

Case No. 4,809. FIRST NAT. BANK OF OMAHA v. DOUGLAS COUNTY.

[3 Dill. 298;<sup>1</sup> 1 Thomp. Nat. Bank Cas. 267; 1 Cent. Law J. 257.]

Circuit Court, D. Nebraska.

May Term, 1873.

TAXATION OF NATIONAL BANKS—JURISDICTION OF EQUITY TO RESTRAIN ILLEGAL TAXES—FEDERAL JUDICIAL JURISDICTION IN RESPECT OF NATIONAL BANKS.

1. National banks may, by reason of their character as such, sue in the federal courts.

[Cited in *Foss v. First Nat. Bank of Denver*, 3 Fed. 186.]

2. Where no remedy exists to recover back illegal state taxes when paid into the treasury, equity will restrain their collection, the plaintiff being otherwise without adequate remedy at law; and equity, having jurisdiction in such a case, will determine the validity of county as well as state taxes, embraced in the same collection warrant and levy.

[Cited in *Union Pac. R. Co. v. McShane*, Case No. 14,382; *Third Nat. Bank of St. Louis v. Harrison*, 8 Fed. 723.]

3. Taxation by state authority of the capital stock of a national bank, invested in United States securities, restrained.

This was a bill in equity [against the county of Douglas and Edward F. McShane, its treasurer] for an injunction to restrain the collection of taxes levied by the commissioners for the defendant county, on behalf of the state of Nebraska and of the county, upon the capital stock of the plaintiff.

A motion was made by Mr. Woolworth, counsel for the bank, to the court, Mr. Justice Miller presiding, for an injunction, which motion was opposed by Mr. Cowin, counsel for the county, on the ground of want of jurisdiction.

MILLER, Circuit Justice, held:—

1. National banks may, by reason of their character as such, sue in the federal courts.

2. A part of the taxes sought to be restrained being for the state of Nebraska, and the county treasurer being by the revenue law of the state required to pay the same into the state treasury when they are collected, and no provision being made by law for an execution or other proceeding against the state for the recovery of them back if illegally exacted, the plaintiff has no adequate remedy at law, and equity will intervene by injunction to restrain the collection of such illegal taxes.

3. When a county treasurer holds one warrant in which he is commanded to enforce payment of both state and county taxes, which for a common reason are illegal, equity, having jurisdiction to restrain the treasurer from enforcing the payment of the state taxes, may proceed to the determination of the validity of the county taxes as well, and restrain them also.

4. The First National Bank of Omaha filed its bill against the county of Douglas and its treasurer, to have it declared that the taxes of 1870 and 1871, levied by the state of

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Nebraska and the county of Douglas upon the capital stock of the bank, were illegal, and to restrain that officer “from making distress upon the property of the plaintiff, as he threatened to do, and from all other proceedings to enforce the payment” of the taxes. On motion for an injunction the defendant objected to the jurisdiction of the court as a federal court, and also as a court of equity. Held, that there was jurisdiction to entertain the bill and allow an injunction.

Injunction allowed.

NOTE.—Suits by National Banks in Federal Courts: Mr. District Judge Welker, of the northern district of Ohio, in the case of *Commercial Bank of Cleveland v. Simmons* [Case No. 3,062], has recently decided that a national bank may sue in the United States circuit court of the district where the bank is located, upon notes endorsed to it by the payee, though the defendant is a resident of the same district. The United States circuit court for the eastern district of Missouri, at the March term, 1875 (present Dillon, Circuit Judge, and Treat, District Judge), decided the same point. Taxation of shares in national banks, see *First Nat. Bank v. Douglas Co.* [Id. 4,799]. Equity jurisdiction to restrain illegal taxation, considered in the Missouri tax cases [Cases Nos. 732, 10,767, and 10,768].

<sup>1</sup> [Reported by Hon. John F. Dillon, Circuit Judge, and here reprinted by permission.]