

**Bank Tax Case**

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**SooperKanoon Citation :** [sooperkanoon.com/81236](http://sooperkanoon.com/81236)

**Court :** US Supreme Court

**Decided On :** 1864

**Appeal No. :** 69 U.S. 200

**Appellant :** Bank Tax Case

**Judgement :**

Bank Tax Case - 69 U.S. 200 (1864)

U.S. Supreme Court Bank Tax Case, 69 U.S. 2 Wall. 200 200 (1864)

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**69 U.S. (2 Wall.) 200**

**SYLLABUS**

A tax laid by a state on banks, "on a *valuation* equal to the amount of their capital stock paid in, or secured to be paid in," is a tax on the property of the institution, and when that property consists of stocks of the federal government, the law laying the tax is void.

A statute of the State of New York, passed in 1857, making some modifications of previous acts of 1823, 1825, and 1830, enacted that the *capital stock of the banks of the state should be "assessed at its actual value,* and taxed in the same

manner as other personal and real estate of the country." After the passage of this act, several of the banks became owners of large amounts of the bonds of the United States, in regard to which Congress enacts [ [Footnote 1](#) ] that "whether held by individuals or *corporations*, they shall be exempt from taxation by or under *state* authority." On a question between several banks of New York, formed under the general banking law of 1838 in that state, and the tax commissioners of New York, this Court decided, in March, 1863 ( *Bank of Commerce v. New York City*, reported in [67 U. S. 2](#) Black 620), that the tax referred to was a tax upon the stock, and that being so, it was by the settled law of this Court illegally imposed. In April, 1863, just after this decision, the Legislature of New York passed *another* statute, [ [Footnote 2](#) ] which enacted that

"all banks, banking associations &c.;, shall be liable to taxation on a *valuation equal to the amount of their capital stock paid in or secured to be paid in*, and their surplus earnings &c.;, in the manner now provided by law,"

&c.; On a tax laid, under

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*this* act, by the commissioners, upon the different banks of New York City, some of which had invested their whole capital in the securities of the federal government and others of which had largely done so, the question was whether this second act did or did not also impose a tax upon these stocks. The Court of Appeals of New York decided that it did not, and from this decision the case came here. It is proper to say that by the general banking law of New York, under which all these banks were created, it is enacted that the legislature may at any time alter or repeal the act. Between twenty and thirty banks being now here as plaintiffs in error, and the question being one of magnitude both in amount and in principle, [ [Footnote 3](#) ] as many of the corporations as wished to be heard were heard, though the principle involved was much the same in the case of each.

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MR. JUSTICE NELSON delivered the opinion of the Court.

The question involved is whether or not the stock of the United States, in which the capital of the Bank of the Commonwealth is invested, is liable to taxation by the State of New York under an act passed by its legislature 29th of April, 1863, or, to state the question more directly, whether or not that act imposes a tax upon these stocks thus invested in the capital of the bank?

It will be remembered that the previous act, the act of 1857, directed that the capital stock of the banks should be assessed and taxed *at its actual value*. By the present act, as is seen, the tax is imposed on a *valuation equal to the amount of their capital paid in or secured to be paid in &c.*;

Looking at the two acts, and endeavoring to ascertain the alteration or change in the law from the language used, the

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intent of the lawmakers would seem to be quite plain, namely a change simply in the mode of ascertaining or fixing the amount of the capital of the banks, which is made the basis of taxation. By the former, the actual value of the capital, as assessed by the commissioners, is prescribed. By the latter, the capital paid in or secured to be paid in, in the aggregate, is the valuation prescribed. By the former, the commissioners were bound to look into the financial condition of the banks, into the investments of their capital, losses, and gains, and ascertain the best way they can the sum of present value as the basis of taxation. By the latter, they need only look into the condition of the banks in order to ascertain the amount of the capital stock paid in, or secured to be paid in; and this sum, in the aggregate, will constitute the basis. The rule of the present law is certainly more simple and fixed than that of the former, and much less burdensome to the commissioners or assessors, and in its practical operation is perhaps as just. The former mode involved an inquiry into the whole of the financial operations of the bank, its several liabilities, and its available resources -- often a complicated and difficult undertaking, and, at best, of uncertain results.

In order more fully to comprehend the meaning of the language used in the act of 1863, it may be well to refer, for a moment, to the system of the general banking law of 1838, and the amendments of the same, under which these institutions have been organized.

Any number of persons may associate to establish a bank under this law, but the aggregate amount of capital stock shall not be less than \$100,000. The instrument of association must specify, among other things, the amount of the capital stock of the association, and the number of shares into which the same shall be divided. It may also provide for an increase of their capital and of the number of the associates, from time to time, as may be thought proper. The association is required to deposit with the superintendent of the bank department stocks of the State of New York or of the United States, or bonds and mortgages upon

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real estate, at a prescribed valuation, before any bills or notes shall be issued to it for circulation as currency. Nor can it commence the business of banking until these securities have been deposited to the amount of \$100,000. The public debt and bonds and mortgages are to be held by the superintendent exclusively for the redemption of the bills and notes put in circulation as money until the same are paid. And it is made the duty of the superintendent not to countersign any bills or notes for an association to an amount, in the aggregate, exceeding the public debt, or public debt and bonds and mortgages so pledged. It is true, the associations are not obliged to invest more of their capital paid in in stocks, or stocks and bonds and mortgages, than is required as security, with the superintendent, for the bills and notes delivered for circulation as currency. The investment, however, cannot be for a less amount than \$100,000. It may exceed that limit. But this reference to the system shows that however large the amount of the capital of the association, fixed by its articles and paid in, the whole or any part of it may be lawfully invested in these stocks. The whole need not be used as a pledge for the redemption of the bills or notes as currency, as the issuing of these for circulation is only one branch of the business of banking. The banks, therefore, were but obeying the injunction of the law in investing the capital paid in in these

stocks.

Now when the capital of the banks is required or authorized by the law to be invested in stocks, and, among others, in United States stock, under their charters or articles of association, and this capital thus invested is made the basis of taxation of the institutions, there is great difficulty in saying that it is not the stock thus constituting the corpus or body of the capital that is taxed. It is not easy to separate the property in which the capital is invested from the capital itself. It requires some refinement to separate the two thus intimately blended together. The capital is not an ideal, fictitious, arbitrary sum of money set down in the articles of association, but, in the theory and practical operation

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of the system, is composed of substantial property, and which gives value and solidity to the stock of the institution. It is the foundation of its credit in the business community. The legislature well knew the peculiar system under which these institutions were incorporated, and the working of it, and when providing for a tax on their capital at a valuation, they could not but have intended a tax upon the property in which the capital had been invested. We have seen that such is the practical effect of the tax, and we think it would be doing injustice to the intelligence of the legislature to hold that such was not their intent in the enactment of the law.

We will add, that we have looked with some care through the statutes of New York relating to the taxation of moneyed corporations, including the act of 1823, in which the first material change was made in the system, the act of 1825, the revision of 1830, the acts of 1857 and of 1863; and it will be seen in all of them that the tax is imposed on the property of the institutions, as contradistinguished from a tax upon their privileges or franchises. Since the act of 1825, the capital has been adopted as the basis of taxation, as furnishing the best criterion of the value of the property of which these institutions were possessed. Under their charters or articles of association, this amount was paid in, or secured to be paid in, by the stockholders or associates to the corporate body, or ideal person,

constituting the capital stock, to be managed and disposed of by directors or trustees in furtherance of the objects and purposes for which the institutions were created. It constituted the fund raised by the corporators, with which the institutions began and carried on the particular business in which they were engaged. The injunction of the charters, which required this capital to be paid in, made it necessarily substantial property. The amount might fluctuate according to the good or ill fortune of the enterprise. It might become enhanced by gains in business, or diminished by losses but, whether the one or the other, the tax in contemplation of the legislature and of the charters was imposed on the property of the institution

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consisting of its capital. In case of a permanent loss, a remedy against grievous taxation was always at hand by a reduction of the capital.

Having come to the conclusion that the tax on the capital of the Bank of the Commonwealth is a tax on the property of the institution, and which consists of the stocks of the United States, we do not perceive how the case can be distinguished from that of the [Bank of Commerce v. New York City](#), 2 Black 620, heretofore before this Court.

*Judgment reversed and the cause remitted, with directions to enter judgment in conformity with this opinion.*

[ [Footnote 1](#) ]

Act of February 25, 1862.

[ [Footnote 2](#) ]

Act of 29 April, 1863.

[ [Footnote 3](#) ]

It was stated by one of the counsel in the case, Mr. Marshall Spring Bidwell, that to the bank of New York City alone the tax made a difference of \$1,500,000.

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