

Case No. 4,811. FIRST NAT. BANK OF YOUNGTOWN V. HUGHES ET AL.
[5 Cin. Law Bul. 515; 2 Browne, Nat. Bank Cas. 176.]

Circuit Court, N. D. Ohio.

1878.

NATIONAL BANKS—PRODUCTION OF DEPOSIT BOOKS FOR EXAMINATION.

National banks cannot be compelled by the auditor or probate judge to present for inspection the deposit books of the bank.

[This was a bill in equity by the First National Bank of Youngtown, Ohio, against James B. Hughes, auditor of Mahoning county, and Monroe W. Johnson, prosecuting attorney of Mahoning county, Ohio, praying for an injunction and for other relief.]

The auditor of said county, under section 2782 of the Revised Code of Ohio, issued a process against the cashiers of said banks, requiring them to appear before him to give testimony in reference to persons who were depositors in said banks, and the amount of such deposits, in order to reach such sums for taxation to the depositors, and also a compulsory process to require the cashiers to bring before him for inspection the books of the banks showing such deposits. The cashier appeared in person, willing to testify, but refused to bring the books, under the orders of the board of directors. The auditor, then, under section 2783, made application to the probate judge for such compulsory order, which was duly issued by the probate judge, requiring said officer of the bank to appear before him, and bring with him the books of the bank for inspection and examination. Application was made to the circuit court of the United States for a restraining order against said auditor and prosecuting attorney, under section 5241 of the Revised Statutes of the United States (act relating to United States banks).

WELKER, District Judge. Held, that the officers of national banks cannot be compelled to present for inspection, either to the auditor or probate judge, books showing the deposits of the bank, and, therefore, defendants were restrained from compelling the same to be done.

Injunctions were issued, in accordance with the order of Judge WELKER, to be served by the marshal.

[NOTE. This cause was subsequently heard before Baxter, Circuit Judge, on demurrer, and motion to dissolve the injunction. The demurrer was sustained, and complainant's bill dismissed, with costs (First Nat Bank of Youngstown v. Hughes, 6 Fed. 737), whereupon complainant appealed to the supreme court. On motion to dismiss, which was granted, Mr. Chief Justice Waite, in delivering the opinion of the court, said that it is supposed the books of the banks contain evidence pertinent to the inquiry, and, appropriate measures having been taken to have them produced for examination, the case is in no respect different in principle from what it would be if the evidence was called for in an ordinary suit in a court of justice between individuals. *Id.*, 106 U. S. 523, 1 Sup. Ct. 489.]

This volume of American Law was transcribed for use on the Internet