

People Vs. the Commissioners

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Decided On : 1866

Appeal No. : 71 U.S. 244

Appellant : People

Respondent : The Commissioners

Judgement :

People v. The Commissioners - 71 U.S. 244 (1866)

U.S. Supreme Court People v. The Commissioners, 71 U.S. 4 Wall. 244 244 (1866)

People v. The Commissioners

71 U.S. (4 Wall.) 244

ERROR TO THE COURT OF

APPEALS OF NEW YORK

SYLLABUS

I. Shares in banks, whether state banks or those organized under the Act of June 3, 1864, "to provide a national currency," &c., are liable to taxation by the state

under certain limitations (set forth in section forty-first of the act), without regard to the fact that the capital of such banks is invested in bonds of the United States, declared, by statutes creating them, to be exempted from taxation by or under state authority. *Van Allen v. The Assessors*, [[Footnote 1](#)] affirmed.

2. If the rate of taxation by the state on such shares is the same as, or not greater, than upon the moneyed capital of the individual citizen which is subject or liable to taxation -- that is to say if no greater proportion or percentage of tax on the valuation of the shares is levied than upon other moneyed taxable capital in the hands of its citizens, the shares are taxed in conformity with that proviso of the forty-first section, which says that they may be assessed, "but not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state."

These were two cases which arose upon a certiorari, prosecuted, the one by Denning Duer as relator, the other by Ralph Mead, in the same way, out of the supreme court of the State of New York, and directed to the Commissioners of Taxes and Assessments for the City and County of New York, the defendants in error. The relator in the first case was a holder of certain shares of stock in the National Bank of Commerce in New York, a banking association organized under the National Bank Law. The relator in the second case held certain shares in the Corn Exchange Bank, in the City of New York, incorporated under the laws of the state. These shares, in both banks, had been assessed in the year 1866, for the purposes of taxation under the

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state laws, by the commissioners, as personal property of the relator, in the place in which the banks were located.

In justification of their proceedings the commissioners relied upon:

First. The enactments, in the form of provisos, in the forty-first section of the National Bank Law, passed June 3, 1864, [[Footnote 2](#)] in these words:

" *Provided* that nothing in this act shall be construed to prevent all the shares in any of the said associations, held by any person or body corporate, from being included in the valuation of the personal property of such person or corporation in the assessment of taxes imposed, by or under state authority, at the place where such bank is located, and not elsewhere, *but not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state.* "

" *Provided further* that the tax so imposed under the laws of any state upon the shares of any of the associations authorized by this act shall not exceed the rate imposed upon the shares in any of the banks organized under authority of the state where such association is located."

Secondly. An act of the State of New York, passed April 23, 1866, [[Footnote 3](#)] in these words:

"SECTION 1. No tax shall hereafter be assessed upon the capital of any bank or banking association organized under the authority of this state or of the United States, but the stockholders in such banks and banking associations shall be assessed and taxed on the value of their shares of stock therein; said shares shall be included in the valuation of the personal property of such stockholder in the assessment of taxes at the place, town, or ward where such bank or banking association is located, and not elsewhere, whether the said stockholder reside in said place, town, or ward, or not, *but not at a greater rate than is assessed upon other moneyed capital in the hands of individuals in this state.* "

The case was heard by the supreme court of New York,

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on the return of the commissioners, as upon a demurrer thereto. The return stated that the commissioners did assess the relator upon the value of said shares, and included the same in the valuation of his personal estate.

That they made no allowance or deduction on account of investments by the bank in any securities of the United States.

That such a deduction or allowance was made in assessments upon insurance companies and individuals.

The Supreme Court gave judgment for the commissioners, which judgment the Court of Appeals affirmed.

The cases were now here for review, under the twenty-fifth section of the Judiciary Act; two questions, among others brought up but not considered by this Court, being:

1. Whether the New York statute of 23 April, 1866, was valid so far as it attempts to authorize the taxation of bank shares where the capital of such bank is invested in United States securities, exempt from taxation under the acts of Congress? a question argued separately in respect to state banks, and to those organized under national laws.

2. Whether the taxation of the shares of the several relators was not invalid, for the reason that an illegal discrimination was made in favor of other state corporations and individuals, citizens of said state?

Besides the two cases reported by name here, there were eight or ten cases in substance very similar to them, the cases being represented by different counsel.

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MR. JUSTICE NELSON delivered the opinion of the Court.

These cases are writs of error to the Court of Appeals of the State of New York. The relator in the first is an owner of one hundred and fifty-two shares of stock in the National Bank of Commerce in New York.

The capital of the bank consists of one hundred thousand shares of one hundred dollars each, and which is invested in United States securities and exempt from

state taxation. The commissioners of taxes, in making their assessments, valued the shares at par and imposed upon them the same rate of tax as was imposed upon other personal property in this city.

The commissioners, in their return to the certiorari, state that in estimating the value of the shares they made no deduction on account of the investment of the capital of the bank in United States securities. That in the valuation of the personal estate of individuals, these securities held and owned by them were deducted and the tax assessed on the balance, and the like deductions were made from the capital of insurance companies.

The assessment of this tax on the shares of the relator in the Bank of Commerce was carried to the supreme court of the state, and, after argument, was affirmed, and thence to the Court of Appeals, where the judgment of the supreme court was affirmed. The case is now here on error under the twenty-fifth section of the Judiciary Act.

The first objection taken to the legality of the tax is on the ground that the commissioners in the valuation of the shares refused to deduct the amount of capital of the bank invested in United States securities, and hence refused to regard this deduction in the valuation of the shares.

This question has heretofore been considered by this Court, and, after full deliberation, determined, in the case of *Van Allen v. Assessors*, [[Footnote 4](#)] and need not again be examined.

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That case was one of a large class of cases which were very thoroughly argued and received at the time the most careful examination of the Court.

The next and perhaps the only material question in the case arises upon a construction of a clause in the first proviso of the forty-first section of the national Bank Act. After referring to the taxation of these shares by state authority, it provides: "But not at a greater rate than is assessed upon other moneyed capital

in the hands of individual citizens of such states."

It is argued that the assessment upon the shares of the relator is at a greater rate than that of the personal property of individual citizens, upon the ground that allowance was made on account of United States securities held and owned by them, when at the same time the deduction was disallowed to him.

The answer is that upon a true construction of this clause of the act, the meaning and intent of the lawmakers were that the rate of taxation of the shares should be the same, or not greater, than upon the moneyed capital of the individual citizen which is subject or liable to taxation. That is, no greater proportion or percentage of tax in the valuation of the shares should be levied than upon other moneyed taxable capital in the hands of the citizens.

This rule seems to be as effectual a test to prevent unjust discrimination against the shareholders as could well be devised. It embraces a class which constitutes the body politic of the state, who make its laws and provide for its taxes. They cannot be greater than the citizens impose upon themselves. It is known as sound policy that, in every well regulated and enlightened state or government, certain descriptions of property, and also certain institutions -- such as churches, hospitals, academies, cemeteries, and the like -- are exempt from taxation; but these exemptions have never been regarded as disturbing the rates of taxation, even where the fundamental law had ordained that it should be uniform.

The objection is a singular one. At the time Congress

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enacted this rule as a limitation against discrimination, it was well known to that body that these securities in the hands of the citizen were exempt from taxation. It had been so held by this Court, and, for abundant caution, had passed into a law.

The argument founded on the objection, if it proves anything, proves that these securities should have been taxed in the hands of individuals to equalize the taxation, and hence that Congress by this clause in the proviso intended to subject

them, as thus situated, to taxation, and therefore there was error in the deduction. This we do not suppose is claimed. But if this is not the result of the argument, then the other conclusion from it is that Congress required that the commissioners should deduct the securities, and at the same time intended the deduction, if made, should operate as a violation of the rate of the tax prescribed. We dissent from both conclusions, and think a sound construction of the clause and one consistent with its words and intent is also consistent with all the acts of Congress on the subject.

The commissioners, in their return, state that insurance companies created under the laws of the state, and doing business in the City of New York, were respectively assessed upon the balance of their capital and surplus profits, liable to taxation, after deducting therefrom such part as is invested in United States securities.

Another objection taken is that the taxation of the shares of the relator is illegal on account of this deduction, it being a departure from the rate of assessment prescribed in the clause already cited.

The answer is that this clause does not refer to the rate of assessments upon insurance companies as a test by which to prevent discrimination against the shares -- that is, confined to the rate of assessments upon moneyed capital in the hands of individual citizens. These institutions are not within the words or the contemplation of Congress, but even if they were, the answer we have already given to the

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deduction of these securities in the assessment of the property of individual citizens is equally applicable to them. These companies are taxed on their capital, and not on the shareholder, at the same rate as other personal property in the state. There is not much danger to be apprehended of a discriminating tax in their favor, prejudicial to the rights or property of the citizen, and of course to the rights of the shareholders in these national banks, who stand on the same footing.

The relator in the second case, Ralph Mead, is the holder and owner of twenty-five shares of stock in the Corn Exchange Bank in the City of New York, incorporated under the laws of the state.

The Act of April 23, 1866, imposed a tax on the shares of these banks.

It is insisted that the tax is illegal on account of the refusal of the commissioners to deduct the United States securities in which a portion of the capital stock of the bank was invested.

The general question was distinctly presented in the bank cases of the last term, of which *Van Allen v. Assessors* was one of the class, [[Footnote 5](#)] and disposed of. It was there said:

"But in addition to this view, the tax on the shares is not a tax on the capital of the bank. The corporation is the legal owner of all the property of the bank, real and personal, and within the powers conferred upon it by the charter and for the purposes for which it was created, can deal with the corporate property as absolutely as a private individual can deal with his own. . . . The interest of the shareholder entitles him to participate in the net profits earned by the bank, in the employment of its capital, during the existence of its charter, in proportion to the number of his shares, and upon its dissolution or termination to his proportion of the property that may remain, of the corporation after the payment of its debts. This is a distinct, independent interest or property, held by the shareholder like any

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other property that may belong to him,"

and, we add, of course is subject to like taxation.

It was supposed on the argument that this principle was in conflict with that which governed the decision of this Court in the case of *Gardner v. Appeal Tax Court*, [[Footnote 6](#)] but this is a mistake. That case turned upon the construction of an act of Maryland exempting the bank from taxation on account of a large bonus to the state for the extension of the charter. This Court held that upon a true

construction of the act, the stockholders were within the scope of the exemption. The Court said:

"In whatever way we examine the acts of 1813 and 1821, we are of opinion that it appears from the eleventh section in those acts to have been the intention of the legislatures which passed them to exempt the stockholders from taxation as persons on account of the stock which they owned in the banks."

Some other questions were discussed on the argument besides those we have noticed, but they are questions of which this Court cannot take cognizance. We have examined all of them that are here under the twenty-fifth section of the Judiciary Act.

Judgment of the court below affirmed.

[[Footnote 1](#)]

[70 U. S. 3](#) Wall. 573

[[Footnote 2](#)]

13 Stat. at Large 99.

[[Footnote 3](#)]

Laws of New York, for 1866, vol. 2, p. 1647.

[[Footnote 4](#)]

[70 U. S. 3](#) Wall. 573.

[[Footnote 5](#)]

3 Wall. [70 U. S. 573](#) , [70 U. S. 583](#) -584.

[[Footnote 6](#)]

3 How. 133.

THE CHIEF JUSTICE:

In concurrence with my brothers WAYNE and SWAYNE, I dissent from the opinion just read. The reasons of dissent sufficiently appear in our dissenting opinion in the case of *Van Allen v. Assessors*, read at the last term, and we do not think it necessary to repeat them.

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