utica v. Waters*, 7 Fed. 152.

⁹⁵ Rev. Stat., Sec. 5241.

⁹⁶ *First National Bank of Youngstown v. Hughes*, 6 Fed. 737.

⁹⁷ *Ibid.*

⁹⁸ *Paul v. McGraw*, 20 Wash. 296.