

Case No. 4,658.

FARMERS' BANK v. FOX.

[4 Cranch, C. C. 330.]¹

Circuit Court, District of Columbia.

Oct. Term, 1833.

TAXATION OF BAKES—DISTRESS AND SALE OF GOODS.

The corporation of Alexandria, D. C., is authorized to tax the Farmers' Bank of Alexandria, and to collect the tax by distress and sale of the goods of the bank.

Trespass against [William Fox] the collector of corporation taxes for entering the plaintiffs' banking house and carrying away goods. Justification as collector, &c.

Mr. Taylor, for the defendant, referred to Act Va. 1779; Acts Cong. Feb. 25. 1804 (2 Stat. 255), and May 13, 1826 (4 Stat. 162); town revenue law of 1835, and for appointment of assessors and collectors; the appointment of assessors and their returns; the appointment of collector, and delivery to him of a list of taxes to be collected.

The cause was submitted to the court upon the following case: The defendant as collector of taxes for the southern district of the corporation of Alexandria, entered the banking-house of plaintiffs and seized the banknotes as a distress for a tax of \$200, alleged to be due to the corporation, and carried away the bank-notes which he seized, and they were lost to the plaintiffs. That the capital actually paid in, was \$310,000; and the capital of the Mechanics' Bank actually paid in was \$372,544. The capital of the Bank of Alexandria and Bank of Columbia, was each \$500,000. That the corporation of Alexandria had laid a tax of \$200 on each of the said banks, by an act of the corporation therein afterwards mentioned.

The defendant gave in evidence the act of Virginia incorporating the town of Alexandria, passed October 4, 1779; the act of congress of February 25, 1804, to amend the charter of Alexandria; the act of congress of May 13, 1826, further to amend the charter of Alexandria. That the defendant had been duly appointed, and was then collector, &c. The by-law of the corporation of Alexandria of the 20th of March, 1830, for raising a revenue, &c., for the year 1830. That the Farmers' Bank of Alexandria, was, at the time of passing the said by-law, and before and after, a bank established under the authority of the acts of congress of February 16, 1811 [2 Stat. 629], and March 2, 1821 [3 Stat. 618], and carrying on the banking business within the territorial limits and jurisdiction of the said common council. That he had duly demanded payment of the said tax, and that payment had been refused. That he was then required by the revenue laws of the common council to collect the taxes by distress and sale, &c, and that he took the said bank-notes as and for a distress

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for the tax of \$200. And it was agreed that, if upon that state of the case, the court should be of opinion that the said common council was not legally authorized and empowered to impose the said tax, judgment should be rendered for the plaintiffs for \$200; but if, &c., the common council had the power, &c., then judgment should be rendered for the defendant.

Mr. Swann, for plaintiffs.

Mr. Taylor, for defendant.

CRANCH, Chief Judge (THRUSTON, Circuit Judge, absent). The original charter of the town of Alexandria, granted by Virginia on the 4th of October, 1779, gives the corporation power "to make by-laws and ordinances for the regulation and good government of the said town; provided such by-laws and ordinances shall not be repugnant to, nor inconsistent with the laws and constitution of the said commonwealth; and to assess the inhabitants for the charge of repairing the streets and highways; to be observed and performed by all manner of persons residing within the same, under reasonable penalties and forfeitures, to be levied by distress and sale of the goods of the offenders for the public benefit of the said town." The act of 1748, for erecting the town, did not give the trustees any power to assess taxes; nor did the acts of 1752, 1762, 1764, or 1772. The act of Virginia of 1796, authorized the corporation to recover the paving tax from nonresident proprietors of lots. By the 5th section of the act of congress of the 25th of February, 1804 (2 Stat. 255), amending the charter of Alexandria, it is enacted that "they" (the common council of Alexandria) "shall have power to raise money by taxes for the use and benefit of the said town; provided that their by-laws shall not be repugnant to, or inconsistent with, the laws and constitution of the United States." The act of congress of May 13, 1826 (4 Stat. 162), "further to amend the charter," provides for the sale of real estate for the taxes thereon; and "for the licensing, taxing, and regulating auctions, theatrical and other public shows and amusements." The power given to the corporation of Alexandria, by its amended charter, to raise taxes, is given in the most general terms, and without the least limitation as to the subject of taxation. The faculty to carry on the banking business seems to be as fair a subject of taxation as any other means by which money is to be acquired. It is the only mode by which the corporation can tax the stock of non-resident stockholders, who ought to contribute something to the expense of that protection of their property and their officers, which is afforded by the good regulations and sound police of the town. There is, in the tax, nothing inconsistent with the laws or constitution of the United States. The Farmers' Bank is not (like the Bank of the United States) necessary for the collection, safe-keeping, and transmission of the national revenues. The power to tax, and the charter of the bank, are given by the same authority; both emanate from the United States. If there should be danger that the corporation of Alexandria would abuse its power to the destruction of the bank, the power may be taken from them, or restrained

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by congress. We are of opinion, that the corporation of Alexandria has a right to tax the bank; and that the judgment, on the case stated, should be for the defendant, with costs.

¹ [Reported by Hon. William Cranch, Chief Judge.]